



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, 18 November 2013  
Nr.ref.:RK496/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI80/13**

Applicant

**Raim Gashi**

**Constitutional Review of the Judgment of the Supreme Court of the  
Republic of Kosovo, Pml. no. 33/2013, dated 30 April 2013**

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

composed of

Enver Hasani, President  
Ivan Cukalovic, 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. Raim Gashi (hereinafter, the Applicant), represented by Mr. Fazli Balaj, a practicing lawyer from Prishtina.

## **Challenged decision**

2. The Applicant challenges the Judgment Pml. no. 33/2013 of the Supreme Court, dated, of 30 April 2013, and served on him on 17 May 2013.

## **Subject matter**

3. The Applicant requests the constitutional review of the challenged Judgment of the Supreme Court, which allegedly has been taken in violation of “[...] *criminal procedure provisions, Article 403, paragraph 1, item 8 and 12 of the Criminal Code of Kosovo* [...]”. The Applicant has not specified which constitutional provision of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) has been violated.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 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 5 June 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 20 June 2013, the President of the Constitutional Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 5 July 2013, the Court requested to the Applicant the following additional documents:
  - a. Judgment of the Supreme Court, Pml. no. 33/2013, of 30 April 2013;
  - b. Judgment of the Supreme Court, AP. no. 304/2010, of 27 June 2012;
  - c. Judgment of the District Court in Prishtina, P. no. 212/2009, of 19 March 2010; and
  - d. Power of Attorney.
8. On 15 July 2013, the Applicant submitted the requested documents.
9. On 11 September 2013, the Referral was communicated to the Supreme Court.
10. On 18 October 2013, 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

11. On 22 March 2010, the District Court in Pristina (Judgment P. no. 212/2009) found the Applicant guilty of having committed the criminal act under Article 244.1 [Counterfeit Money] in connection with Article 23 [Co-Perpetration] and Article 382.2 [Unauthorised Ownership, Control, Possession or Use of Weapons] of the Provisional Criminal Code of Kosovo (hereinafter, the PCCK). The Applicant complained to the Supreme Court against this Judgment.
12. On 27 June 2012, the Supreme Court (Judgment Ap. no. 304/2010) rejected the complaint of the Applicant and upheld the Judgment of the District Court of Pristina. The Supreme Court held that *"Based on all the above, and other circumstances and reasons provided by the first instance court in the judgment challenged, the Supreme Court found that the first instance court has fairly and fully ascertained the factual situation, and has properly applied criminal law in finding the accused guilty of the criminal offence of counterfeiting money, as per Article 244, paragraph 1, in connection with Article 23 of the PCCK, and therefore, it rejected as ungrounded the complaints for these allegations."* The Applicant filed with the Supreme Court a request for protection of legality.
13. On 30 April 2013, the Supreme Court (Judgment Pml. no. 33/2013) rejected the Applicant's request for protection of legality as unfounded. The Supreme Court held that *"[...] the allegations in the request for protection of legality are not grounded. The violations alleged by the representative of the sentenced are not grounded, since based on the case files, police officers (...) were heard in the capacity of witnesses, since these officers had taken part in the search of the houses of the accused (...), and they have testified about the events and the items found during the search, while the criminal report was filed by (...) investigators filing criminal report, (...) direct supervisor, (...) Head of General Investigation, and (...) Head of Regional Investigation, therefore the police officers/witnesses have not filed the criminal report, and their testimony is in compliance with Article 158, paragraph 1 of the PCCK, and the alleged violation of Article 403, paragraph 1, item 8 of the PCCK, is not grounded."*

## Applicant's allegations

14. The Applicant alleges that *"[...] both the judgment of the District Court P. no. 212/2009, of 19.03.2010, and the judgment of the Supreme Court of Kosovo, Ap. no. 304/2010, of 27.06.2012, contain substantial violations of criminal procedure provisions, as per Article 403, paragraph 1, item 8 and 12 of the PCCK, which are of absolute nature. Both judgments are grounded upon inadmissible proof – the identity of my client has not been validated – since he is not the offender. The criminal law has also been violated, due to the fact that he was found guilty of a crime he has not committed, and for which the case files contain no evidence. The whole judgment is built upon and concluded on a group of people in Ferizaj, and then, without any grounds, the accused Raim Gashi, is included, although he has nothing to do with the accused."*



## Admissibility of the Referral

15. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
16. In this respect, the Court refers to Article 48 of the Law on Court, which provides that *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge"*.
17. In addition, the Court also takes into account Rule 36.1.c of the Rules of Procedure which foresees that *"The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded."*
18. 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 regular courts when assessing evidence or applying the law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, this Court is not to act as a court of fourth instance, when considering the decisions taken by the 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).
19. 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).
20. In this respect, the Court considers that the Applicant has not substantiated and proved an allegation on how and why the alleged errors of fact or law (legality) committed by the District and Supreme Courts may have infringed any of his rights and freedoms protected by the Constitution (constitutionality). The Court further considers that the Applicant's allegation that the judgments of these courts were taken in violation of the Provisional Criminal Procedure Code of Kosovo is only of a legality nature and not of a constitutionality one.
21. Therefore, 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).
22. In sum, the Applicant has not built and proved a case on a violation of any of his rights as guaranteed by the Constitution. Thus, pursuant to Rule 36.1.c. of the Rules of Procedure, the Referral is manifestly ill-founded and, therefore, it is inadmissible.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 of the Law on the Court and Rule 36.1.c and Rule 56.2 of the Rules of Procedure, on 18 October 2013, unanimously

## DECIDES

- I. TO REJECT the Referral 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;
- IV. TO DECLARE this Decision immediately effective.

**Judge Rapporteur**



Almiro Rodrigues

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani