



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

Prishtina, 29 December 2014
Ref. no.:RK741/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI143/14

Applicant

Ferbend Haxhijaj

**Constitutional Review of the
Judgment Rev. no. 26/2012 of the Supreme Court,
dated 16 September 2013**

composed of

Enver Hasani, President
Ivan Čukalovič, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge, and
Arta Rama-Hajrizi, Judge.

The Applicant

1. The Referral was submitted by Mr. Ferbend Haxhijaj, citizen of the Republic of Albania with residence in Durrës, Republic of Albania (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges the Judgment Rev. No. 26/2012 of the Supreme Court of 16 September 2013, which was served on the Applicant on 11 November 2013.
3. The Court has already rendered a decision on this same matter in case KI28/14, Applicants *Skender Mezini and Ferbend Haxhiqj*, Resolution on Inadmissibility, rendered on 19 May 2014 and published on 13 June 2014.

Subject matter

4. The subject matter is the constitutional review of the same challenged Judgment, which allegedly violated the rights of the Applicant guaranteed by Article 1 [Protection of Property] of Protocol No. 1 to the European Convention on Human Rights (hereinafter, the ECHR) and his rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution). The Applicant does not specify which provisions of the Constitution were violated.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

6. On 19 September 2014, the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 7 October 2014, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 21 October 2014, the Court notified the Applicant on registration of the Referral.
9. On 9 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

The Facts of the Case

10. On 19 September 2014, the Applicant filed the Referral KI143/14, without having submitted any new facts or evidence related to the completed procedure before the regular courts and the Constitutional Court.
11. In fact, on 10 February 2014, the Applicant, together with Skender Mezini, had submitted to the Court the Referral KI28/14, by which they have challenged the

same Judgment of the Supreme Court (Rev. no. 26/2012, of 16 September 2013).

12. Meanwhile, on 19 May 2014, the Court declared the Referral KI28/14 inadmissible for being manifestly ill-founded (Case KI28/14, Resolution on Inadmissibility, published on 13 June 2014).
13. The facts and court's decisions submitted by the Applicant in this new Referral KI143/14 have already been reviewed in the Case No. KI28/14, as decided by the Resolution on Inadmissibility dated 19 May 2014.

Applicant's allegation

14. The Applicant in this new Referral KI143/14 insists on claiming that the challenged Judgment has violated his right guaranteed by Article 1 of the Protocol No. 1 to the ECHR.
15. The Applicant further claims that the regular courts have violated his rights guaranteed by the Constitution, namely his right as an heir of his predecessors who were born in Kosovo to become citizen of the Republic of Kosovo and enjoy the property right over the immovable property of his predecessors.
16. However, the Applicant does not accurately specify the provisions of the Constitution, which were allegedly violated. Instead he refers to Articles 3, 4 and 5 of the Law No. 03/L-95 on the Rights of former Politically Convicted and Persecuted (published in the Official Gazette of the Republic of Kosovo on 10 December 2010).
17. The Applicant concludes by requesting the Court to enable him as an heir to enjoy the property right over the immovable property of his predecessors.

Admissibility of the Referral

18. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
19. In this regard, the Court refers to Article 116 (1) of the Constitution [Legal Effect of Decisions], which establishes:

Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.

20. In addition, the Court also takes note of the Rule 63 (1) of the Rules of Procedure, which provides:

The decisions of the Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.

21. Furthermore, the Rule 36 (3) d) of the Rules of Procedure foresees:

*Referral may also be deemed inadmissible in any of the following cases:
(...) e) the Court has already issued a Decision on the matter concerned and
the Referral does not provide sufficient grounds for a new Decision.*

22. The Court considers that the facts and allegations raised by the Applicant in his new Referral do not provide any sufficient or relevant grounds or reasons for a new decision (See Constitutional Court Case KI02/14, Applicant *Hamdi Ademi*, Resolution on Inadmissibility of 26 May 2014).
23. In fact, the Court recalls that it has already dealt with the above-mentioned matter in Case KI28/14, Applicants *Skender Mezini and Ferbend Haxhiaj*, Resolution on Inadmissibility rendered on 19 May 2014. In its Resolution, the Court had declared the Referral inadmissible for being manifestly-ill founded because the presented facts by the then Applicants did not in any way justify their allegation of a violation of the constitutional rights and that the Applicants have not sufficiently substantiated how and why the Judgment of the Supreme Court had violated their rights, guaranteed by the Constitution.
24. Thus, the Court holds that it has already rendered a decision on this matter and that this Referral does not contain any ground for rendering a new decision.
25. Therefore, pursuant to Article 116 (1) of the Constitution, Rules 63 (1) and 36 (3) d) of the Rules of Procedure, the Court concludes that this Referral is to be declared inadmissible.


FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 (3) e) and 63 (1) of the Rules of Procedure, on 9 December 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


Almiro Rodrigues



President of the Constitutional Court


Prof. Dr. Enver Hasani