



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

Prishtina, on 17 May 2016
Ref. no.: RK941/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI67/15 and KI68/15

Applicants

Mykereme Hoxha and Mërgim Hoxha

Constitutional review of Judgment Rev. no. 116/2012, of the Supreme Court of Kosovo, of 7 November 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Ms. Mykereme Hoxha and Mr. Mërgim Hoxha, having their residence in Peja (hereinafter: the Applicants).

Challenged decision

2. The challenged decision is Judgment Rev. no. 116/2012 of the Supreme Court, of 7 November 2014, in conjunction with Judgment AC. no. 313/2010 of the District Court, of 9 November 2011, and Judgment C. 90/03, of 9 January 2008.
3. According to the case file, the challenged Judgment was served on the representative of the Applicants on 27 January 2015.

Subject matter

4. The Applicants have submitted individual Referrals to the Constitutional Court of the Republic of Kosovo (hereinafter: Court), alleging that the aforementioned judgments violate their rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 40 [Freedom of Expression], Article 41 [Right of Access to Public Documents], Article 46 [Protection of Property], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6, paragraph 1 [Right to a fair trial] in conjunction with Article 10 paragraph 1 [Freedom of expression] of the European Convention on Human Rights and Freedoms (hereinafter: the ECHR), and Article 1 of Protocol 1 to the ECHR.
5. The Applicants request that the Court hold a hearing session regarding their case.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rules 27 and 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

7. On 28 May 2015, the Applicants filed separately their Referrals with the Court.
8. On 29 June 2015, the President of the Court, by Decision GJR. KI67/15, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, by Decision KSH. KI67/15, the President appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova, and Arta Rama-Hajrizi.
9. On 15 July 2015, the Court requested the Basic Court in Peja to provide some additional information, indicating the date when the Applicants were served with the challenged Judgment.
10. On 20 August 2015, the Basic Court in Peja submitted the requested documents to the Court.

11. On 2 September 2015, in accordance with Rule 37 (1) of the Rules of Procedure, the President ordered that Referral KI68/15 be joined to Referral KI67/15 and that the Judge Rapporteur and the Review Panel be the same for both Cases (KI67/15 and KI68/15), as it was decided in Referral KI67/15.
12. On 10 September 2015, the Court notified the Applicants on registration of the Referrals KI67/15 and KI68/15 and their joinder.
13. On 29 October 2015, the Applicant, Ms. Mykereme Hoxha, submitted to the Court a document whereby she requests that the Order on Joinder of the Referrals (KI67/15 and KI68/15) be served on her.
14. On 4 November 2015, the Applicant, Ms. Mykereme Hoxha, sent to the Court a document based on which she requests the review of the decision of the Court on the joinder of the Referrals (KI67/15 and KI68/15).
15. On 11 November 2015, the Applicant, Mr. Mërgim Hoxha, submitted to the Court a document based on which he requested the review of the Decision of the Court on the Joinder of the Referrals (KI67/15 and KI68/15).
16. On 17 November 2015, the Applicant, Ms. Mykereme Hoxha, submitted to the Court a document whereby she requested "*the elimination of constitutional obstacles*" and the delivery of all the decisions on the appointment of the Judge Rapporteur and the Review Panel in Cases KI27/12, KI31/12, KI32/12 and KI33/12, as well as the order on the joinder of these Referrals.
17. On 18 November 2015, the Applicant, Mr. Mërgim Hoxha, sent to the Court a document whereby he requested "*the elimination of constitutional obstacles*" and the delivery of all the decisions on the appointment of the Judge Rapporteur and the Review Panel in Cases KI27/12, KI31/12, KI32/12 and KI33/12, as well as the order on the joinder of these Referrals.
18. On 25 November 2015, the Applicant, Mrs. Mykereme Hoxha, submitted to the Court a letter whereby she requests that the President, Arta Rama-Hajrizi and the Vice President, Ivan Čukalović, be recused from the review of her case.
19. On 16 December 2015, the Applicant, Ms. Mykereme Hoxha, submitted to the Court an additional document (Supplementation to the Referral).
20. On 22 December 2015, the Applicant, Ms. Mykereme Hoxha, submitted to the Court a request whereby she requested that the Court hold a hearing session for the case.
21. On 29 December 2015, upon their requests, the Court sent to the Applicants the Order on the joinder of the Referrals (KI67/15 and KI68/15).
22. On 6 January 2016, the Applicant, Ms. Mykereme Hoxha, submitted to the Court a request whereby she requested "*to deliver to her 5 (five) annexes to the Order on the joinder of the Referrals (KI67/15 and KI68/15)*".

23. On 12 January 2016, the Applicant, Ms. Mykereme Hoxha, submitted to the Court another request for “*the review of the decision on the joinder of the Referrals (KI67/15 dhe KI68/15)*”.
24. On 15 January 2016, the Applicant, Ms. Mykereme Hoxha, submitted to the Court a request whereby she requested that the case no. KI67/15 be reviewed separately from case KI68/15.
25. On 27 January 2016, the Applicant, Mrs. Mykereme Hoxha, submitted to the Court a letter whereby she re-requested that the President, Arta Rama-Hajrizi and Deputy President, Ivan Čukalović be recused from the review of her case.
26. On 9 February 2016, the Applicant Ms. Mykereme Hoxha submitted to the Court an additional document (Supplementation of the Referral).
27. On 7 March 2016, the Applicant Ms. Mykereme Hoxha submitted to the Court a request whereby requesting that the Court holds a hearing session regarding the case.
28. On 7 March 2016, the Court in accordance with Article 7 of the Rules of Procedure reviewed the Applicant’s request regarding the recusal of the President Arta Rama-Hajrizi and Deputy President, Ivan Čukalović from the review of the case and unanimously decided to not take into consideration as it did not meet the requirements provided by Article 18 of the Law.
29. On 8 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of facts

30. As regards the raised allegations and the facts presented by the Applicants, related to Judgment C. 90/03 of the Municipal Court, of 9 January 2008 and Judgment AC. no. 313/2010 of the District Court, of 9 November 2011, which are completely similar to the present Referral, the Court has already rendered a decision on the following cases: KI27/12, KI31/12, KI32/12 and KI33/12.

Summary of facts for previous cases

31. The Applicants’ Referrals were about a property contest, related to a property located in Peja. H. D. (who is the sister of the first Applicant and aunt of the second Applicant) had filed a Claim with the Municipal Court in Peja on the confirmation of the ownership rights over the apartment, against the respondent M. H. (who is the deceased spouse of the first Applicant and the deceased father of the other Applicant). In 2002, M. H. passed away.
32. On 9 January 2008, the Municipal Court in Peja rendered Judgment C. no. 90/03, confirming that H. D. was the owner of the apartment and obliging the Applicants to recognize the H. D.’s ownership right.

33. On 9 November 2011, the District Court in Peja rendered Judgment AC. no. 313/2010, rejecting the Appeal as ungrounded.
34. On 19 March 2012, Ms. Mykereme Hoxha filed a Referral with the Court bearing number KI27/12.
35. On 26 March 2012, Mr. Mërgim Hoxha filed with the Court the Referral bearing number KI32/12. The Referral bearing number KI31/12, was filed by Ms. Merita Hoxha and Referral bearing number KI33/12, was filed by Mr. Blerim Hoxha, all the three being children of the Applicant, Ms. Mykereme Hoxha.
36. On 4 July 2012, in compliance with Rule 37 (1) of the Rules of Procedure, the President ordered that Referrals KI31/12, KI32/12 and KI33/12 be joined with Referral no. KI27/12.
37. On 5 July 2013, the Court decided on the previous Applicants' referrals declaring the Referral inadmissible and manifestly ill-founded.

Summary of facts for Case KI67/15 and KI68/15

38. Based on the Applicants' Referral for Case KI67/15 and KI68/15, it results that on an unspecified date, the Applicants addressed the Supreme Court by a request for revision against Judgment AC. no. 313/2010 of the District Court, of 9 November 2011, alleging that the aforementioned judgment was rendered by essential violation of the contested procedure provisions and erroneous application of the substantive law.
39. On 7 November 2014, the Supreme Court of Kosovo (Judgment Rev. no. 116/2012), rejected the request for revision. In the Judgment of the Supreme Court, the following is emphasized: *"The second instance court after correctly and completely determining the factual situation applied correctly the provisions of the contested procedure and the substantive law when it confirmed that the statement of claim of claimant-counter respondent is grounded, and rejected the respondent's-counterclaimant's appeal as such"*.
40. As mentioned above, on 28 May 2015, the Applicants individually addressed the Court.
41. On 20 August 2015, by letter bearing number GJA. nr. 289/2015, the Basic Court in Peja notified the Court that the Applicants had refused to receive the decisions of the regular courts, which were duly served on them in a regular manner, except for Judgment Rev. no. 116/2012 of the Supreme Court, of 7 November 2014.
42. Based on the case file (the acknowledgement of receipt), it is noted that the Judgment of the Supreme Court Rev. No. 116/2012, of 7 November 2014, was served on the Applicant's representative before the Supreme Court, Mr. Blerim Hoxha on 27 January 2015.

43. Based on the case file it is noted that the Applicants were represented before the Supreme Court by Mr. Blerim Hoxha (who also filed Referral KI33/12 and who, based on the case file, results to be the son of Mrs. Mykereme Hoxha and brother of Mr. Mërgim Hoxha, who are the Applicants in the present case).

Applicants' allegations

44. The Applicants allege that Judgment C. no. 90/03 of the Municipal Court, of 9 January 2008, Judgment AC. no. 313/2010 of the District Court, of 9 November 2011, and Judgment Rev. no. 115/2012 of the Supreme Court of Kosovo, of 7 November 2014, violated their rights guaranteed by Article 31 [Right to Fair and Impartial Trial] as read in conjunction with Article 40 [Freedom of Expression], Article 41 [Right of Access to Public Documents], and Article 46 [Protection of Property], of the Constitution, as well as Article 6 [Right to a fair trial] as read in conjunction with Article 10, paragraph 1 [Freedom of expression] of the ECHR, as read in conjunction with Article 1 of Protocol No. 1 [Protection of Property] of the ECHR,.
45. The Applicants allege that they were denied the access to the case files and that they were never served with the decisions of the regular courts.

Admissibility of the Referral

46. The Court will examine whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
47. The Court recalls that as regards Judgment C. 90/03 of the Municipal Court, of 9 January 2008 and Judgment AC. no. 313/2010 of the District Court, of 9 November 2011, which are challenged again by the Applicants, the Court has decided by its Resolution on Inadmissibility in cases KI27/12, KI31/12, KI32/12 and KI33/12, of 5 July 2013. The Court emphasizes that it has no jurisdiction to decide on the same legal matters whereon it has already decided, unless there are new allegations or new facts.
48. Under these circumstances, the Court will consider the Applicants' allegations only as regards Judgment Rev. no. 115/2012 of the Supreme Court of Kosovo, of 7 November 2014.
49. With this regard, the Court refers to Article 113 paragraphs 1 and 7 of the Constitution, which provides:
- “1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
(...)
7. 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.”*
50. The Court also 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”

51. In addition, the Court takes into consideration Rule 36 (1) c) of the Rules of Procedure, which provides:

“(1) The Court may consider a referral 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, [...].”

52. Moreover, the Court refers to Rule 27 (3) of the Rules of Procedure, which clarifies that:

“When a period is expressed in months, the period shall end at the close of the same calendar date of the month as the day during which the event or action from which the period to be calculated occurred;

53. Based on the case files, namely the acknowledgment of receipt submitted by the Municipal Court in Peja, the Court notes that Judgment Rev. no. 115/2012 of the Supreme Court of Kosovo, of 7 November 2014, was served on the Applicants' Representative on 27 January 2015.
54. The Court reiterates that any procedural action or inaction on the representatives part is attributable to the Applicant/Applicants (See, *Bekauri v. Georgia*, No. 14102/02 ECtHR, Judgment of 10 April 2012, paragraphs 22-25; and see, *mutatis mutandis*, Case no. KI02/10, Resolution on Inadmissibility, *Roland Bartezko*, §§ 25-28, 21 March 2011 and *Migliore and Others v. Italy*, No. 58511/13 ECtHR, Decision of 27 January 2014).
55. In this relation, the Court emphasizes that the deadline of 4 (four) months shall be counted from the day upon which the claimant or his/her representative has been served with a court decision, even if the Applicant himself has been informed later with the decision (See, *Otto v. Germany* No. 21425/06, ECtHR, Decision of 10 November 2009 and see, *mutatis mutandis*, *Celik v. Turkey*, ECtHR, No. 52991/99, see also case *Benet Praha, SPOL. S R.O v. Czech Republic*, No. 38354/06, ECtHR, Decision of 28 September 2010).
56. To determine whether the Applicants have submitted the Referral within the foreseen time limit of four (4) months, the Court considers as the date of receipt of the decision the date of receipt of the above mentioned Judgment by the representative of the Applicants, i.e. 27 January 2015. The Court notes that the Applicants have filed their Referral with the Court on 28 May 2015 (Thursday). This means that the Referral was submitted one day after the

expiry of the prescribed deadline. Consequently, the Referral has not been filed within the legal time limit specified in Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure.

57. The Court recalls that the Applicants in their Referral claim that they have never been served with the abovementioned Judgment and that they were not granted access to the case file. This claim constitutes the core of the Applicants' request for protection of their constitutional rights. However, the Applicants did not provide detailed explanations and do not further clarify their claims that their right to access the case files was violated, namely the Judgment of the Supreme Court has not been served on them. Furthermore, the Court notes that these Applicant's allegations are not in compliance with the case file sent by the Basic Court in Peja.
58. The Court wishes to reiterate that the mere referring to the provisions of the Constitution or alleging that they were violated without presenting convincing facts to confirm that such violation was made by a public authority, and without clarifying the circumstances that led to such alleged violation, do not provide sufficient grounds to convince the Court that the Constitution or the ECHR have been violated.
59. As regards the Applicant's request to hold a hearing session, the Court refers to Article 20 of the Law:

"1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.

2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files".
60. The Court considers that the case files of these referrals are sufficient to decide on this case, based on the wording of paragraph 2 of Article 20 of the Law.
61. Therefore, the Applicant's request to hold a hearing session is rejected as ungrounded.
62. In sum, the Court recalls that the objective of the 4 (four)-month legal deadline, under Article 49 of the Law and Rule 36 (1) c) of the Rules of Procedure, is to promote legal certainty, by ensuring that the cases presenting the constitutional matters are reviewed within a reasonable time and that the decisions rendered previously are not continuously open to challenge (*See case O'Loughlin and others v. United Kingdom, No. 23274/04, ECtHR, Decision of 25 August 2005*).
63. Therefore, the Referral is to be rejected as inadmissible, because it is filed out of time.


FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on 8 March 2016, unanimously

DECIDES

- I. TO DECLARE the Referral 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; and
- IV. This Decision is effective immediately.

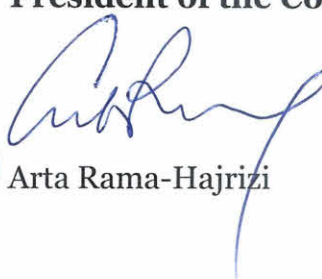
Judge Rapporteur



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi