



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

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Prishtina, 27 August 2015  
Ref. no.: RK827/15

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI49/15**

Applicant

**Veli Kuçi**

**Constitutional Review of Judgment PML. no. 65/2015,  
of the Supreme Court of 26 March 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. Veli Kuçi, from the village of Shiroka, Municipality of Suhareka (hereinafter: the Applicant).

## **Challenged Decision**

2. The Applicant challenges Judgment PML. no. 65/2015 of the Supreme Court of 26 March 2015.

## **Subject Matter**

3. The subject matter is the request for constitutional review of the Judgment of the Supreme Court. The Applicant considers that “*the proceedings before the regular courts were unfair*”, and that Articles 24 [Equality Before the Law], 29 [Right to Liberty and Security] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”) have been violated.

## **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 20 April 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 2 June 2015 by Decision no. GJR. KI49/15 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, by Decision no. KSH. KI49/15, the President appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Ivan Čukalović and Artta Rama-Hajrizi.
7. On 18 June 2015 the Court informed the Applicant and the Supreme Court about the registration of the Referral.
8. On 8 July 2015 the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of Facts**

9. On 21 December 2009 by Judgment P. no. 1931/2009, of the Municipal Court in Prishtina, the Applicant was found guilty of ten criminal offences of Fraud under Article 261 paragraph 1 of the Criminal Code of Kosovo (hereinafter: the CCK) and he was sentenced by aggregate punishment of imprisonment of 2 (two) years and two months.
10. The Municipal Public Prosecutor in Prishtina within the legal deadline filed an appeal against the Judgment (P. no. 1931/2009) due to the decision on punishment, with the proposal that the Judgment be modified and that the longer imprisonment sentence be imposed on the accused.

11. The Applicant submitted appeal within legal deadline against Judgment (P. no. 1931/2009) due to essential violations of the criminal procedure provisions, erroneous and incomplete determination of factual situation, erroneous application of the substantive law and decision on punishment with the proposal that the judgment be annulled and the case be remanded to the first instance court for retrial.
12. On 12 March 2013 the Court of Appeal of Kosovo by Judgment PA 1 no. 441/12 rejected as ungrounded the appeals of the Municipal Public Prosecutor in Prishtina and of the Applicant and upheld the Judgment of the Municipal Court in Prishtina (P. no. 1931/09).
13. On 23 January 2015 the Applicant filed a request for protection of legality against the Judgment of the Court of Appeal of Kosovo (PA 1 no. 441/12) and the Judgment of the Municipal Court in Prishtina (P. no. 1931/09).
14. On 26 March 2015 the Supreme Court of Kosovo by Judgment PML. no. 65/2015 rejected as ungrounded the request for protection of legality, with the following reasoning:

*"... In support of all administered evidence, it results that the conclusions of the courts were fair and lawful, given that within specific actions, the convict on behalf of the Agency for mediation for employment, asked for money to obtain visas for them and he took from them a certain amount, although he knew that he could not accomplish that, and thus he deceived the injured..."*

### **Applicant's Allegations**

15. The Applicant alleges that the regular courts violated the rights guaranteed by Articles 24 [Equality Before the Law], 29 [Right to Liberty and Security] and 31 [Right to Fair and Impartial Trial] of the Constitution.
16. The Applicant alleges that *"he did not commit this criminal offence and that he returned to all of the parties the entire amount of money to the last cent."*
17. The Applicant considers that *"he was unfairly convicted and he requests to be released from serving the sentence and to annul the judgments, by which he was convicted."*

### **Admissibility of the Referral**

18. The Court shall first examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
19. 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.”*

20. The Court also 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.”*

21. Moreover, the Court recalls Rule 36 (2) (b) of the Rules of Procedure, which provides:

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

*...*

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

22. The Court notes that the Applicant reiterates the same allegations in the proceedings of the request for protection of legality before the Supreme Court of Kosovo, which by Judgment PML. No. 65/2015 of 26 March 2015 provided a reasoned response to all Applicant's allegations regarding the reasons for the application of the relevant rules of procedural and substantive law.
23. The Court reiterates that it is not its task under the Constitution to act as a court of fourth instance with respect to the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also Case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
24. The Applicant has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights (See: *Vanek vs. Slovak Republic*, No. 53363/99 ECHR Decision on admissibility, of 31 May 2005).
25. Although the Applicant claims that his rights have been violated by erroneous determination of the facts and erroneous application of the law by the regular courts, he has not shown how the abovementioned decisions violated his constitutional rights.
26. The Court further reiterates that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings in his case cannot of itself raise an arguable claim for breach of the Constitution (see: *mutatis mutandis*, ECHR Judgment No.5503/02, *Mezotur-Tiszazugi Tarsulat vs. Hungary*, Judgment of 26 July 2005).
27. The Applicant was afforded the opportunity to present his case and to challenge the interpretation of the law, which he considers is wrong, before the Municipal

Court in Prishtina, the Court of Appeal of Kosovo in Prishtina and the Supreme Court of Kosovo, in the regular court proceedings.

28. The Court, after having reviewed the proceedings in their entirety, did not find that the relevant proceedings before the regular courts have been unfair or arbitrary (*mutatis mutandis*, *Shub v. Lithuania*, no. 17064/06, ECHR. Decision of 30 June 2009).
29. The Court considers that admissibility requirements have not been met. The Applicant has failed to point out and substantiate that his constitutional rights and freedoms have been violated by the challenged decision.
30. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (2) (b) of the Rules of Procedure.

#### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113 paragraph 7 of the Constitution, Articles 20 and 48 of the Law and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 8 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;
- IV. This Decision is effective immediately.

**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi