



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

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Prishtina, 10 February 2015  
Ref. No.: RK770/15

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI161/14**

Applicant

**Mursel Izeti**

**Constitutional review of the Judgment, Pml. no. 99/2014, of the Supreme Court, dated 10 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. Mursel Izeti (hereinafter: the Applicant), from village Greme, Municipality of Ferizaj, represented by Mr. Besnik Berisha, lawyer.

## **Challenged decision**

2. The challenged decision is the Judgment, PML. no. 99/2014, of the Supreme Court of 10 June 2014, which rejected as ungrounded the request of the Applicant for protection of legality. This decision was served on the Applicant on 25 June 2014.

## **Subject matter**

3. The subject matter is the constitutional review of the Judgment of the Supreme Court, by which, allegedly, Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 6 (Right to fair trial) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the "ECHR") were violated, because *"The Court, without any grounded reasoning, did not review the items of evidence proposed by the Defense Counsel. The evidence that is not administered by this Court is very relevant and influential for ascertaining the innocence or culpability of the Applicant."*

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 27 October 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) by post mail and it arrived at the Court on 29 October 2014.
6. On 6 November 2014 the President of the Court, by Decision GJR. KI161/14 appointed Judge Arta Rama-Hajrzi as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI161/14 appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 6 November 2014 the Court notified the Applicant on the registration of Referral and requested from him to submit the power of attorney for Mr. Besnik Berisha.
8. On 19 November 2014 the Applicant submitted the requested documentation by the Court.
9. On 24 November 2014 the Court notified the Supreme Court and the Basic Court in Ferizaj – Serious Crime Department (hereinafter: the Basic Court) on the registration of Referral and requested from it to submit the return paper,

indicating the date on which the Applicant was served with the Judgment (Pml. no. 99/2014, of 10 June 2014) of the Supreme Court.

10. On 4 December 2014 the Basic Court submitted to the Court the return paper, showing that the Judgment of the Supreme Court of 10 June 2014 was served on the Applicant's lawyer on 25 June 2014.
11. On 22 January 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

### **Summary of facts**

12. On 22 March 2013, the Basic Court in Ferizaj-Department for serious crimes (Judgment PKR. no. 9/2013-P. 94/12 PR1) found the Applicant guilty of having committed a criminal offence under the Criminal Code of the Republic of Kosovo and convicted him to imprisonment. The Applicant had pleaded guilty at the beginning of the hearing for the criminal offence "unauthorized ownership, control, possession or use of weapons" as provided by Article 328, paragraph 2 of the Criminal Code of Kosovo (hereinafter: "CCK"), but not for the criminal offence "aggravated murder" as provided by Article 147, paragraph 1, subparagraph 9 of the CCK because his actions were done in self-defense. The Basic Court based its findings based on the following evidence:
  - a. partially from the defense of the accused persons, during the main trial and the investigative proceedings;
  - b. from the testimonies of the witnesses;
  - c. from the examination of the photo-album, scheme, and photos taken in the crime scene;
  - d. from the reading of the Autopsy Report No. NA11-033 of the Forensic Department;
  - e. from the reading of the expertise report on firearm;
  - f. from the reading of the expertise report on fingerprints; etc.
13. The Applicant filed an appeal with the Court of Appeal against the Judgment of the Basic Court because of essential violation of criminal procedure provisions, erroneous and incomplete ascertainment of the factual situation and violation of criminal law. The Applicant claimed that the Basic Court had denied him the opportunity to ask questions to the expert, which would have contribute to the finding of the truth of the matter via questions.
14. On 12 November 2013, the Court of Appeal (Judgment PAKR. no. 303/2013) rejected the appeal and upheld the Judgment of the Basic Court. The Court of Appeal held that the Applicant had not been denied any of the rights granted to them under the Criminal Code of Kosovo, which can be confirmed by the case files, especially by the minutes of the main trial.
15. The Applicant filed a request for protection of legality with the Supreme Court against the Judgment of the Basic Court and the Judgment of the Court of Appeal, because of essential violation of the criminal procedure provisions and violation of the criminal law. The Applicant claimed that the lower instances

court had failed to provide reasons for not granting the proposals of the Applicant to hear the forensic expert and to do the reconstruction of the crime scene and the hearing of the ballistics expert.

16. On 10 June 2012, the Supreme Court (Judgment Pml. no. 99/2014) rejected as ungrounded the request for protection of legality filed by the Applicant. The Supreme Court held that the Applicant's appeal does not contain any specification with regard to the manner the alleged violations were manifested in the lower instances decisions.

### **Applicant's allegations**

17. The Applicant alleges that *"[...] in the proceedings against him, the principle of equality of arms was violated and this action was manifested by the rejection of the proposals of the Applicant's defense to submit the evidence and hear the witnesses in the interest of the defense, while, on the other hand, the hearing of all the witnesses and the submission of evidence were provided to the Prosecution even in the main trial [...]"*.

### **Admissibility of the Referral**

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

19. In this respect, the Court refers 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".*

20. In addition, Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, provide:

*(1) The Court may consider a referral if::*

*[...]*

*(d) the referral is prima facie justified or not manifestly ill-founded.*

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

*(a) the referral is not prima facie justified, or*

*(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*

*(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*

*(d) the Applicant does not sufficiently substantiate his claim;*

21. The Court notes that in the present case the Applicant complains that the regular courts had rejected his proposals to hear the forensic expert and the ballistics expert and to do the reconstruction of the crime scene, without giving any single reason for the rejection.
22. In this respect, the Court notes that the Basic Court in Ferizaj have provided extensive reasons for its findings and also referred to the case law of the European Court of Human Rights and the provisions of the Constitution in respect to the presumption of innocence. Furthermore, also the Court of Appeal and the Supreme Court have reasoned their decisions and argued each of the Applicant's allegations in respect to the rejection of the Applicant's proposal.
23. The Supreme Court held in its judgment that the Applicant has had ample opportunity to defend himself and that he has been given the opportunity to see the case files. Furthermore, it held that it does not suffice to say, for example, that the judgment is not grounded on the content of the case files, or that it is grounded on assumptions, but it must be explained where the contradiction is, what the flaws in the reasoning of the decisive facts are. Due to the absence of specification in giving these explanations, the Supreme Court assessed that the allegations in question were ungrounded. The Supreme Court, in respect to the Applicant's allegation that the Basic Court did not reason the rejection of the proposal of the Applicant related to the administration of evidence, found that in page 11 of the Judgment it is explained why the Applicant's request was rejected. Moreover, the Applicant has also commented on the case file.
24. The Court reiterates that it is not to act as a court of fourth instance, with respect to the decision rendered by the Supreme Court. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way evidence was taken, (see case *Edwards v. United Kingdom*, No. 13071/87, the Report of the European Commission of Human Rights of 10 July 1991).
25. In the present case, the Court does not find that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
26. Therefore, the Court notes that the Applicant has not substantiated his allegation on constitutional grounds and he did not provide evidence, indicating how and why his rights and freedoms, protected by the Constitution, have been violated by the challenged decision.
27. The Court concludes that the Applicant's Referral is manifestly ill-founded pursuant to Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) d) and 36 (2) of the Rules of Procedure, on 10 February 2015, unanimously

## DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately;

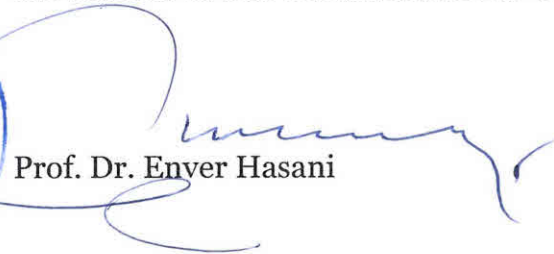
**Judge Rapporteur**



Arta Rama-Hajrizi



**President of the Constitutional Court**



Prof. Dr. Enver Hasani