



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO  
GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT

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Prishtina, 22 January 2015  
Ref. no.: RK 752/15

## RESOLUTION ON INADMISSIBILITY

in

**Case no. KI148/14**

Applicant

**Driton Kelmendi**

**Constitutional review of the Judgment PML. no. 101/2014,  
of the Supreme Court of Kosovo, of 6 June 2014**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge and  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. The Referral was submitted by Mr. Driton Kelmendi (hereinafter: the Applicant) from Peja, who is currently serving the imprisonment sentence in the Correctional Centre in Dubrava, who, before the Constitutional Court of Kosovo, is represented by lawyers Mr. Ramë Dreshaj and Mr. Halil Palaj from Prishtina.

## **Challenged decision**

2. The Applicant challenges Judgment PML. no. 101/2014, of the Supreme Court of Kosovo, of 6 June 2014, which was served on the Applicant on 12 June 2014.

## **Subject matter**

3. The subject matter is the constitutional review of Judgment, PML. no. 101/2014, of the Supreme Court, of 6 June 2014, which according to the Applicant's allegations, violated Article 31 of the Constitution of the Republic of Kosovo and Article 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).
4. The Applicant requests at the same time the imposition of interim measure, by which would be suspended the execution of the final Judgment PML. no. 101/2014, of the Supreme Court of Kosovo, of 6 June 2014.

## **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47.1 of the Law on Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 7 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 8 October 2014, the President of the Court, by Decision no. GJR. KI148/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI148/14, appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 10 October 2014, the Court notified the Applicant and the Supreme Court of Kosovo of registration of the Referral.
9. On 9 December 2014, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

10. On 14 November 2012, the District Court in Peja by Judgment P. no. 181/12 found the Applicant guilty of the criminal offence of aggravated murder under Article 147, paragraph 4 and 9 of the CCK, and the criminal offence of unauthorized ownership, control, possession or use of weapons under Article 328, paragraph 2 of the Criminal Code of Kosovo, and sentenced him by

imposing an aggregate punishment of a long-term imprisonment to 23 (twenty three) years.

11. On 16 January 2014, the Court of Appeal of Kosovo by Judgment PAKR. no. 134/2013 modified the Judgment P. no. 181/12, of the District Court in Peja, regarding the legal qualification of the criminal offense and regarding the decision on punishment, so that this Court qualified the offense of the aggravated murder under Article 147, paragraph 1, subparagraph 4 of CCK as a criminal offence of murder under Article 146 of the CCK, and for this criminal offence imposed the imprisonment sentence to 17 (seventeen) years, while it upheld the imprisonment sentence imposed by the first instance court to 2 (two) years for the criminal offense of unauthorized ownership, control, possession or use of weapons under Article 328, paragraph 2 of the Criminal Code of Kosovo, and for two criminal offenses, pursuant to Article 71 of CCK imposed the aggregate punishment of imprisonment to 18 (eighteen) years.
12. On 10 May 2014, the Applicant's defense counsels filed a request for protection of legality, by which they allege significant doubt with regard to the accuracy of the decisive facts, determined in the challenged judgments, with a proposal that the Supreme Court of Kosovo annul the challenged judgments, by remanding the case for retrial and proposed the suspension of execution of the imprisonment sentence.
13. On 22 May 2014, the State Prosecutor of Kosovo, by submission KMLP. II. no. 73/14 proposed that the request for protection of legality of the convict's defense counsels is rejected as ungrounded.
14. On 6 June 2014, the Supreme Court by Judgment PML. no. 101/2014 rejected as ungrounded the request for protection of legality of the defense counsels of the convict Driton Kelmendi filed against the Judgment P. no. 181/12, of the District Court in Peja, of 14 November 2012, and the Judgment PAKR. no. 134/2013, of the Court of Appeal of Kosovo, of 16 January 2014, with a detailed reasoning of all allegations filed by the defense counsels.

### **Applicant's allegations**

15. The Applicant alleges that *"...the challenged judgments and the criminal proceedings conducted prior to the judgments have one thing in common: the insistence to not consider the numerous proposals of the defense for processing new evidence. These new proposals were either rejected by the same unsound justification, or were completely disregarded, starting from the criminal investigation until the hearing session in the Court of Appeal, respectively, from the judgment of the first instance court, the judgment of the second instance and that of the Supreme Court of Kosovo"*.
16. The Applicant further alleges that the *"Rejection of evidence proposed by the defense, by disregarding them, had certainly, exceeded the limit to which the Court, pursuant to its free conviction, assessed the evidence and the facts. The fact that the evidence of the defense was rejected by repeated, unsound and unlawful justifications or were completely disregarded – with an unprecedented insistence, but also even if one would not like to, it was*

*impossible to escape from the thought that this was taking place for no good purposes“.*

17. The Applicant in the submission before the Constitutional Court further lists a number of proposals on the presentation of evidence that were an integral part of the request for protection of legality filed before the Supreme Court and concerning the factual situation and a series of violations of the Law on Criminal Procedure, which were also argued before the Supreme Court of Kosovo and also before the Court of Appeal.

18. The Applicant requests from the Constitutional Court the following:

*“To impose interim measure, to suspend the execution of the final Judgment - serving the imprisonment sentence - as an unconstitutional Judgment, rendered in violation of Article 31 of the Constitution, since he considers that it would cause irreparable damage to the Applicant and leave him to unlawfully serve a non-deserved sentence”.*

*“To hold that there has been violation of Article 31 of the Constitution, Right to Fair and Impartial Trial and Article 6 of the ECHR, Right to a Fair Trial”.*

*“To declare the Judgment PML. no. 101/2014 of the Supreme Court of Kosovo, of 06 June 2014, as null and void“.*

### **Admissibility of the Referral**

19. The Court observes that, in order to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

20. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

*“Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law”.*

21. The Court refers also to Article 48 of the Law, which provides:

*“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”*

22. Moreover, the Court refers to Rule 36 (2) b) of the Rules of Procedure, which provides:

*„(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

...

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights “.

23. Considering the Applicant's allegations regarding violation of the Criminal Procedure Code, the Constitutional Court reiterates that is not a court of appeal, when reviewing the decisions taken by regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1]).
24. Considering the Applicant's allegations in respect of claims that the evidence requested and proposed by the defense of the Applicant was not presented, the Court notes that the Court of Appeal, by Judgment, PAKR. no. 134/2013 of 16 January 2014, taking into account such claims, modified the Judgment P. no. 181/12, of the District Court in Peja, of 14 November 2012, and justified in detail the manner in which it accepted and rejected the evidence, and the manner in which it assessed the evidence.
25. The Judgment PAKR. no. 134/2013 of the Court of Appeal of Kosovo, of 16 January 2014, and the Judgment of the Supreme Court of Kosovo PML. no. 101/2014, of 6 June 2014, in the reasoning provide in detail a response to the Applicant's allegations regarding the reason of applying the relevant rules of procedural and substantive law as well as the reasons of presenting or rejecting the presentation of certain evidence that the Applicant now repeats before the Constitutional Court.
26. The Court emphasizes that the Applicant has not provided any *prima facie* evidence which would point to a violation of his constitutional rights (see *Vanek vs. Slovak Republic*, ECHR Decision on admissibility, Application no. 53363/99 of 31 May 2005).
27. In this case, the Applicant was afforded opportunities to present the case and to challenge the interpretation of the law, which he considers is wrong, before the District Court in Peja, the Court of Appeal in Prishtina and the Supreme Court of Kosovo. After the review of the proceedings in entirety, the Constitutional Court has not found that the respective procedures were in any way unfair or arbitrary (see, *mutatis mutandis*, *Shub against Lithuania*, ECHR Decision on admissibility of Referral no. 17064/06, of 30 June 2009).
28. Finally, the admissibility requirements were not met in this submission. The Applicant failed to show and support by evidence the allegation that his constitutional rights and freedoms were violated by the challenged decision.
29. Consequently, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (2) b) of the Rules of Procedure.

### **Request for interim measure**

30. As it was stated above, the Applicant also requests from the Court “*To impose interim measure, to suspend the execution of final Judgment - serving the*

*imprisonment sentence - as an unconstitutional Judgment, rendered in violation of Article 31 of the Constitution, since he considers that it would cause irreparable damage to the Applicant and leave him to unlawfully serve a non-deserved sentence”.*

31. In order that the Court imposes interim measure, pursuant to Rule 55 (4 and 5) of the Rules of Procedure, it is necessary that:

*"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*

*(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and (...)*

*If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application”.*

32. As stated above, the Applicant's Referral is inadmissible and for this reason, there is no *prima facie* case for granting interim measure. Therefore, the request for interim measure must be rejected.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law, and Rules 36 (2) b) and 55 (4) and (5) of the Rules of Procedure, on 9 December 2014, unanimously:

### **DECIDES**

- I. TO DECLARE the Referral Inadmissible;
- II. TO REJECT the request for Interim Measure;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

**Judge Rapporteur**

  
Robert Carolan



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani