



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

---

Pristina, 8 July 2013  
Ref.no.:RK447/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI35/13**

Applicant

**Sali Shala**

**Constitutional Review of the Judgment of the Supreme Court of the  
Republic of Kosovo, Pkl. no. 189/2012, dated 26 December 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 Referral is submitted by Mr. Sali Shala (hereinafter: the “Applicant”), residing in the village Lipovec, Municipality of Gjakova.

## **Challenged decision**

2. The Applicant challenges the Supreme Court judgment, Pkl. no. 189/2012, of 26 December 2012, which was served on the Applicant on an unspecified date.

## **Subject matter**

3. The Applicant alleges that his rights under Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”) and Article 6 (Right to fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the “ECHR”) have been violated.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (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 Court**

5. On 11 March 2013, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
6. On 25 March 2013, the President of the Constitutional Court, with Decision No.GJR.KI-35/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-35/13, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 29 March 2013, the Referral was communicated to the Supreme Court of the Republic of Kosovo.
8. On 29 March 2013, the Court requested the Applicant to submit the following additional documents:
  - a. Judgment of the Municipal Court in Gjakova, P. No. 263/09, of 9 March 2011;
  - b. Judgment of the Municipal Court in Gjakova, P. No. 263/09, of 10 May 2011;
  - c. Judgment of the District Court in Peja, Ap. no. 60/11, of 21 December 2011;
  - d. Judgment of the Supreme Court, Api. No. 3/2012, of 23 September 2012; and
9. On 18 April 2013, the Applicant replied to the Court submitting the requested additional documents.

10. On 3 June 2013, the President of the Constitutional Court, with Decision No.GJR.KI-35/13, replaced Judge Artta Rama-Hajrizi with Judge Ivan Čukalović as Judge Rapporteur.
11. On 17 June 2013, the Review Panel considered the report of the Judge Rapportuer and made a recommendation to the Court on the Inadmissibility of the Referral.

### **Summary of facts**

12. On 9 March 2011, the Municipal Court in Gjakova (Judgment P. no. 263/09) found the Applicant guilty for having committed the criminal act of theft under Article 252 paragraph 1 of the Provisional Criminal Code of Kosovo (hereinafter: "PCKK") and issued a punitive order fining him with 300 euro. The Applicant pursuant to the legal advice written in the Judgment objected this Judgment to the Municipal Court in Gjakova.
13. On 10 May 2011, the Municipal Court in Gjakova (Judgment P. no. 263/09) acquitted the Applicant from the charge because it was not proven that the Applicant had committed the criminal act. The Municipal Public Prosecutor complained against this Judgment to the District Court in Peja.
14. On 15 November 2011, the District Court in Peja (Judgment Ap. no. 60/11) approved the complaint of the Municipal Public Prosecutor and found the Applicant guilty for having committed the criminal act of theft under Article 252 paragraph 1 of the PCKK fining him with 1.200 euro. The Applicant filed a complaint against this Judgment to the Supreme Court.
15. On 23 August 2012, the Supreme Court (Judgment Api. no. 3/2012) rejected the Applicant's complaint and upheld the Judgment of the District Court in Peja. Both the State Prosecutor and the Applicant each of them filed a request for protection of legality with the Supreme Court against the Judgment of the District Court in Peja, Ap. no. 60/11 of 15 November 2011, and the Judgment of the Supreme Court, Api. no. 3/2012 of 23 August 2012.
16. On 26 December 2012, the Supreme Court (Judgment Pkl. no. 189/2012) rejected as unfounded the Applicant's and the State Prosecutor's request for protection of legality. The Supreme Court held that *"The District Court in Peja, acting upon the complaint of the Municipal Public Prosecutor, Judgment Ap. no. 60/2011 of 15 November 2011, modified the judgment, so that it found the accused Sali Shala guilty for the criminal offence of theft as provided by Article 252 par. 1 of PCKK and imposed the fine of €1.200. According to Article 480 of the Provisional Criminal Procedure Code of Kosovo, in such situations the courts are not bound by the principle reformatio in peius, and this deviation from this principle applies to both courts, the first instance court and the second instance court, because if the court of first instance, instead of fine, following the objection, would impose imprisonment sentence and the public prosecutor would complain this judgment, the second instance court would not be limited by any legal provision to impose on the accused a harsher sentence."*

*The same situation would be also when the court imposes a higher fine, while the second instance court, following the complaint of the public prosecutor would have a chance to increase even more the fine, within the minimum of the maximum. If during the review, the court of first instance would be able to impose the imprisonment sentence, why then the second instance court cannot impose the same type of punishment, but at a higher amount, as it acted in this case, since in one aspect, the court of second instance legally took a role of the first instance court. So, the allegations of the State Prosecutor and those of the defence, whether the principle reformatio peius has been violated are unsubstantiated by law.”*

### **Applicant’s allegations**

17. The Applicant alleges that the judgments of the District Court in Peja and the Supreme Court are in violation of the principle *reformatio in pejus* “[...] no one can be injured from its appeal, cannot have hassle for his appeal, as it happened in the concrete case.”
18. In this respect, the Applicant alleges that his rights under Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to fair trial) of the ECHR have been violated.

### **Admissibility of the Referral**

19. The Court observes that, in order to be able to adjudicate the Applicant’s complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
20. In this respect, the Court notes that, for a *prima facie* case on the admissibility of the referral, the Applicant must show that the proceedings in the Supreme Court, viewed in their entirety, have not been conducted in such a way that the Applicant has had a fair trial or other violations have been committed by the Supreme Court.
21. Thus, the Court refers to Rule 36 (1.c) of the Rules of Procedure which provides that *“The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.”*
22. The Court emphasizes 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).
23. Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is 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).

24. As a matter of fact, the Applicant does not substantiate a prima facie claim on constitutional grounds and did not provide evidence showing that his rights and freedoms have been violated by the Supreme Court. The Supreme Court provided the Applicant with a well reasoned judgment interpreting the principle *reformatio in pejus* and explaining why this principle cannot be applied in the Applicant's case, i.e. the District Court acted and decided upon the complaint of the Municipal Public Prosecutor and not upon the Applicant's complaint.
25. Thus, the Court cannot conclude that the relevant proceedings in the Supreme Court 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).
26. Therefore, the Applicant did not show prima facie why and how the Supreme Court violated his rights as guaranteed by the Constitution and ECHR. Thus, the Court considers the Referral inadmissible as manifestly ill-founded.

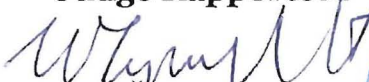
### FOR THESE REASONS

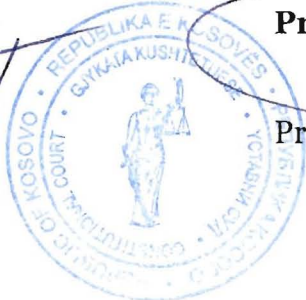
The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 8 July 2013, unanimously

### 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;
- IV. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

  
Ivan Čukalović



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani