



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

Prishtina, 26 January 2015
Ref. No.: RK762/15

RESOLUTION ON INADMISSIBILITY

in

Cases No. KI80/14 and KI93/14

Applicants

Gazmend Musollaj and Nezir Kerrellaj

**Constitutional review of Judgment Pml. no. 166/13 of the
Supreme Court of the Republic of Kosovo,
dated 6 November 2013**

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 and
Arta Rama-Hajrizi, Judge.

Applicants

1. The Referrals were submitted by Mr. Gazmend Musollaj from village Gurakoc, Municipality of Istog and Mr. Nezir Kerrellaj from village Serbobran, Municipality of Istog (hereinafter, the Applicants). Mr. Gazmend Musollaj (KI80/14) is represented by Mr. Zenel Mekaj, lawyer from Peja, whereas Mr. Nezir Kerrellaj (KI93/14) is represented by Mr. Zeqir Berdynaj, lawyer from Peja.

Challenged Decision

2. The Applicants challenge the Judgment Pml.no.166/13 dated 6 November 2013 of the Supreme Court of the Republic of Kosovo (hereinafter, the Supreme Court), which rejected as ungrounded their request for protection of legality.
3. The challenged Judgment was served on the Applicants on 23 December 2013.

Subject Matter

4. The subject matter is the constitutional review of the challenged Judgment of the Supreme Court.
5. The Applicant Gazmend Musollaj (KI80/14) claims that the challenged Judgment *“has violated his constitutional right guaranteed by Article 33 [The Principle of Legality and Proportionality in Criminal Cases] paragraph 4 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).”*
6. The Applicant Nezir Kerrellaj (KI93/14) claims that the challenged Judgment *“has violated his rights guaranteed by the Constitution, namely Article 3 [Equality before the Law], Article 19 [Applicability of International Law] and Article 31 [Right to Fair and Impartial Trial].”*

Legal basis

7. The Referral is based on Article 113.7 of the Constitution, Article 22 and 47 of the Law on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (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

8. On 8 May 2014, the Applicant Gazmend Musollaj submitted the Referral (KI80/14) to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court). On 22 May 2014, the Applicant Nezir Kerrellaj filed the Referral (KI93/14) with the Court.
9. On 10 June 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
10. On 18 June 2014, in accordance with Rule 37 (1) of the Rules of Procedure, the President ordered that the Referral KI93/14 to be joined to the Referral KI80/14 and that the Judge Rapporteur and the Review Panel for both cases (KI80/14 and KI93/14) be the same as it was decided in the Referral KI80/14.
11. On 20 June 2014, the Court notified the Applicants on the registration of Referrals KI80/14 and KI93/14 and the joinder of these two Referrals. The Court also requested from the Applicants to submit a power of attorney for Mr.

Zenel Mekaj and for Mr. Zeqir Berdynaj as well as to complete their Referrals. On the same date, the Court sent a copy of these Referrals to the Court of Appeal.

12. On 30 June 2014, the Applicant Gazmend Musollaj (KI80/14) submitted the additional documents requested by the Court.
13. On 4 September 2014, the Court requested from the Basic Court in Peja to provide a copy of the return paper, indicating the date on which the Applicants were served with the challenged Judgment of the Supreme Court.
14. On 12 September 2014, the Applicant Nezir Kerrellaj (KI93/13) submitted the additional documents requested by the Court.
15. On 16 September 2014, the Basic Court in Peja submitted the additional information requested by the Court.
16. On 18 September 2014, the Court sent a copy of the Referrals KI80/14 and KI93/14 to the Supreme Court.
17. On 25 November 2014 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

18. On 29 March 2012, the District Court in Peja (Judgment, P. no. 473/11) found the Applicants guilty for committing in co-perpetration the criminal offence of aggravated murder. The Applicant Gazmend Musollaj (KI80/14) was also found guilty for having committed the criminal offence of unauthorized ownership, control or possession of weapons.
19. The Applicant Gazmend Musollaj (KI80/14) was sentenced with twenty-seven (27) years of long-term imprisonment, while the Applicant Nezir Kerrellaj (KI93/14) was sentenced with fifteen (15) years imprisonment.
20. The Public Prosecutor of the District Court in Peja and the representative of the injured Z. A. filed an appeal with the Supreme Court against the Judgment of the District Court in Peja regarding the length of the sentence.
21. On 12 December 2012, the Supreme Court (Judgment Ap. no. 391/2012) replaced the previous sentence of the Applicant Gazmend Musollaj (KI80/14) with thirty-two (32) years of long-term imprisonment, whereas the previous sentence of the Applicant Nezir Kerrellaj (KI93/14) was replaced with thirty (30) years of long-term imprisonment.
22. The Applicants filed an appeal with the Supreme Court against the Judgment of the Supreme Court (Ap. no. 391/2012, of 12 December 2012).

23. On 21 March 2013, the Supreme Court (Judgment Pa. II. no. 1/2013) rejected as ungrounded the Applicants' appeals and upheld the Judgment of the Supreme Court.
24. The Applicants filed a request for protection of legality with the Supreme Court against that Judgment.
25. On 6 November 2013, the Supreme Court (Judgment Pml. no. 166/2013) rejected as ungrounded the Applicants' requests for protection of legality, by holding that *"[...] the court of first instance, second instance and that of the third instance, have correctly applied the criminal law when they concluded that the actions of the convict constitute elements of criminal offense for which the convicts were found guilty [...]"*.

Applicants' allegations

26. The Applicant Gazmend Musollaj (KI80/14) claims a violation paragraph 4 of Article 33 [The Principle of Legality and Proportionality in Criminal Cases] of the Constitution. He alleges:

"[...] the general principle is violated, since it should be acted on his favor, whereas by the first instance court, the convict Musollaj for the aforementioned criminal offences is sentenced to long-term imprisonment in duration of 27 years, however the second instance court modifies the decision of the first instance court and imposes the sentence of 30 years imprisonment, before the entrance into force of the new Criminal Code, whereas the third instance court rejects the appeals of the defense counsels and upholds the Judgment of the second instance court in the hearing, following the entrance into force of the new Criminal Code, which means that the decision was not final yet".

27. The Applicant Nezir Kerrellaj (KI93/14) claims a violation of Article 3 [Equality before the Law], Article 19 [Applicability of International Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution. He alleges:

"[...] in the present case should be respected the law that is more favorable for the accused, i.e. the law which was in force at the time of commission of the criminal offence and the imposed sentence was 15 years and maximum 20 years could be imposed, and not 30 years of imprisonment as the courts acted [...]"

Admissibility of the Referral

28. The Court examines whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
29. In this respect, the Court refers to 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. [...]”.

30. The Court also takes into account Rule 36 (1) (c) 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 which the decision on the last effective remedy was served on the Applicant [...]”.

31. The Court notes that the challenged Judgment was served on the Applicants on 23 December 2013.
32. The Court observes that the Applicant Gazmend Musollaj (KI80/14) filed his Referral on 8 May 2014, while the Applicant Nezir Kerrellaj (KI93/14) filed his Referral on 22 May 2014.
33. Therefore, the Court considers that the Applicants have submitted their Referrals to the Court after the deadline of four months provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.
34. 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 the 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, ECHR, Decision of 25 August 2005).
35. Consequently, the Referral is out of time and must be rejected as inadmissible, pursuant to Article 49 of the Law and 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, Rules 36 (1) (c) and 56 (b) of the Rules of Procedure, on 25 November 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- 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



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani