



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

Prishtina, on 28 May 2015
Ref. No.:RK 801/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI146/14

Applicant

Bekim Cakolli

**Constitutional Review of Judgment PML. no. 160/2013
of the Supreme Court of 8 October 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
Arta Rama-Hajrizi, Judge and
Bekim Sejdiu, Judge.

Applicant

1. The Applicant is Mr. Bekim Cakolli from Prishtina, who is currently serving imprisonment sentence in Dubrava Prison, represented by Mr. Bajram Tmava, lawyer from Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The challenged decision is Judgment PML. no. 160/2013, of the Supreme Court, of 8 October 2013, by which the Supreme Court rejected the Applicant's request for protection of legality as ungrounded and upheld the Judgment of the District Court in Prishtina.
3. This Judgment was served on the Applicant on 10 November 2013.

Subject Matter

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated Article 31 [Right to Fair and Impartial Trial].

Legal Basis

5. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on 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 2 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 6 November 2014, the President of the Court by Decision GJR. KI146/14 appointed Judge Kadri Kryeziu as Judge Rapporteur and by Decision KSH. KI146/14 appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
8. On 23 January 2015, the Constitutional Court informed the Applicant and the Supreme Court of Kosovo about the registration of the Referral. By this notification, the Constitutional Court requested the Applicant and the Municipal Court in Prishtina to submit a copy of the return paper with the date of receipt of the Judgment PML. no. 160/2013, of the Supreme Court.
9. On 18 February 2015, the Municipal Court submitted a copy of the return paper, indicating that the challenged Judgment of the Supreme Court of Kosovo was served on the Applicant on 10 November 2013.
10. On 25 February 2015 the Applicant submitted to the Court additional information whereby he alleges that his attorney B.T. has not defended him legally because during the sessions he did not allow him to speak.

11. On 15 April 2015, 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

12. On 31 May 2012, the District Court in Prishtina, [Judgment P. no. 412/2010] found the Applicant guilty of several criminal offenses and sentenced him to imprisonment.
13. On 26 September 2012, the Supreme Court of Kosovo [Judgment Ap. no. 378/2012], deciding upon the appeal of the Applicant (the accused) and of the District Public Prosecutor, approved the Applicant's appeal and modified the Judgment [P. no. 412/2010] of the District Court in Prishtina regarding the legal qualification.
14. Thereafter, the Applicant submitted to the Supreme Court of Kosovo a request for protection of legality, claiming substantial violation of the criminal law and requesting the modification of the appealed judgment.
15. On 8 October 2013, the Supreme Court of Kosovo [Judgment PML. no. 160/2013] rejected the Applicant's appeal as ungrounded. This Judgment was served on the Applicant on 10 November 2013.

Applicant's Allegations

16. The Applicant claims that by challenged decision were violated the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and it contains substantial violation of CPCCK.
17. The Applicant requests the Court:
 - *ANNULMENT of Judgment 412/2010 of the District Court in Prishtina, of 31.05.2012, Judgment Ap. no. 122/2012 of the Supreme Court of Kosovo, of 07.06.2012, Judgment PML. no. 160/2013 of 08.10.2013.*
 - *To remand the criminal matter of the accused Bekim Cakolli for retrial and reconsideration to the Basic Court in Prishtina- Serious Crimes Department.*

Admissibility of the Referral

18. The Court notes that, in order to be able to adjudicate the Applicant's Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.
19. 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 [...]"

20. The Court also refers to 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, or [...]"

21. The final Judgment [PML. no. 160/2013] of the Supreme Court of Kosovo, was rendered on 8 October 2013, and was served on the Applicant on 10 November 2013, whereas the Applicant submitted the Referral to the Court on 2 October 2014 i.e. more than 4 months after the judgment of the Supreme Court of Kosovo was served on him. Therefore, the Referral was filed out of time.

22. It follows that the Referral is inadmissible, in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 49 of the Law on Constitutional Court and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 28 May 2015, 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 on the Constitutional Court;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur


Kadri Kryeziu

President of the Constitutional Court


Prof. Dr. Enver Hasani

