



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

Prishtina, on 1 June 2015
Ref. No.: RK 805/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI132/14

Applicant

Rrok Nikollprenkaj

**Constitutional Review of the Decision, P. nr. 389/12, of the Municipal
Court of Gjakova, dated 21 August 2012**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Rrok Nikollprenkaj (hereinafter: the “Applicant”), residing in village Novosella e Epërme, Municipality of Gjakova.

Challenged decision

2. The Applicant challenges the Decision, P. nr. 389/12, of the Municipal Court of Gjakova, dated 21 August 2012, which was served to him on 21 June 2013.

Subject matter

3. The Applicant did not specify which constitutional provisions have allegedly been violated by the challenged decision. In his referral the Applicant states *“I seek my rights whereas I have been subject of mockery for almost 5 years by four persons in question and by the judiciary.”* The Applicant also claims that there has been *“violation by the authority of the Prosecutor’s office and the judge, following the case of 25 April 2010; 26 April 2010 deliberately avoided the case during my detention on remand, accusing me with the purpose to imprison me and close the case.”*

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 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 28 August 2014, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
6. On 5 September 2014, the President of the Constitutional Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 15 September 2014, the Applicant was notified of the registration of the Referral.
8. On 16 April 2015, after having considered the Report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 25 April 2010 the four police officers in question arrested the Applicant.
10. According to the Applicant, during the arrest he was beaten by these police officers and consequently suffered severe brain injuries.
11. On 26 April 2010, the Municipal Court of Gjakova rendered a Decision (Hp.No. 32/2010) against the Applicant for criminal offence of attacking official persons performing official duties (Art. 317.2 of the Provisional Criminal Code, PCCK). By that Decision a measure of attendance at the police station was imposed to the Applicant. The further status of this case is unknown.

12. On 5 October 2010, the Municipal Public Prosecutor's Office in Gjakova, notified the Applicant that the investigation against four police officers for the criminal offences: 1) grievous bodily harm, 2) unlawful deprivation of liberty, and 3) mistreatment in exercising duties was terminated. The Applicant was notified that he could undertake a criminal prosecution through a private charge in accordance with Article 62.2 of PCCK.
13. On 22 March 2011, the Applicant submitted a private charge to the Municipal Court in Gjakova, against the four police officers for four criminal offences: 1) grievous bodily harm, 2) unlawful deprivation of liberty, 3) mistreatment in exercising duties, and 4) torture.
14. That charge was rejected on 15 July 2011 by Decision (P no 275/11) of the District Court in Peja. The justification was that the Applicant is not an authorized prosecutor for these four criminal offences which prosecution is under authority of the State prosecutor.
15. The Applicant did not appeal the Decision of the District Court of Peja.
16. On 16 August 2012, the Applicant filed a private charge against the four police officers for the criminal offences: 1) grievous bodily harm, 2) unlawful deprivation of liberty, and 3) mistreatment in exercising duties.
17. On 21 August 2012, his private charge was rejected and criminal proceedings terminated by Municipal Court of Gjakova Decision, P.no.389/12. It stated in the reasoning that the Applicant submitted his motion "*after 1 year, 10 months and 8 days, the Court rejected the private prosecution and terminated the criminal proceedings ...based on Article 62. 1 and 2 of PCCK and Article 316 par. 2 of PCCK.*" The Applicant did not challenge this decision.

Applicant's allegations

18. The Applicant alleges that during the arrest he was beaten by the four police officers and consequently suffered severe brain injuries. He also stated: "*I Rrok Nikoll Penkaj, pursuant to my abilities, continued with the criminal report, however the Court terminated the proceedings and due to health reasons I did not understand...*"

Admissibility of the Referral

19. The Court notes that to be able to adjudicate upon the Applicant's complaint, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
20. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides that:

"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".

21. The Court also notes the 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 (...).”

22. The Court also takes into account Rule 36 (1) c) of the Rules of Procedure, which provide:

“(1) The Court may only deal with Referrals 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...”

23. Based on case file, the Court finds that the Applicant filed his referral on 28 August 2014, while the last decision of the Municipal Court of Gjakova (P. nr. 389/12) was adopted on 21 August 2012 and served on him on 21 June 2013.

24. Thus, the Applicant filed his referral with the Court after the expiry of the time limit prescribed by Article 49 of the Law, and Rule 36 (1) c) of the Rules of Procedure.

25. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedures is to promote legal certainty, by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (See case O’ LOUGHLIN and Others v. United Kingdom, No. 23274/04, ECtHR, Decision of 25 August 2005”).

26. Therefore, the Court concludes that the Referral is filed out of time.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113(7) of the Constitution, Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure, on 1 June 2015, 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 effective immediately.

Judge Rapporteur

President of the Constitutional Court


Dr. Kadri Kryeziu


Prof. Dr. Enver Hasani