



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

Prishtina, on 31 October 2016
Ref. No.: RK987/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KIo6/16

Applicants

Xhelal Zherka and Reshad Zherka

**Constitutional review of Judgment Pml. Kzz 8/2015
of the Supreme Court of 18 February 2015**

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 is submitted by Mr. Xhelal Zherka and Mr. Reshad Zherka from Gjakova (hereinafter: the Applicants).

Challenged decision

2. The Applicants challenge Judgment [Pml. Kzz 8/2015] of the Supreme Court, of 18 February 2015, which according to Applicants' allegations, was served on them on an unspecified date in May 2015.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court, which allegedly violated the Applicants' rights and freedoms guaranteed by Article 102 [General Principles of the Judicial System] paragraph 2 and Article 106 [Incompatibility] paragraph 1 and 2 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. Both Applicants request that their identity be not disclosed due to "*personal reasons*".

Legal basis

5. 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 (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 Constitutional Court

6. On 12 January 2016, the Applicants submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 12 February 2016, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova (Judge) and Ivan Čukalović (Judge).
8. On 25 March 2016, the Court informed the Applicants about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 12 July 2016, 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

10. On 31 July 2012, the EULEX District Prosecutor filed Indictment [PPS. 114/2012] to the Basic Court in Peja against the Applicants and several public servants, for Abusing Official Position or Authority in violation of Article 422 of the CCK, Abusing Official Position or Authority in violation of Article 339 paragraph I of the PCCK, and Unauthorized Possession of Weapons in violation of Article 374 paragraph 1 of the CCK.

11. On 23 May 2013, the Basic Court in Peja rendered Judgment [P. no. 346/12], which found both Applicants guilty, and sentenced them to aggravated punishment of five years in prison and as well as to the accessory punishment of prohibition from exercising any public service or function for a period of three years after the term of imprisonment has been served.
12. Both Applicants filed the appeals within legal time limit with the Court of Appeal against the Judgment of the Basic Court. on the ground of a violation of the criminal law, and certain substantial violations of the provisions of the criminal procedure.
13. On 6 June 2013, the Court of Appeal rendered Judgment [PAKR 413/13] which partly approved the Applicants' appealing allegations, whereby reducing the imprisonment sentence of 5 (five) years to 3 (three) years.
14. On 5 August 2014, the Applicants filed requests for protection of legality with the Supreme Court.
15. On 18 February 2015, the Supreme Court rendered Judgment [Pml. Kzz 8/2015] which rejected the Applicants' request as ungrounded.
16. In the Judgment [Pml. Kzz 8/2015] was stated: *"A large number of points were raised by the defendants and the Defence Counsel. However, the Supreme Court notes that most of the submissions are mere repetitions of the issues that were raised in the appeals against the First Instance Judgement which were carefully and thoroughly considered by the Court of Appeals, Defendants and Defense Counsel are reminded that Requests for Protection of Legality may be filed on the ground of a violation of the criminal law, on the ground of certain substantial violations of the provisions of the criminal procedure, or if there is any other violation of the provisions of the criminal procedure that has affected the lawfulness of the judicial decision. A Request may not be filed on the ground of erroneous or incomplete determination of the factual situation (Article 432 of the CPC)."*

Applicant's allegations

17. The Applicants allege: *"that Judgment Pml.Kzz 8/2015 of 18.02.2015 is in full contradiction with the constitutional principles and the Constitution itself as the highest legal act of the country."*
18. Further, the Applicants allege that:

"In the case of decision taking before the Supreme Court as regards the Requests for protection of legality, in the trial panel composed of EULEX judges, among others, Judge V. D has also taken part as a member of the trial panel, who has also signed the Judgment in question.

Judge V. D was president of the Central Election Commission of the Republic of Kosovo at the time when the Judgment mentioned above was rendered, and at this period of time, Ms. V. D was suspended from all her

functions as a judge at the Supreme Court. Thus Ms. V. D was provisionally stripped of her authorizations of a judge at the Supreme Court, and that was for the duration while she would exercise the function of the president of the Central Election Commission."

19. The Applicants request the Court to: „provide interpretation of constitutionality whether Judgment Pml. Kzz 8/2015, of the Supreme Court of the Republic of Kosovo is in accordance with the constitutional provisions.“

Admissibility of Referral

20. The Court first examines whether the Applicants have fulfilled the admissibility requirements laid down in Constitution and as further specified in the Law and the Rules of Procedure.

21. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

“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.”

22. The Court also refers to Article 49 of the Law, which stipulates:

“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...”

23. The Court further takes into account Rule 36 (1) (c) of the Rules of Procedure, which stipulates:

“(1) The Court may consider a referral if:

(...)

(c) referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant.”

24. After having reviewed the Applicants' Referral, the Court found that both Applicants allege that Judgment Pml. Kzz 8/2015 of the Supreme Court, of 18 February 2015, was served on them in May 2015.
25. Accordingly, the Court considers that even assuming, which is in favor of the Applicants, that the challenged judgment was served on the Applicants on 31 May 2015, which is the last date of May, the Referral was submitted after the legal time limit of 4 (four) months, because they submitted the Referral to the Court on 12 January 2016.
26. The Court recalls that the purpose of the 4 (four) months 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 constitutional review (See case *O'Loughlin and Others v. United Kingdom*, Application No. 23274/04, ECHR, Decision of 25 August 2005, and see also Case no. KI140/13, *Ramadan Cakiqi*, Decision on Inadmissibility of 17 March 2014, paragraph 24).

27. Therefore, the Referral is to be declared inadmissible for review because it is out of time as established in Article 113.7 of the Constitution, provided for in Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure.

Request to not disclose identity

28. Regarding the request for not disclosing their identity, the Applicants tried to justify such a request only by stating that their identity be not disclosed, and that is due to "*personal reasons*," without providing legal arguments and reasoning that would be taken into consideration.
29. However, the Court rejects the requests as ungrounded, because the Applicants did not explain, nor have substantiated by supporting documents, the merits of their requests, having in mind that their identity has already been published in the proceedings before the regular courts.

FOR THESE REASONS

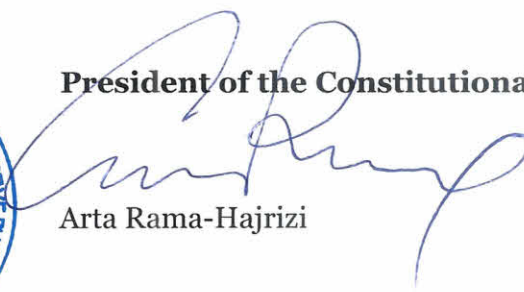
The Constitutional Court of Kosovo, pursuant to Article 49 of the Law, and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 12 July 2016, unanimously

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;
- IV. TO DECLARE this Decision effective immediately.


Judge Rapporteur
Bekim Sejdiu




President of the Constitutional Court
Arta Rama-Hajrizi