



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

Pristina, 16 July 2012
Ref.No.: RK/280/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 24/12

Applicant

Alban Kastrati

**Constitutional Review of the Judgment of the Supreme Court, Pkl. no.
1/2010, dated 3 December 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 Čukalovič.

Applicant

1. The Referral was submitted by Mr. Alban Kastrati (the Applicant), represented by Mr. Nysret Mjeku, a practicing lawyer from Pristina. However, on 29 May 2012, the Applicant submitted additional documents to the Court, whereby also

the power of attorney of Mr. Nysret Mjeku was revoked and Mr. Ibrahim Z. Dobruna, a practicing lawyer from Pristina, was appointed to represent the Applicant.

Challenged decision

2. The Applicant challenges the Judgment of the Supreme Court, Pkl. no. 1/2010, of 3 December 2010, which was served on him on 29 December 2010.

Subject matter

3. The Applicant alleges that the abovementioned decision violated his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the "Constitution"), namely Articles 3 [Equality Before the Law], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 30 [Rights of the Accused], 31 [Right to Fair and Impartial Trial], and 54 [Judicial Protection of Rights] and as well as Article 6 [Right to fair trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (hereinafter: the "ECHR").

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 22 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 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules").

Proceedings before the Court

5. On 7 March 2012, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the "Court").
6. On 8 March 2012, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Enver Hasani and Kadri Kryeziu.
7. On 11 May 2012, the Court requested additional clarification by the Applicant informing whether the Applicant addressed his Referral to the Constitutional Court or the Supreme Court and to clarify what are the Constitutional provisions that has allegedly been violated by the Supreme Court.

8. On 22 May 2012, the Applicant replied informing that the Referral is addressed to the Constitutional Court and that the Constitutional Provisions that has allegedly been violated by the Supreme Court is Article 54 [Judicial Protection of Rights] of the Constitution.
9. On 29 May 2012, the Applicant submitted additional documents to the Court, whereby also the power of attorney of Mr. Nysret Mjeku, a practicing lawyer from Pristina who initially submitted the Referral to the Court, was revoked.
10. On 6 June 2012, the Court communicated the Referral to the Supreme Court and to the State Public Prosecutor.
11. On 13 June 2012, the Court requested additional clarification by the Applicant informing whether the Applicant authorized his father or the attorney to submit the Referral with the Constitutional Court.
12. On 14 June 2012, the Court requested from the District Court in Pristina the receipt of service of the Judgment of Supreme Court Pkl. no. 1/2010 dated 3 December 2010 on the Applicant.
13. On 18 June 2012, the Applicant submitted to the Court the power of attorney for Mr. Ibrahim Z. Dobruna signed by the Applicant.
14. On 10 July 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

15. On 29 June 2007, the District Court of Pristina (Decision P. no. 667/2006) found the Applicant guilty for having committed a criminal act. The Applicant appealed against this decision to the Supreme Court.
16. On 11 June 2008, the Supreme Court (Judgment Ap. no. 488/07) rejected the Applicant's appeal as unfounded and confirmed the Judgment of the District Court. The Applicant appealed against this decision to a different review panel within the Supreme Court.
17. On 11 June 2009, the Supreme Court (Judgment API. no. 5/08) rejected the Applicant's complaint as unfounded and confirmed the Judgment of the Supreme Court of 11 June 2008. The Applicant submitted to the Supreme Court

a request for protection of legality against the District Court and Supreme Court Judgments.

18. On 3 December 2010, the Supreme Court (Judgment Pkl. no. 1/2010) rejected the Applicant's request for protection of legality as unfounded.

Applicant's allegations

19. The Applicant alleges that judgments were taken in violation of the essential provisions of the criminal procedure and criminal law.
20. In this respect, the Applicant alleges that the judgments "do not contain the facts which would confirm the characteristics of the criminal offence, on the basis of such facts the Courts would ground their judging".
21. Furthermore, allegedly, the Court of first instance and the Supreme Court did not conduct an analysis of the offence and the judgments are contradictory to the statements of the defendants, witnesses and other case file documents.
22. The Applicant, therefore, considers that the Supreme Court has violated Articles 3 [Equality Before the Law], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 30 [Rights of the Accused], 31 [Right to Fair and Impartial Trial], and 54 [Judicial Protection of Rights] of the Constitution and as well as Article 6 [Right to fair trial] of ECHR.

Assessment of the admissibility of the Referral

23. 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.
24. 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.
25. The final judgment of the Supreme Court, Pkl. no. 1/2010, was taken on 3 December 2010 and was served on the Applicant on 29 December 2010, whereas the Applicant filed the Referral with the Court on 7 March 2012, i.e.

more than 4 months from the day upon which the Applicant has been served with a the Supreme Court decision.

26. Furthermore, Rule 36 1 (c) of the Rules of Procedure provides that *“The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.”*
27. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, *García Ruiz v. Spain [GC]*, no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
28. In sum, the Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87, adopted on 10 July 1991).
29. Moreover, the Applicant merely disputes whether the Supreme Court entirely applied the applicable law and disagrees with the courts’ factual findings with respect to his case.
30. As a matter of fact, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his rights and freedoms have been violated by that public authority. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see mutatis mutandis, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
31. Therefore, the Applicant did not show why and how the Supreme Court violated his rights as guaranteed by the Constitution.
32. In all, it follows that the Referral is inadmissible because of out of time pursuant to Article 49 of the Law and, even if in time, it is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 49 of the Law and Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 10 July 2012, unanimously

DECIDES

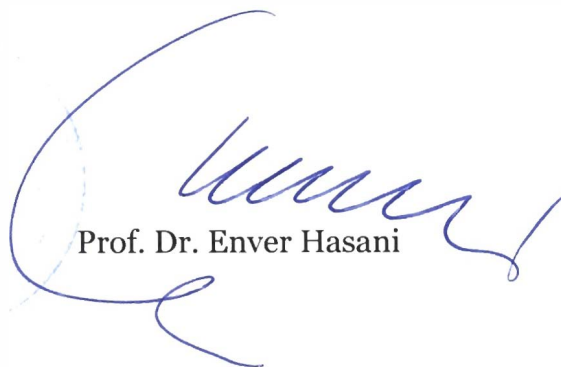
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur



Almiro Rodrigues

President of the Constitutional Court



Prof. Dr. Enver Hasani