



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

Pristine, 21 May 2012
Ref. No.: RK237/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI130/11

Applicant

Mr. Denic Mladen and Mr. Vitkovic-Denic Milorad

**Request for re-examination of the Resolution on Inadmissibility of the
Constitutional Court of the Republic of Kosovo, KI 18/10, dated 12 April 2011.**

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 Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicants

1. The Applicants are Mr. Denic D. Mladen and Mr. Vitkovic-Denic D. Milorad, residing in Kraljevo, Serbia, represented by Mr. Vitkovic M. Branislav, a practicing lawyer in Kraljevo, Serbia, who submitted a first Application (Case No. KI 18/10) to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 24 February 2010. The Case was rejected as inadmissible on 12 April 2011.

Challenged decision

2. With the present Referral, the Applicants request this Court to re-examine the Resolution on Inadmissibility of this Court in Case KI 18/10, of this Court, dated 12 April 2011, by which the Court declared inadmissible the Applicants' Referral for not having exhausted all legal remedies. The Resolution on Inadmissibility was served on the Applicants on 19 September 2011.

Subject matter

3. In this request for re-examination of the Resolution on Inadmissibility, the Applicants' complain that this Court did not take into consideration a letter which was submitted to this Court on 12 May 2011.

Legal basis

4. Rule 36 (3.e) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 3 October 2011, the Applicant submitted a request to this Court to re-examine the Resolution on Inadmissibility in Case KI 18/10 of this Court, dated 12 April 2011, and published on 19 September 2011.
6. On 18 January 2012, the President, by Decision No. GJR. 130/11, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President, by Decision No. KSH. 130/11, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Almiro Rodrigues.
7. On 2 February 2012, the Court requested the Municipal Court in Pristina what the status of the proceedings was.
8. On 29 February 2012, the Municipal Court in Pristina replied that it was reviewing the Applicants' case; However, due to the complexity of the case, the large amount of cases pending before it and the difficulties in communicating with the Applicants' who reside in Serbia, the Municipal Court in Pristina had not had the possibility to hold a session.
9. On 4 May 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

10. As to the Applicant's previous Case KI. No. 18/10, adjudicated on 12 April 2011, this Court found the Referral inadmissible on the ground that the Applicants had failed to show that they had exhausted all legal remedies as provided by applicable law, since they had not raised or pursued the alleged violations during the pending proceedings before the Municipal Court or before any higher instance courts. This decision was published on 19 September 2011.
11. On 12 May 2011, the Applicants had submitted a letter to this Court, claiming that Article 54 [Judicial Protection of Rights] of the Constitution has been violated because until today the Municipal Court in Pristina has not yet taken a decision in their case within a reasonable time.

Assessment of the admissibility of the Referral

12. In the Applicants' request for re-examination, they allege that this Court did not take into consideration a letter which was submitted by the Applicants' to this Court on 12 May 2011, whereby the Applicants had alleged that:

“ ...

 - a. Article 54 [Judicial Protection of Rights] of the Constitution has been violated because until today the Municipal Court in Pristina has not yet taken a decision in their case within a reasonable time;
 - b. Article 143.1 [Comprehensive Proposal for the Kosovo Status Settlement] of the Constitution has been violated because the Supreme Court with its Judgment, No. Cml.-Gzz. br. 36/2007, of 13 December 2007, had not respected the provisions of the Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari Proposal), Annex VII, Article 2 para. 2.1 [Socially Owned Enterprises] and Article 3, para. 3.1 and 3.3 [KTA Claims Adjudication Process], which provides that the Special Chamber of the Supreme Court of Kosovo is competent to decide this matter and not the Supreme Court; and
 - c. Article 156 [Refugees and Internally Displaced Persons] of the Constitution has been violated because their wealth had not been returned to them.

“ ...”
13. In this respect, the Court refers to Rule 36 (3.e) of the Rules of Procedure which provides:

“ ...
A Referral may also be deemed inadmissible in any of the following cases: the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision;
“ ...”
14. In this regard, the Court notes that as to allegation b) and c) are the same allegations as made in the initial Referral. These allegations have been dealt with by this Court in its Resolution on Inadmissibility in Case No. KI. 18/10, whereby it ruled that the Applicants' had not exhausted all available legal remedies.
15. The Court is, therefore, barred from dealing with them here, pursuant to Rule 36(3) (e) of the Rules of Procedure.
16. As to allegation a), the Court observes that it is a new complaint regarding the excessive length of proceedings which does not fall within the scope of the initial Referral dealt with by the Court in Resolution on Inadmissibility in Case No. KI. 18/10. However, this does not preclude the Applicants' from submitting a new Referral complaining about the excessive length of proceedings.
17. All the more, the Court notes that the Applicants' claim, which they are presently making before this Court concerning the excessive length of proceedings, has not been decided yet by the Municipal Court. Therefore, all arguments regarding the alleged excessive length of proceedings should be satisfied by the Applicants' before the Municipal Court in Pristina and if they are not satisfied, be raised in appeal before the higher instance Courts, including the Supreme Court.
18. It follows, that the Referral is inadmissible pursuant to Rule 36 (3.e) of the Rules of Procedure, however, as stated previously this does not preclude the Applicants from submitting a new Referral complaining about the excessive length of proceedings.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (3.e) and Rule 56 (2) of the Rules of Procedure, on 4 May 2012, unanimously

DECIDES

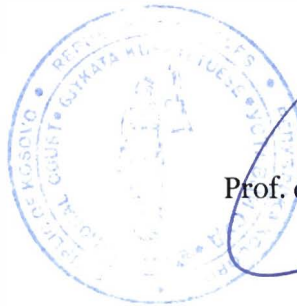
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Prof. dr. Enver Hasani

