



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 12 july 2012
Ref. No.: RK /270/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 111/11

Applicant

Selim Krasniqi

**Constitutional Review of the Judgment of the Supreme Court, PKL. No.
117/09, dated 12 October 2010.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Selim Krasniqi, represented by Mr. Mahmut Halimi, a practicing lawyer from Mitrovica.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, PKL. No. 117/09, of 12 October 2010, which was served on the Applicant on an unspecified date.

Subject matter

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”) of the constitutionality of the Judgment of the Supreme Court, PKL. No. 117/09, by which, allegedly, his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”), Articles 24 [Equality Before the Law], 30 [Rights of the Accused] and 31 [Right to Fair and Impartial Trial] have been violated.
4. Furthermore, the Applicant requests the Court not to have his identity foreclosed.

Legal basis

5. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (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

6. On 11 August 2011, the Applicant submitted the Referral with the Court.
7. On 23 August 2011, the President, by Decision No. GJR. KI 111/11 appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI 111/11, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Snezhana Botusharova.
8. On 18 October 2011, the Court communicated the Referral to the Supreme Court and to the District Court of Prizren.

9. On 24 January 2012, the Court communicated the Referral to the State Prosecutor.
10. On 24 January 2012, the Court requested the Supreme Court to notify this Court when the Applicant was served with the Judgment of the Supreme Court, PKL. No. 117/09 of 12 October 2010. So far no reply has been received.
11. On 20 March 2012, 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 10 August 2006, the District Court of Prizren found the Applicant guilty for having committed the criminal act of Article 142 in conjunction with Articles 22, 26 and 30 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (hereinafter: "CC SFRY"), (Decision P. no. 85/2005). The Applicant appealed against this decision to the Supreme Court.
13. On 10 April 2009, the Supreme Court approved the Applicant's appeal as to the sentence, which was modified by the Supreme Court. The rest of the appeal of the Applicant was rejected as unfounded and the remaining of the Judgment of the District Court was confirmed (Judgment Ap-Kz nr. 371/2008). The Applicant submitted to the Supreme Court a request for protection of legality against this Judgment.
14. On 12 October 2010, the Supreme Court rejected the Applicant's request for protection of legality as unfounded (Judgment Pkl-Kzz 117/09).
15. On 19 October 2010, the Supreme Court issued a ruling whereby the Judgment of the Supreme Court of 12 October 2010, which contained a formal mistake, was corrected (Ruling Pkl-Kzz 117/09).
16. Furthermore, no supporting documentation and information was provided on the reasons for the Applicant not to have his identity foreclosed.

Applicant's allegations

17. The Applicant alleges that his rights as guaranteed by the Constitution, Articles 24 [Equality Before the Law], 30 [Rights of the Accused] and 31 [Right to Fair and Impartial Trial] have been violated with the Judgment of the Supreme

Court, PKL. No. 117/09, because the statements of the witnesses are contradictory and do not correspond with their explanations for events for which they allege that has happened.

Assessment of the admissibility of the Referral

18. The Applicant alleges that his rights guaranteed by Articles 24 [Equality Before the Law], [Rights of the Accused] and 31 [Right to Fair and Impartial Trial] of the Constitution have been violated. 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.
19. In this respect, the Court emphasizes that it can only decide on the admissibility of a Referral, if the Applicant shows that he/she has submitted the Referral *"within a period of four (4) months [...] from the day upon which the claimant has been served with a court decision."*, pursuant to Article 49 of the Law.
20. The final judgment of the Supreme Court, PKL. No. 117/09, was taken on 12 October 2010 and was served on the Applicant on an unspecified date, whereas the Applicant filed the Referral with the Court on 11 August 2011. Since the Applicant has failed to submit evidence to this Court when he was served with the judgment of the Supreme Court, this Court considers the date when the decision is publicly announced as the date of service, i.e. 12 October 2010 when the Judgment was signed by the Judges.
21. The consideration is reasonable taking into account that the service of the decision would have been made in a period of four months due to the nature of the criminal proceedings.
22. The Court, therefore, concludes that the Referral must be rejected as inadmissible, pursuant to Article 49 of the Law.
23. As to the Applicant's request for not having his identity foreclosed, the Court rejects it as ungrounded, because no supporting documentation and information was provided on the reasons for the Applicant not to have his identity foreclosed.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law, and Rule 56 (2) of the Rules of Procedure, on 20 March 2012,

DECIDES

- I. Unanimously, to reject the Referral as Inadmissible;
- II. By majority, to reject the Referral as inadmissible out of time;
- III. Unanimously, to reject his request not to have his identity foreclosed;
- IV. 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;
- V. This Decision is effective immediately.

Judge Rapporteur

For 
Gjyljeta Mushkolaj

President of the Constitutional Court


Prof. Dr. Enver Hasani

