



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

Prishtina, on 4 December 2017
Ref. no.: RK 1166/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI14/17

Applicant

Shaban Syla

**Constitutional review of
Decision PN. No. 298/2016 of the Court of Appeals
of 25 May 2016**

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 Referral is submitted by Shaban Syla (hereinafter, the Applicant) from Kishnarekë, currently serving a prison sentence in the Correctional Center Dubrava.

Challenged decisions

2. The Applicant challenges the Decision PN. No. 298/2016 of the Court of Appeals of 25 May 2016, which rejected as ungrounded the Applicant's appeal to include his house arrest time into the calculation of his imprisonment sentence.
3. That Decision was served upon the Applicant on 7 June 2016.

Subject matter

4. The subject matter is the constitutional review of the challenged Decision of the Court of Appeals, which allegedly violated the provisions of the criminal procedure and of the criminal code and erroneously and incompletely determined its factual basis; no constitutional provisions were referred to.

Legal basis

5. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Article 47 the Law No. 03/L-121 on the 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

6. On 9 February 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 20 March 2017, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of judges Snezhana Botusharova (presiding), Bekim Sejdiu and Gresa Caka-Nimani.
8. On 2 May 2017, the Court notified the Applicant about the registration of the Referral and asked to fill in the referral form and attach all relevant documents.
9. On 30 May 2017, a copy of the Referral was sent to the Basic Court in Prishtina which, requesting it to submit the acknowledgment of receipt by the Applicant of the Decision of the Court of Appeals.
10. On 17 May 2017, the Applicant submitted a complete Referral form.
11. On 6 June 2017, the Court sent a copy of the Referral to the Court of Appeals.
12. On 30 June 2017, the Basic Court in Prishtina submitted the requested acknowledgment of receipt by the Applicant.
13. On 24 October 2017, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

14. On 17 December 2012, the District Court in Prishtina (Judgment P. No. 592/11) found the Applicant guilty for having committed the criminal offence of attempted aggravated murder and sentenced him to imprisonment. That Judgment was upheld by the Court of Appeals (Judgment PAKR. No. 102/13 of 12 December 2013).
15. After that Judgment, the Applicant furthered the proceedings regarding the calculation of the time spent in house arrest in the imprisonment imposed on him.
16. In fact, on 29 March 2016, the Basic Court in Prishtina (P. No. 592/2011) decided to include the time of the Applicant's house arrest into the period of his sentence of imprisonment.
17. The Applicant filed with the Court of Appeals an appeal against that Decision *"due to the substantial violation of the provisions of the criminal procedure and erroneous application of them, erroneous and incomplete determination of the factual situation and violation of the Criminal Code"*.
18. On 25 May 2016, the Court of Appeals (Decision PN. No. 298/2016) rejected as ungrounded the appeal of the Applicant and upheld the Decision (P. No. 592/2011) of the Basic Court.
19. The Court of Appeals concluded that *"the above mentioned appealed allegations are ungrounded and the Court of the first instance correctly calculated the measure of house arrest in the punishment imposed against the convicted Shaban Sylja, pursuant to Judgment P. No. 592/11, of the District Court in Prishtina, of 17 December 2012, which becomes final on 12 December 2013"*.

Applicant's allegations

20. The Applicant claims that he *"was in house arrest from 28 July 2011 until 23 March 2015, without the Courts recognizing his "house arrest with hours and days"*.
21. The Applicant states that he filed his Referral due to *"substantial violation of the provisions of the criminal procedure and erroneous application of legal provisions, erroneous and incomplete determination of the factual situation and violation of the criminal code"*.
22. The Applicant requests the Court to *"recognize [his] house arrest with hours and day as I served on strict adherence"*.
23. Finally, the Applicant states: [I] *"do not request more or less than what the Constitution of the Republic of Kosovo guarantees to me"*.

Admissibility of the Referral

24. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
25. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:
 1. *The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
[...]
 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.*
26. The Court also refers to Articles 49 [Deadlines] 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”.
27. The Court further takes into account § (1) (c) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which foresees:
 - (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”
28. In this respect, the Court recalls that the challenged Decision was served upon the Applicant on 7 June 2016.
29. The Court notes that the Applicant submitted the Referral to the Court on 9 February 2017.
30. Thus the Court considers that the Referral was submitted more than three (3) months beyond the legal deadline of four months provided for by Article 49 of the Law and as further foreseen by Rule 36 (1) (c) of the Rules of Procedure.
31. Therefore, the Court concludes that the Referral was not filed within four months from the date on which the challenged Decision was served on the Applicant.
32. The Court recalls that the purpose of the four-month legal time limit under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure is to promote legal certainty, to ensure that cases raising constitutional issues are dealt with within a reasonable time and that previously rendered decisions are not endlessly open to challenging. (See ECtHR case *O’ Loughlin and Others v. the United Kingdom*, no. 23274/04, Decision of 25 August 2005 and, *mutatis*

mutandis, Constitutional Court case no. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility, of 3 March 2014).

33. Moreover, the Court reiterates that it is the duty of the applicants to act with '*due diligence*' to ensure that their claims for protection of rights are filed within the legal deadline of four (4) months. (See Constitutional Court Case KIO7/15, Applicant *Shefki Zogiani*, Resolution on Inadmissibility, §§ 46-52, with further references).
34. Consequently, the Court finds that the Referral is inadmissible as out of time, pursuant Article 113 (7) of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 of the Constitution, Article 49 of the Law, and Rules 36 (1) (c) and 56 (2) of the Rules of Procedure, in the session held on 24 October 2017, 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



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi