



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

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Prishtina, 20 June 2014  
Ref.no.:RK645/14

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI33/13**

Applicant

**Abdyl Pasjaqa**

**Constitutional Review of Decision No. Pkl. no. 167/12 of the Supreme  
Court of 29 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, and  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. The Applicant is Mr. Abdyl Pasjaqa, represented by Mr. Sadri A. Godanci, a lawyer practicing in Prishtina.

## **Challenged decision**

2. The Applicant challenges Decision No. Pkl. no. 167/12 of the Supreme Court of 29 November 2012, which was served on him in December 2012.

## **Subject matter**

3. The matter concerns the Applicant's complaint that Judgment Pkl. no. 167/12 of the Supreme Court of 29 November 2012 was taken by violating the law and constitutional principles.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 56 (2) 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 2013, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 25 March 2013 the President appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 7 May 2014, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

8. From the submissions by the Applicant it appears that, at the end of the nineties, he migrated to the UK, where he obtained citizenship and met the D. sisters through a friend of his.
9. On 9 December 2005, by judgment P. no. 152/2005, the Municipal Court in Prishtina found the Applicant guilty, under Article 257 (1) and (3) of UNMIK Regulation 2003/26/Provisional Criminal Code of Kosovo (hereinafter: "PCCK"), of misappropriation of funds which had been entrusted to him by the sisters D. and sentenced him to imprisonment of 3 years and 6 months and payment of a total amount of 210.347, 21 Euros.
10. The Applicant appealed against this decision to the District Court in Prishtina, inter alia, on the ground that the Municipal Court had wrongly established the facts and violated essential provisions of the Provisional Code of Criminal Procedure of Kosovo (hereinafter: "PCPCK") and the PCCK.

11. By decision Ap. Nr. 69/2009 of 15 March 2007, the District Court in Prishtina concluded that the Applicant's appeal was well-founded, since the first instance court in the reasoning of its challenged judgment had not made a complete and correct assessment of all evidence administered in the hearing and had not conducted any assessment or analysis of the evidence pursuant to Article 387 PCPCK. As a consequence, the District Court annulled the decision of the Municipal Court and remanded the case to the same court for retrial.
12. On 25 July 2008, the Municipal Court in Prishtina, while taking into account the remarks of the appeal court, once more found the Applicant guilty of misappropriation of funds and handed down the same sentence as before.
13. Again the Applicant appealed this decision to the District Court in Prishtina which, by Decision Ap. no. 69/2009 of 14 June 2011, ruled that the appeal of the Applicant was well-founded and modified the Judgment of the Municipal Court in acquitting the Applicant of the charge under Article 257 (1) and (3) PCCK of having misused the trust of the injured parties. According to the District Court, the accuracy of the statements made by the injured parties were very suspicious and, taking into consideration the principle that by lack of sufficient and reliable facts one should always find in favor of the accused based on the principle "*In dubio pro reo*," it acquitted the Applicant.
14. On 15 October 2012, the Chief State Prosecutor filed a request for protection of legality (KMLP. II. 123/12) with the Supreme Court, requesting it to annul Judgment Ap. nr. 69/2009 of the District Court of 14 June 2011 and to reopen the proceedings for review, since, in his opinion, the judgment did not contain reasons for the establishment of the decisive facts, that a hearing should have been held and that the parties were not given any advice as to the legal remedies.
15. The Applicant replied to the request of the Chief State Prosecutor, proposing that the request of the State Prosecutor be rejected as ungrounded and, if not, be rejected as time-barred, since it was filed more than 16 months after the challenged judgment.
16. On 29 November 2012, the Supreme Court, by Judgment Pkl. no. 167/2012, ruled, *inter alia*, that "*the allegations of the public prosecutor that the law has been violated to the benefit of the accused are founded [...]*" and "*[T]he allegations of the defense counsel of the accused that the request for protection of legality is time-barred, are ungrounded, since it was filed more than 16 months later, since pursuant to Article 452, paragraphs 2 and 3 of the PCCK, the State Prosecutor has no time limit (like any other party as per Article) to use such a remedy.*" The Supreme Court further ruled that, "*[...] since the criminal law in this case was violated to the benefit of the defendant [the Applicant], it only found the violation without amending the final decision. [...]*"

### **Allegations of the Applicant**

17. In the Referral, the Applicant alleges that the Supreme Court has violated the law and constitutional principles, in particular, the Articles 3, 6, 21, 24, 31 and

paras. 2 to 4 of Article 102 of the Constitution. In his view, the Supreme Court contradicted itself in the reasoning of its judgment, when it approved the request of the public prosecutor and found that the law had been violated to the benefit of the Applicant, despite the fact that the request was time-barred.

18. Therefore, the Applicant requests the Court to assess the legality of the judgment of the Supreme Court and to render a decision within the competency provided by law and the Constitution.

### **Admissibility of the Referral**

19. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules.
20. In this connection, the Court refers to Rule 36 (2) of the Rules of Procedure, stipulating that the Referral should not be manifestly ill-founded.
21. In the present case, the Applicant alleges that Judgment Pkl. no. 167/2012 of the Supreme Court of 29 November 2012 violated his rights guaranteed by Articles 3, 16, 21, 24, 31, 102, paras. 2 to 4 of the Constitution and requests the Court to assess the legality of the judgment of the Supreme Court.
22. In this respect, the Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of decisions taken by ordinary courts, including the Supreme Court. In general, "Courts shall adjudicate based on the Constitution and the law" (Article 102 of the Constitution). More precisely, the role of the ordinary courts is to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia v. Spain* [CG], no. 30544/96, para.28, European Court on Human Rights [ECHR] 1999-I).
23. Moreover, the Court refers to the ECtHR Judgment in Case *DMD Group, A.S. v. Slovakia*, Application 19334/03, of 5 October 2010, in which it was held that: "*The Court further reiterates that, in principle, a violation by a tribunal of domestic legal provisions relating to the establishment and competence of judicial organs gives rise to a violation of Article 6 § 1. The Court may therefore examine whether the domestic law has been complied with in this respect. However, having regard to the general principle that it is, in the first place, for the national courts themselves to interpret the provisions of domestic law, the Court finds that it may not question their interpretation unless there has been a flagrant violation of domestic law* (see, *mutatis mutandis*, *Coëme and Others*, cited above, § 98 in fine, and *Lavents*, cited above, § 114)."
24. As to the Applicant's case, the Court notes that the Supreme Court decided to approve the request of the State Prosecutor for protection of legality, thereby finding that by judgment of the District Court in Prishtina, Ap. no. 69/2009, dated 14 June 2011, the law was violated to the benefit of the Applicant. The Supreme Court concluded that: "*Nevertheless, since the criminal law in the*



*case was violated to the benefit of the defendant, this Court only found a violation, without amending the final decision.”*

25. The Court, therefore, notes that the Supreme Court did not amend the judgment of the District Court, by which the Applicant was acquitted of the charges, but left the judgment in place.
26. Moreover, with respect to the Decision of the Supreme Court, the Applicant did not substantiate his claim on constitutional grounds and did not provide evidence that his rights and freedoms have been violated by that public authority.
27. Therefore, the Court cannot conclude that the relevant proceedings before the Supreme Court were in any way unfair or tainted by arbitrariness (See case KI14/13, Applicant *Municipality of Podujeva*, Resolution on Inadmissibility of 12 March 2013).
28. In these circumstances, the Court concludes that the Referral is manifestly ill-founded.

#### **FOR THESE REASONS**

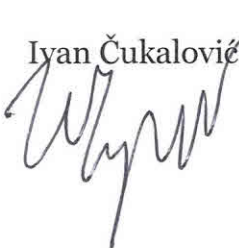
The Constitutional Court, pursuant to Rule 36 (2) and 56 (2) of the Rules of Procedure, on 7 May 2014, unanimously

#### **DECIDES**

- I. TO DECLARE the Referral 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;
- IV. This Decision is immediately effective.

**Judge Rapporteur**

Iyan Čukalović



**President of the Constitutional Court**

Prof. Dr. Enver Hasani

