



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

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Pristina, 24 February 2014  
Ref.no.:RK 553/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI149/13**

Applicant

**Lukë Kuzhnini**

**Constitutional Review of the Judgment of the Appellate Court of Kosovo,  
PAKR. no. 1990/12, of 7 May 2013**

### **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

#### **Applicant**

1. The Applicant is Mr. Lukë Kuzhnini from the village of Smaq, Municipality of Prizren, serving imprisonment sentence in the Dubrava Prison, who authorised Mrs. Myrvete Çollaku, lawyer in Prizren, to represent him.

## **Challenged decision**

2. The Applicant challenges the Judgment of the Kosovo Court of Appeals, PAKR, no. 1990/12, of 7 May 2013, which the Applicant claims to have received on 28 May 2013.

## **Subject matter**

3. The subject matter of the Referral is constitutional review of the Judgment of Kosovo Court of Appeals, PAKR, no. 1990/12, of 7 May 2013, upon criminal proceeding in which the Applicant was found guilty of a criminal offence of Serious Murder, as per Article 147 par. 11, in conjunction with paragraph 4 of the Criminal Code of Kosovo (hereinafter: CCK), criminal offence of Unauthorised Ownership, Control, Possession or Use of Weapons, as per Article 328, paragraph 2 of the CCK, and criminal offence of Falsifying Documents, as per Article 332, paragraph 3, in conjunction with paragraph 1 of the CCK, sentenced to imprisonment of fourteen years and six months.

## **Legal basis**

4. The Referral is based on the Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: Law) and Rule 56.2 of the Rules of Procedure.

## **Proceedings before the Court**

5. On 17 September 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: Court).
6. On 24 September 2013, the President, by Decision GJR. no. 149/13, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by decision no. KSH. 149/13, appointed the Review Panel consisting of the Judges Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 9 October 2013, the Constitutional Court informed the Applicant and the Court of Appeals on the registration of Referral, and demanded from the representative of the Applicant to submit to the Court, as soon as possible, the proxy document showing her authorization to represent the Applicant before the Court.
8. On 14 October 2013, the representative of the Applicant filed her authorization with the Court.
9. On 5 December 2013, the Review Panel after having considered the report of Judge Rapporteur made a recommendation to the Court on the inadmissibility of the Referral.

## Summary of facts

10. On 23 July 2012, the District Court in Prizren, deciding as first instance court on the criminal offence of the Applicant, due to commission of criminal offence of Serious Murder, as per Article 147 par. 11, in conjunction with paragraph 4 of the Criminal Code of Kosovo (hereinafter: CCK), criminal offence of Unauthorized Ownership, Control, Possession or Use of Weapons, as per Article 328, paragraph 2 of the CCK, and criminal offence of Falsifying Documents, as per Article 332, paragraph 3, in conjunction with paragraph 1 of the CCK, as per indictment of the District Prosecutor in Prizren, found the Applicant guilty as charged, and sentenced him to imprisonment of 14 years and six months.
11. On 7 May 2013, the Kosovo Court of Appeals, deciding upon complaint of the District Prosecutor in Prizren, and defense lawyers of the Applicant, rejected such complaints as ungrounded. The Complaint of the District Prosecutor in Prizren, was related to a lenient sentence thereby proposing that the Court of Appeals amends the judgment and imposes a longer imprisonment sentence. The defence counsels of the Applicant complained on grounds of erroneous and incomplete ascertainment of factual situation.
12. The Court of Appeals further found in its reasoning:

*“According to evaluation of Court of Appeals, the court of first instance when imposing the type and height of punishment not only that it has concluded correctly and completely all circumstances, which impact on imposing the criminal sanction but assessed the same correctly, therefore having into account all abovementioned circumstances as well as circumstances of concrete case, way and circumstances under which were committed criminal offences then it comes out that the punishment pronounced to the accused by the judge of first instance is correct and legal, that it is in compliance with the level of criminal responsibility of the accused by the court of first instance is correct and lawful...”*

## Applicant's allegations

13. The Applicant claims that the judgment of the Kosovo Court of Appeals, PAKR no. 1990/12, of 7 May 2013, was violated his rights as guaranteed by the Constitution, Article 31 (Right to Fair and Impartial Trial), Article 21 (General Principles), Article 23 (Human Dignity), Article 24 (Equality before Law), Article 25 (Right to Life) and Article 29 (Right to Liberty and Security) of the Constitution.
14. The Applicant claims that:

*“The trial against Luke (Gjergj) Kuzhnini was not fair, since it was not objective, the facts of case were not assessed correctly, therefore it was decided already by prejudice since the proceeding of the case to police...”*

## Assessment of admissibility of the Referral

15. For the Court to be able to review the Referral of the Applicant, it must first assess whether the Applicant has fulfilled the admissibility criteria as provided by the Constitution, and further specified by Law and Rules of Procedure.
16. The Court further 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”.*

In relation to such requirements, the Court notes that the Applicant is a natural person, and is an authorized party as per Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.

17. The Court must determine whether the Applicant, in compliance with requirements of Article 113 (7) of the Constitution, and Article 47 (2) of the Law, has exhausted all legal remedies. In this case, the Applicant has submitted evidence of exhaustion of all legal remedies available by applicable law.
18. The Applicant must also demonstrate fulfillment of requirements of the Article 49 of the Law, related to timely submission of Referral. It may be derived from the case files, and there is no evidence to counter the claim of the Applicant that the Judgment of the Kosovo Court of Appeals, PAKR, of 7 May 2013, was served on the Applicant on 28 May 2013, therefore, the Referral was submitted within the deadline of four months, as provided by the Law and the Rules of Procedure.
19. In relation to this Referral, the Court also takes note of the Rule 36.2 of the Rules of Procedure, which provides that:

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

*[...], or*

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

*[...], or*

*(d) when the Applicant does not sufficiently substantiate his claim”.*

20. In this regard, the Constitutional Court reiterates that it is not its duty by the Constitution to act as a fourth instance court on rulings rendered by regular courts. It is the role of the latter to interpret and apply pertinent rules of procedural and material law (see, *mutatis mutandis*, García Ruiz v. Spain, no. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28, see also Case no. KI70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Inadmissibility Resolution of 16 December 2011).
21. Therefore, the Court may only review whether the evidence has been presented in such a manner and the proceedings in general and viewed in their entirety have been conducted in such a way that the Applicant had a fair trial (see



*mutatis mutandis*, Report of the European Commission for Human Rights, in the case Edwards v. United Kingdom, Application no. 13071/87, 10 July 1991).

22. Based on the case files, the Court notes that the reasoning provided with the Judgment of the District Court in Prizren is clear, and upon review of all proceedings, the Court also found that proceedings of the Court of Appeals were in no way unfair or arbitrary (see, *mutatis mutandis*, Shub v. Lithuania, no. 17064/06, ECtHR, Decision of 30 June 2009). Furthermore, the judgment of the Kosovo Court of Appeals, PAKR no. 1990/12, of 7 May 2013, is clear and justified properly. The Court finds that the Applicant has failed in presenting convincing arguments to support the alleged violations.
23. Furthermore, the Applicant has not submitted any *prima facie* evidence to corroborate the violation of his Constitutional rights (see Vanek v. Republic of Slovakia, ECtHR Resolution on Admissibility of Application no. 53363/99, of 31 May 2005).
24. For all reasons mentioned above, the Court is convinced that the facts submitted by the Applicant have in no way justified the allegations of violation of his constitutional rights, and that the Applicant has failed in supporting his allegations.

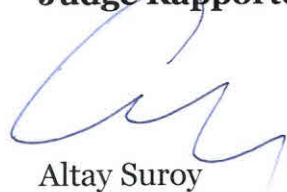
#### **FOR THESE REASONS**

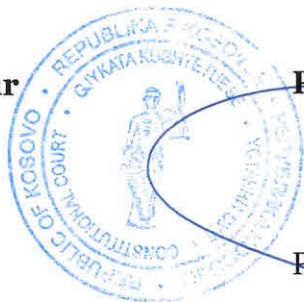
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 36 (2) b) and d) of the Rules of Procedure, on 5 December 2013, unanimously,

#### **DECIDES**

- I. TO DECLARE the Referrals as 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; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

  
Altay Suroy



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani