



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

---

Pristina, 26 February 2013  
Ref. No.: RK382/13

## **RESOLUTION ON INADMISSIBILITY**

**Case No. KI124/11**

Applicant

**Ljubiša Živić**

**Request for review of the appellate proceedings in the District Court Mitrovica regarding the judgment of the Municipal Court in Vučitrn K 66/09 dated 25 May 2010 (delay of proceedings)**

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

composed of

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

#### **Applicant**

1. The Applicant is Živić Ljubiša residing in Gračanica.

### **Subject matter**

2. Subject matter of the Referral filed with the Constitutional Court by the Applicant is the alleged unreasonable length of appellate criminal proceedings against judgment of the Municipal Court in Vučitrn K 66/2009 of 25 May 2010. That criminal proceeding has been instituted against accused DD. The Applicant is interested party in the proceedings.
3. The Applicant considers that his rights guaranteed by Articles 3 and 24 [Equality before the Law], Article 54 [Judicial Protection of Rights] and Article 56 [Fundamental Rights and Freedoms during a State of Emergency] of the Constitution have been violated.

### **Legal Basis**

4. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of the Law, and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

### **Proceedings before the Court**

5. On 19 September 2011, the Applicant submitted a referral with the Constitutional Court.
6. On 7 February 2012, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and a Review Panel composed of Judges Almiro Rodrigues (Presiding), Enver Hasani and Gjyljeta Mushkolaj.
7. On 18 January 2012, the Court notified the Applicant and the District Court in Mitrovica and the Municipal Court in Vučitrn with the referral.
8. On 12 November 2012, the President appointed Judge Kadri Kryeziu , replacing Judge Gjyljeta Mushkolaj.
9. On 21 November 2012, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

### **Applicant's Allegations**

10. In his referral the Applicant alleges as follows "even though that 16 months elapsed the District Court in Mitrovica did not schedule the hearing in the case number K 66/09, by which it violated our constitutional rights and the right to a fair trial."
11. The Applicant requests from the Constitutional Court "to schedule the proceedings before the District Court in Mitrovica and ensure bringing the final decision in the case."

### **Summary of Facts**

12. The Applicant did not specify any facts of the case other than allegations that are specified above.
13. From the documents submitted in support of the referral the following facts can be noted.

14. On 25 May 2010, the Municipal Court in Vučitrn issued Judgement K 66/09 in the criminal proceedings against accused DD who was found guilty for criminal offence false representation pursuant to Article 325 of the Criminal Code of Kosovo (CCK), criminal offence special cases of falsifying documents pursuant to Article 333(4) of the CCK and criminal offence election fraud pursuant to Article 180 of the CCK.
15. It appears from the judgement that the accused DD has been sentenced to imprisonment for 12 (twelve) months and fined at the amount of 1300 (one thousand and three hundred) Euro.
16. It also appears from the judgment K 66/09 of the Municipal Court in Vučitrn that Applicant was listed as injured party in the criminal proceedings.
17. On unspecified date the defence counsel of the accused DD submitted an appeal to the District Court of Mitrovica alleging violation of criminal material and procedural law.
18. It further appears from the documents submitted by the Applicant that he has not submitted any written or oral submission regarding the criminal procedure against accused DD.

#### **Applicable law**

19. Article 151 of the Kosovo Provisional Code of Criminal Procedure ("PCCPK", Law No 2003/26) in Chapter XVIII describes the meaning of legal expression of the term "injured party" as follows: *"For the purposes of the present Code: The term "injured party" means a person whose personal or property rights are violated."*

#### **Assessment of the Admissibility of the Referral**

20. In order able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution that is further specified in the Law and in the rules of procedure.
21. In this regard, the Court refers to Article 113.7 of the Constitution which provides that:
 

*"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. The Court also takes into consideration:
 

Rule 36 of the Rules of Procedure of the Constitutional Court which stipulates that:  
*"(1) The Court may only deal with Referrals if:  
 c) the Referral is not manifestly ill-founded."*
23. As it was mentioned earlier, the Applicant's main argument is that his rights right to a fair trial have been violated because 16 months elapsed and the District Court in Mitrovica did not schedule the hearing in the criminal case number K 66/09 against DD.
24. The Court notes that in this case the Applicant does not prove "the status of the victim caused by a public authority", as it is required by Article 113.7 of the Constitution in conjunction with Article 34 of the European Convention for the Protection of Human Rights (see *mutatis mutandis* Lindsay v. the United Kingdom, no. 31699/96, Commission decision of 17 January 1997, 23 E.H.R.R., Agrotexim and Others v. Greece, judgment of 24 October 1995, Series A no. 330-A, pp. 22-26, §§ 59-72; see also Resolution on Inadmissibility in the case KO 43/10, Applicants LDK-AAK-LDD Constitutional Review of the Legal Acts issued by the Mayor of Prizren of 25 October 2011).

25. The Court recalls that a victim is a natural or legal person (see case of AB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case No. KI. 41 /09) whose human rights are personally or directly affected by a measure or act of a public authority. A person who is not affected in this manner does not have standing as a victim since the Constitution does not provide for *actio popularis*.
26. Thus, the Court, in accordance with Rule 36.2 (c) of the Rules of Procedure shall reject a Referral as being manifestly ill-founded “*when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution*”

### FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution and Rule 36. 2 (c) of the Rules of the Procedure unanimously:

### DECIDES

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

**Judge Rapporteur**

Prof. Dr. Ivan Čukalović



**President of the Constitutional Court**

Prof. Dr. Enver Hasani

