



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
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Prishtina, 11 may 2010
Ref. no.:RK 20 /10

RESOLUTION

Case No. KI. 31/09,

Mehdi Faik Fazliu
against

Supreme Court Decision Ap Nr 141/2004
District Court P. Nr. 233/2002 and P. Nr. 265/2002

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Snezhana Botusharova,
Robert Carolan, Judge
Ivan Čukalović, Judge
Iliriana Islami, Judge
Kadri Kryeziu, Judge
Gjylieta Mushkolaj, Judge
Almiro Rodrigues, Judge and
Altay Suroy, Judge

Applicant

1. The Applicant is Mehdi Faik Fazliu, currently serving his prison sentence in Dubrava Prison, Republic of Kosovo.

Challenged decisions

2. In his Referral, the Applicant challenges Judgments Nr. 233/2002 and Nr 265/2002 of the District Court of Pristina, dated 23 December 2003. He also challenges Judgment Nr. 141/2004 of 29 September 2004 of the Supreme Court.

Subject matter

3. The Applicant deems that the right to a fair and impartial trial as guaranteed by the Constitution, has been violated.

Legal basis

4. Article. 113 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution); Articles 20, 27.7 and 27.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law), and Section 54(b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Summary of the proceedings before the Court

5. The Applicant submitted his Referral to the Constitutional Court on 30 April 2009. On 18 February 2010, after having considered the Report of the Judge Rapporteur, Almiro Rodrigues, the Review Panel, composed of Judges Altay Suroy (Presiding), Gjylieta Mushkolaj and Kadri Kryeziu, forwarded its recommendation to reject the case as inadmissible to the full Court on the same day.

Summary of facts

6. It appears from the documents submitted by the Applicant, that, as of 11 July 2002, he has been imprisoned in Dubrava Prison in the Republic of Kosovo.

7. On 29 September 2004, the Supreme Court of Kosovo rendered Judgment No. Ap. Nr 141/2004 in the Applicant's case and confirmed the District Court Judgments P Nr 233/2002 and P Nr 265/2002 of 23 December 2003, according to which the Applicant was found guilty of the criminal offence of premeditated murder and imposed on him a punishment of 13 years imprisonment, including the time served in detention on remand.

Applicant's allegations

8. The Applicant alleges that he is wrongly convicted of the criminal offence of murder, that he is innocent and that his human right to a fair and impartial trial, as guaranteed by the Constitution, has been violated.

Assessment of the Admissibility of the Referral

9. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court needs first to examine, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and the Law.

10. In this connection, the Constitutional Court refers to Article 49 (Deadlines) of the Law, stipulating that:

"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...”.

11. The Constitutional Court notes that the Applicant was served with the Supreme Court decision (i.e. the Supreme Court Judgment Ap. Nr. 141/2004) on 29 September 2004.

12. The Constitutional Court also notes that the Applicant filed the Referral on 30 April 2009.

13. In these circumstances, the Referral must be considered time-barred in application of Article 49 of the Law.

14. Consequently, the Applicant cannot be considered to have fulfilled the requirements for admissibility of the Referral.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Section 54(b) of the Rules of Procedure, unanimously,

DECIDES

- I. TO REJECT the Referral as inadmissible.
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law.
- III. This Decision is effective immediately.

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Prof. dr. Enver Hasani

