



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 12 December 2016
Ref. no.: RK1017/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI02/16

Applicant

Liridon Aliu

**Request for constitutional review of
Judgment PA1. no. 1160/2012, of the Court of Appeal of Kosovo,
of 12 September 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Applicant is Liridon Aliu, from village Hajvali, Municipality of Prishtina.

Challenged decision

2. The challenged decision is Judgment PA1. no. 1160/2012, of the Court of Appeal of Kosovo, of 12 September 2013, which was served on the Applicant on 12 December 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by the Constitution, without invoking to any constitutional provision in particular.

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 the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 5 January 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 February 2016, the President of the Court, by Decision GJR. KIo2/16, appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Robert Carolan (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 14 February 2016, the Applicant submitted additional documents to the Court in support of the Referral.
8. On 24 March 2016, the Court informed the Applicant about the registration of the Referral.
9. On 6 April 2016, the Applicant submitted again additional documents to the Court.
10. On 30 September 2016, the President of the Court appointed Judge Ivan Čukalović as Presiding Judge of the Review Panel instead of Judge Robert Carolan, who resigned from the position of a judge of the Court on 9 September.
11. On 20 October 2016, 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

12. On 20 September 2012, the Basic Court in Prishtina (Judgment P. no. 727/2012), found guilty L. V. of the criminal offence of the Criminal Code of Kosovo [Light bodily injury] committed against the Applicant, by imposing on him 8 months of suspended imprisonment sentence.
13. On an unspecified date, the Applicant filed appeal with the Court of Appeal of Kosovo (hereinafter: the Court of Appeal), against Judgment P. no. 727/2012 of the Basic Court in Prishtina, of 20 September 2012, by requesting that on L. V. be imposed effective imprisonment sentence.
14. On 12 September 2013, the Court of Appeal (Judgment PA1. no. 1160/2012) rejected as ungrounded the appeal and upheld Judgment P. no. 727/2012, of the Basic Court in Prishtina, of 20 September 2012.
15. In addition, the Judgment reads: *"The circumstances determined by the first instance court are accepted by this court too, thus, taking into account all abovementioned circumstances, the fact that in the appeal no exceptional aggravating circumstance that would have influence on imposing another punishment is mentioned [...] this court assesses that the punishment imposed on the accused by the first instance court is in harmony with the degree of criminal liability of the accused [...]."*
16. The Applicant addressed the Basic Court in Prishtina with a request for protection of legality against Judgment PA1. no. 1160/2012 of the Court of Appeal of 12 September 2013.
17. On 6 March 2014, the Basic Court in Prishtina (Decision P. no. 727/2012) rejected the request for protection of legality because: *"[...] the request was filed by an unauthorized person in accordance with Article 433 par 1 of CPK [...]."*
18. The Applicant also filed a private claim against L.V., which was rejected by the regular courts arguing that this criminal offence belongs to the criminal offences that are prosecuted upon the indictment filed by the State Prosecutor, *ex officio*.

Applicant's allegations

19. The Applicant alleges that *"I know very well that the imprisonment suspended sentence of 8 months should be executed- revoked in Case 727/12, but I want to have it officially in written by you, the Constitutional Court of Kosovo, what institutions in fact should execute-revoke the sentence in Case 727/12."*

Admissibility of the Referral

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

21. In this respect, the Court refers to Article 113.7 of the Constitution, which establishes:

“7. 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 refers to Article 49 of the Law, which provides:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”

23. The Court further takes into account Rule 36 (1) c) of the Rules of Procedure, which specifies:

“(1) The Court may consider a referral if:

[...]

(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant.”

24. In order to verify whether the Applicant has submitted the Referral within the prescribed four (4) month deadline, the Court refers to the date of receipt of the final decision by the Applicant and the date of submitting the Referral to the Constitutional Court.
25. The “final decision” for the purposes of Article 49 of the Law will normally be the final decision rejecting the Applicant’s claim (See *Paul and Audrey Edwards v. UK*, No. 46477/99, ECtHR, Decision of 14 March 2002). The time limit starts to run from the final decision resulting from the exhaustion of remedies which are adequate and effective to provide redress in respect of the matter complained of. (See *Norkin v. Russia*, App. 21056/ 11, ECtHR, Decision of 5 February 2013, and see also *Moya Alvarez v. Spain*, No. 44677/98, ECtHR, Decision of 23 November 1999).
26. Regarding the request for protection of legality submitted to the Basic Court in Prishtina, the Court notes that the decision reasons that “[...] *the request for protection of legality was filed by an unauthorized person. In accordance with Article 433 par. 1 of CPCK, a request for protection of legality may be filed by the Chief State Prosecutor, the defendant or his or her defence counsel*”.
27. For the foregoing reasons, the Court considers that the final decision in the present case is the Judgment of the Court of Appeal and the time-limit begins to run from the date of receipt of the aforementioned Judgment by the Applicant (See *Bayram and Yildirim v. Turkey*, App. No. 38587/97, ECtHR,

Decision of 29 January 2002). Thus, from the submissions it appears that the Applicant declares that the Judgment of the Court of Appeal was served on him on 12 December 2013, whereas the Applicant submitted the Referral to the Court on 5 January 2013.

28. It follows that the Referral was submitted out of the deadline 4 months stipulated by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, and as such, is inadmissible.

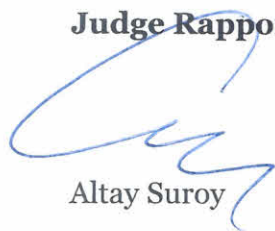
FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 20 October 2016, 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; and
- IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi