



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 22 Janar 2015

Ref. No.: RK749/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI102/14

Applicant

Arben Ademi

**Constitutional review of Judgment Pkl. no. 150/2012 of the Supreme
Court of the Republic of Kosovo, of 30 January 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

Applicant

1. The Referral was filed by Mr. Arben Ademi from Prishtina (hereinafter: the Applicant), represented by Mr. Alban Ademi.

Challenged decision

2. The Applicant challenges Judgment Pkl. no. 150/2012 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 30 January 2013, served on the Applicant on 25 March 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, by which the Supreme Court rejected the Applicant's request for protection of legality.
4. The Applicant does not specify any right guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) which might have been violated.

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 16 June 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 19 June 2014 the Applicant submitted additional documents to the Court.
8. On 20 June 2014 the Applicant submitted the power of attorney for Mr. Alban Ademi.
9. On 7 July 2014 the President of the Court by Decision no. GJR. KI102/14 appointed Judge Ivan Čukalović as Judge Rapporteur and by Decision no. KSH. KI102/14 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
10. On 25 July 2014 the Court notified the Applicant of the registration of the Referral and sent a copy of it to the Supreme Court.
11. On 2 October 2014 the Court notified the Basic Court in Prishtina of the registration of the Referral and requested from it to submit to the Court the return receipt, showing the date when the Applicant was served with the Judgment (Pkl. no. 150/2012, dated 30 January 2013) of the Supreme Court.
12. On 8 October 2014 the Court received the response from the Basic Court in Prishtina.
13. On 21 October 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 the facts

14. On 22 December 2008 the District Court in Prishtina (Judgment P. No. 728/2005) sentenced the Applicant to a long-term imprisonment of thirty five (35) years for the commission of the criminal offence of aggravated murder.
15. The Applicant filed an appeal with the Supreme Court against the Judgment of the District Court in Prishtina.
16. On 7 September 2011 the Supreme Court (Judgment Pkl. no. 351/2009) rejected as ungrounded the Applicant's appeal by reasoning that:

"[...] The first instance court analyzed and assessed the evidence in compliance with the provision of Article 387 of the PCPCK, while regarding contradictory evidence it acted in accordance with the provisions of Article 396 paragraph 7 of the PCPCK, by presenting completely, what facts and for what reasons takes as proved or unproved, by making assessment of contradictory evidence. Therefore, the conclusions drawn by the first instance court, based on administered evidence, which are not put into question by any evidence, as fair and lawful, are approved by this court too."

17. The Applicant filed a request for protection of legality with the Supreme Court alleging "substantial violations of the criminal procedure and incomplete and erroneous determination of facts".
18. On 30 January 2013 the Supreme Court (Judgment Pkl. no. 150/2012) rejected the Applicant's request for protection of legality by reasoning that:

"[...] the Supreme Court of Kosovo admits in entirety the legal stance of the first instance court upheld by the second and the third instance judgment, with regards to criminal liability of the convict Arben Ademi that in the actions of the convict are constituted all objective and subjective elements of criminal offence of aggravated murder [...] for which he was found guilty and was convicted."

Applicant's allegations

19. In his Referral, the Applicant states that "Article 147 par. 1 and par. 3 in conjunction with Article 23 of CCK is completely violation of justice, since in this case we do not have to deal with murder, but our only weakness is that we do not know how to prove, reveal, show that it is not like he is accused and convicted based on this Article".
20. The Applicant addresses the Court with the following request:

"The only thing we want and try is to move forward to the extent that the justice is revealed, hoping that this court will make possible that the justice is revealed. We ask only to help us to reveal the case as it was, respectively as it happened and not as it was presented."

Admissibility of the Referral

21. The Court examines whether the Applicant has met the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.
22. 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 [...]”.
23. The Court also takes into account Rule 36 (1) (c) of the Rules of Procedure:

“(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, [...]”.
24. Based on the case file, the Court notes that the Applicant submitted his Referral on 16 June 2014. In addition, based on the case file, the Court determined that Judgment Pkl. no. 150/2013 of the Supreme Court was served on the Applicant on 25 March 2013. Consequently, it results that the Applicant submitted his Referral to the Court after the expiry of the legal deadline provided 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 the cases raising issues under the Constitution are dealt with within a reasonable time and that the 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).
26. For the foregoing reasons, it follows that the Referral is out of time and it 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 and Rule 36 (1) (c) of the Rules of Procedure, on 21 October 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral 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

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani

