



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

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Prishtina, 7 September 2015  
Ref. No.: RK 841/15

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI31/15**

Applicant

**Tomislav Ilić**

**Constitutional Review of Decision of the Court of Appeal of Kosovo, Ka.  
no. 2/III/ 2015, of 4 February 2015**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge, and  
Bekim Sejdiu, Judge

#### **Applicant**

1. The Referral was submitted by Mr. Tomislav Ilić (hereinafter: the Applicant), with residence in Niš, Republic of Serbia.

## **Challenged Decision**

2. The Applicant challenges Decision of the Court of Appeal of Kosovo, Ka. no. 2/III/ 2015, of 4 February 2015.

## **Subject Matter**

3. The subject matter is the constitutional review of Decision [Ka. no. 2/III/ 2015] of the Court of Appeal of Kosovo, of 4 February 2015.

## **Legal Basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (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**

5. On 11 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 21 April 2015, the President of the Court, by Decision GJR. KI31/15, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President, by Decision KSH. KI31/15, appointed the Review Panel composed of Judges: Ivan Čukalović (Presiding), Enver Hasani and Arta Rama Hajrizi.
7. On 21 May 2015, the Court notified the Applicant and the Court of Appeal of the registration of the Referral. At the same time, it requested from the Court of Appeal to provide additional information regarding the Applicant's allegations that the decision of the Court of Appeal, of 4 February 2015, had never been physically served.
8. On 28 May 2015, the Court of Appeal responded to the request of the Court.
9. On 1 July 2015, by Decision GJR. KI31/15, the President of the Court appointed Judge Altay Suroy as a member to the Review Panel, replacing Judge Enver Hasani, whose mandate in the Constitutional Court ended on 26 June 2015.
10. On 7 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court the inadmissibility of the Referral.

## **Summary of Facts**

11. On 17 September 2012, at a border crossing point, officers of the Kosovo Customs Service confiscated from the Applicant a certain amount of funds that, pursuant to Article 29 of Law no. 03/L-196 on Prevention of Money Laundering and Financing of Terrorism, had to be declared to the competent customs service when entering or exiting from the territory of Kosovo.

12. On 25 June 2014, the Basic Court in Prishtina-Branch in Podujevo rendered Decision [Reg. no. 10118/12-2] which declared the Applicant responsible for committing the offense referred to in Article 29.4 of the Law on Prevention of Money Laundering and Financing of Terrorism. In the conclusion of the decision is stated: *„The party dissatisfied has the right to appeal with the Court of Appeal within 8 (eight) days from the day of service of the decision”*.
13. On 18 July 2014, the Applicant, through his legal representative, Mr. Ž.J., filed an appeal with the Court of Appeal against this Decision [Reg. no. 10118/12-2] of the Basic Court of Prishtina-Branch in Podujeva, of 25 June 2014.
14. On 5 August 2014, the Court of Appeal rendered its Decision [PO. no. 713/2014] which rejected the appeal of the Applicant's legal representative, Mr. Ž.J., as having been submitted out of time, pursuant to Article 216 of the Law on Offences (hereinafter: LO).
15. On 1 December 2014, the Applicant filed a claim with the Court of Appeal, requesting extraordinary review of both the Decision of the Municipal Court in Prishtina-Branch in Podujeva, of 25 June 2014, and the Decision of the Court of Appeal, of 5 August 2014.
16. On 4 February 2015, the Court of Appeal rendered Decision [KA. no. 2/III/2015], by which it rejected the request for extraordinary review as out of time, with the reasoning: *“Pursuant to provisions of Article 237 of the LO, it is provided that the request for review of the final decision may be appealed within time limit of 15 days from the day the decision becomes final, as the Applicant through his legal representative was served with the decision on 16 August 2014, which is confirmed by the mail book of delivery, whereas he submitted by mail the request for review on 01 December 2014, which means that the request for review was filed out of the provided time limit, therefore it is rejected.”*

### **Relevant law**

17. Law No. 03/L-196 on Prevention of Money Laundering and Financing of Terrorism

Article 29. Movement of monetary instruments into and out of Kosovo -  
Obligation to declare

*“1. Every person entering or leaving Kosovo and carrying monetary instruments of a value of € ten thousand (10,000) or more must declare the amount of the monetary instruments and the source of such monetary instruments in writing, in a format to be prescribed by the Kosovo Customs, to a customs officer, and, if so requested by the officer, shall present the monetary instruments [....]”*

## **Applicant's Allegations**

18. The Applicant alleges that in the regular procedure he was not allowed to question the witnesses, that the courts did not serve on him the decision and that he could not file the appeals.
19. The Applicant requested from the Court to annul Decision [Reg. no. 101 18/12-2] of the Basic Court in Prishtina-Branch in Podujeva, of 25 June 2014 and Decision [PO. no. 713/2014] of the Court of Appeal of 5 August 2014, or to modify the decisions and suspend the proceedings, so that the Applicant is acquitted of responsibility.

## **Admissibility of the Referral**

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

21. In this respect, Article 113. paragraph 7 of the Constitution 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.”*

22. Article 48 of the Law also 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.”*

23. In this case, the Court refers to Rule 36 (1) (d) and (2) (d) of the Rules of Procedure of the Constitutional Court, which provides:

*(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:*

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

24. The Court notes that the Applicant has built his constitutional complaint on allegations that in the regular proceedings he was not allowed to take legal actions which, allegedly, caused violation of Article 30 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial] Article 32 [Right to Legal

Remedies], Article 46 [Protection of Property] and Article 54 [Judicial Protection of Rights] of the Constitution.

25. After having analyzed the case file submitted by the Court of Appeal on 28 May 2015, the Court found that on 19 September 2012, the Applicant authorized his legal representative, who, according to the power of attorney, was authorized to take all legally permitted procedural actions and to file legal remedies within the deadline prescribed by law.
26. The Court further notes that on the basis of letter of receipt Nr. 10118 / 12-2, the decision of the Basic Court of Prishtina-Branch in Podujeva dated on 25 June 2014 was served on the Applicant's legal representative on 09. July 2014, while according to the letter of receipt Nr. 10118 / 12-2, the decision of the Appellate Court of Kosovo dated on 4 February 2015, was served on the Applicant's legal representative on 30 March 2015.
27. Regarding the constitutional review of Decision [Ka. no. 2/III/2015] of the Court of Appeal of Kosovo, of 4 February 2015, the Court considers that in the proceedings before the Court of Appeal it was decided on the existence of legal requirements for filing a request for an extraordinary review of the final decision, and not on the resolution of the merits upon the Applicant's request.
28. According to the assessment of the Court, the Court of Appeal based its decision [KA. no. 2/III/2015], which rejected the request for extraordinary review of the final decision, of 4 February 2015, on relevant legal provision of Article 237 of LO, which provides:

*„The request for an extraordinary review of the final decision shall be filed within 15 days from the date the decision becomes final. The request for an extraordinary review of the final decision shall be submitted in writing to the High Court for Minor Offenses”.*
29. Accordingly, in this case there is nothing to indicate that the Applicant, in a timely fashion, in the regular courts contested whether there had been an arbitrary application of the procedural law to the detriment of the Applicant.
30. The Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz v. Spain*, ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
31. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, as the Applicant has not substantiated that the challenged decision violates his rights guaranteed by the Constitution or the ECHR.

32. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

### FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Rules 36 (1) (d) and (2) (d) of the Rules of Procedure, in the session held on 6 July 2015, unanimously:

### DECIDES

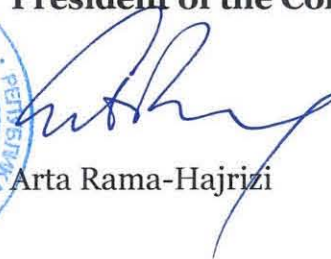
- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 paragraph 4 of the Law; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

  
Robert Carolan



**President of the Constitutional Court**

  
Arta Rama-Hajrizi