# RESOLUTION ON INADMISSIBILITY

In

## Case No. KI 10/13

Applicant

## Enver Zeneli

## Constitutional Review of the Supreme Court Judgment Pkl.nr.125/2012, of 30 November 2012

### 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
Arta Rama – Hajrizi, Judge

**The Referral**

1. The Referral was filed by Enver Zeneli, residing in village Malishevë, Municipality of Gjilan (hereinafter, the Applicant), represented by Mr. Shemsedin Piraj.

2. The Applicant challenges the Supreme Court Judgment Pkl.nr.125/2012, dated of 30 November 2012 (hereafter, the Judgment).

3. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law and Rule 30 and 75 of the Rules.

**Proceedings before the Court**

4. On 25 January 2013, the Applicant filed the Referral with the Court.

5. On 3 February 2012, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.

6. On 27 February 2013, the Court informed the Supreme Court of Kosovo on the Referral.

7. On 27 February 2013, the Court sent a letter to the Applicant requesting from him to complete the official referral form and to include the authorization for his attorney.

8. On 4 March 2013, the Applicant's lawyer submitted the requested additional documents.

9. On 12 March 2013, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral and on the rejection of the request for interim measure.

**Summary of the facts**

10. On 6 April 2006, the Municipal Court in Prishtina found (P.nr.210/2005)the Applicant guilty of charges of aggravated theft [Article 253 of the CCK] and falsifying documents [Article 332 of the CCK] and sentenced him with 6 months imprisonment and a fine of 1000 € (one thousand Euro).

11. On 17 June 2006, the Applicant filed an appeal with the District Court in Prishtina against that Judgment, challenging it, proposing the annulment of the judgment and sending it for a retrial.

12. On 21 November 2008, the District Court partially approved (AP.nr.452/06) the appeal of the Applicant and changed the Judgment of the Municipal Court, by confirming the imprisonment for 6 (six) months and changing the amount of fine from 1000 € (one thousand Euro) to 800 (eight hundred Euro).

13. On 13 July 2012, the Applicant submitted to the Supreme Court a request for protection of legality, because "I as the accused could not state my defense claim thus my right to be defended at this stage of the procedure has been violated, and it was important for making a fair and legal judgment".

14. On 22 March 2010, the Supreme Court declared (Pkl.nr.15/2010) the request founded and annulled District Court's Judgment and sent the case back for retrial, since the District Court in Prishtina breached the provisions of the Criminal Procedure Code regulating the participation of the parties in court sessions.

15. On 6 May 2010, the District Court rejected (Ap.nr.152/2010) the Applicant's appeal and confirmed the judgment (P.nr.210/2005) of the Municipal Court.

16. On 13 July 2012, the Applicant once again requested to the Supreme Court protection of legality.

17. On 30 November 2012, the Supreme Court rejected (Pkl.no.125/2012), the request as ungrounded, stating that:

   "...the essential violations of the criminal procedure clauses which are alleged are not grounded as it is emphasized in the reasoning of this judgment their enacting clauses are understandable, clear and have no contradictions with themselves or their reasoning".

## Allegations of the Applicant

18. The Applicant alleges that "the first instance court for reasons unknown to me, deprived itself of the possibility that in this case, it exactly finds the factual situation as from the possible comparison of the data of these two vehicles it would easily come to the conclusion that we are dealing with two vehicles which are totally different concerning their technical data...".

19. In addition, the Applicant claims that *"in lack of providing the proposed material evidence by the expert of the corresponding field – machinery, an expertise which was proposed by the defense counsel, the factual situation was not clarified"*.

20. In sum, the Applicant complains that the Judgment of the Supreme Court violated his constitutional right to a fair and an impartial trial, guaranteed by Article 31 of the Constitution, was violated.

21. The Applicant concludes requesting from the Constitutional Court to adopt a judgment which will:

> *"DECLARE as admissible the applicant's referral, Enver Zeneli from village Malishevo, Gjilani Municipality.*
> *ANNUL all court decisions and return the matter to court of the first instance for retrial.*
> *RECOMMEND the first instance court to get the necessary material evidence the expertise from an expert of the respective field – machinery, which was proposed by the defense counsel and the applicant of this referral"*.

22. The Applicant further requests, even though not explicitly, the Constitutional Court to impose interim measure in his case, by requesting to:

> *" ORDER the stopping of the execution of the judgment of the first instance court in Prishtina, identified in the file"*.

**Preliminary assessment of the admissibility of the Referral**

23. First of all, the Court examines whether the Applicant have fulfilled the admissibility requirements laid down by the Constitution, the Law and the Rules of Procedure.

24. The Court notes that the Applicant justified the referral with the facts he considers relevant and implicitly makes reference to an alleged violation; expressly challenges the Judgment as being the concrete act of public authority subject to the review; points out the relief sought; and attaches the different decisions and other supporting information and documents.

25. However, the Court notes that Rule 36 (1).c) of the Rules of Procedure provides:

*"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

26. The Court also refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution that establishes:

*"The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties".*

27. The main claim of the Applicant has to do with an alleged erroneous and incomplete evaluation of the material evidence by the regular courts.

28. The Court recalls that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

29. Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is rather the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

30. In sum, the Court can only consider whether the evidence has been presented in such a manner that the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).

31. Moreover, the Applicant merely disputes whether the Supreme Court entirely applied the applicable law and disagrees with the courts' factual findings with respect to its case.

32. As a matter of fact, the Applicant did not substantiate an allegation on constitutional grounds and did not provide evidence that its rights and freedoms have been violated by the Supreme Court.

33. Consequently, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

34. Moreover, the Court notes that the judgments of the Supreme Court and the District Court were well argued and thoroughly reasoned and recalls again that it is not under the jurisdiction of the constitutional review to check the assessment of the evidence made by the regular courts.

35. It follows that, pursuant to Article 113 (1) of the Constitution and Rule 36 (1.c) of the Rules, the Referral is inadmissible as manifestly ill-founded.

## Request for Interim Measures

36. Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, provide that "when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures.

37. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled to request interim measures under Rule 54 (1) of the Rules of Procedure.

38. Furthermore, the Applicant merely requests the Court to impose interim measures, without providing any further argument or relevant documents grounding his request.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 27 of the Law, and Rules 52, 55 and 56 (2) of the Rules of Procedure, on 12 March 2013, unanimously

### DECIDES

    I. TO REJECT the Referral as 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**          **President of the Constitutional Court**

Almiro Rodrigues          Prof. Dr. Enver Hasani