



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

Pristine, 21 May 2012
Ref. No. RK236/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 26/11

Applicant

Vladimir Ukaj

**Constitutional Review of the Supreme Court Judgment Pkl-Kzz-93/09 of 1
March 2010**

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

Applicant

1. The Applicant is Vladimir Ukaj born in Puke, Albania, currently serving the prison sentence in Dubrava prison.
2. The Applicant claims a violation of paragraphs 1, 2 and 4 of Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 41 [Right to Access Public Documents] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution")
3. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Challenged decision

4. The challenged decision is the Judgment Pkl-Kzz-93/09 issued by the Supreme Court of Kosovo on 1 March 2010, according to which the Applicant's request for Protection of Legality was dismissed as inadmissible.

Proceedings before the Court

5. On 25 February 2011 the Applicant submitted a referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On the same date the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Iliriana Islami.
7. On 23 November 2011, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the Facts

8. On 20 July 2005 in the case P.Nr. 02/05, the District Court in Prizren found the Applicant guilty because he committed the following criminal offences: Sexual intercourse or unnatural lechery through abuse of official position under Article 78, Paragraph 1 of CLK, as amended by Section 1.4 of UNMIK Regulation No.2003/1 amending the Applicable Law on Criminal Offences Including Sexual Violence, Facilitating Prostitutions under Article 201, Paragraph 3 of PCCK, Trafficking in Persons in co-perpetration under Section 2.2 of UNMIK Regulation No. 2001/04 on the Prohibition of Trafficking in Persons in Kosovo, in conjunction with Article 22 of CCY and Trafficking in persons in co-perpetration under Article 139, Paragraph 2 of PCCK, in conjunction with Article 23 of PCCK.
9. Consequently, pursuant to Article 71, Paragraph 1 of PCCK, the Applicant, is obliged to serve an aggregate punishment or twelve (12) years imprisonment.
10. The Applicant filed an appeal to the Supreme Court against the aforementioned judgment. On 28 May 2007 the Supreme Court by the judgment Ap-KZ 478/2005 fully rejected the Applicant's appeal. The Applicant was served with this judgment on 5 September 2007.
11. On 24 September 2007 the Applicant filed an appeal to the Supreme Court which was dismissed as inadmissible on 1 June 2009.
12. On 26 June 2009 the Applicant requested protection of legality. The Supreme Court decided on 1 March 2010 to dismiss the request as inadmissible. The Applicant was served by the above mentioned Judgment on 19 March 2010.

Applicants Allegations

13. The Applicant alleges that there was a violation of Article 31 of the Constitution because the District Court unfairly found him guilty. He claims that the judgment of the District Court of Prizren P.nr 02/2005 of 20 July 2005 is entirely grounded on a police report which he entirely objects. The Applicant also claims that the police denied his right to a defence counsel and that he was not allowed to contact the Embassy as a foreign citizen.

14. The Applicant also alleges that he was charged that on 30 June 2004 he committed the criminal offence of trafficking of persons but on this date he was in Konispol and provided documents to confirm that.
15. The Applicant further claims that his right to legal remedies under Article 32 of the Constitution was violated. According to him, during the second instance proceedings, he was interrupted while giving his closing statement as the accused.
16. He also claims he has been denied the right of access to public documents contrary to Article 41 of the Constitution as a copy of the record from the second instance proceedings was not provided.

Assessment of the admissibility of the referral

17. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.
18. From the documents in the Court case file it appears that the Applicant was served with the District Court in Prizren Judgment of 20 July 2005 (P.Nr. 02/05) and the Supreme Court judgment of 28 May 2007 (Ap-KZ 478/2005) before the Constitution entered into force, i.e. before 15 June 2008.
19. The Court must, thus, first establish, whether the matters raised in the Referral "fall under jurisdiction". In this respect, the Court considers that the public authorities of the Republic of Kosovo can only be required to answer to facts and acts which occurred subsequently to the entry into force of the Constitution. Accordingly, the Court cannot deal with the a Referral relating to events that occurred before the entry into force of the Constitution (see, the Court's Resolution on Inadmissibility in Case No 18/10, Denic *et al* of 17 August 2011).
20. Furthermore, the Court refers to Article 49 (Deadlines) 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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced."
21. The Court notes that the Applicant challenges the Supreme Court Judgment Pkl-Kzz-93/09 of 1 March 2010 which was served to him on 19 March 2010.
22. As mentioned above, the Referral was submitted on 25 February 2011, which is almost a year after the Supreme Court Judgment of 1 March 2010 was served to the Applicant.
23. As a result, the Referral was not submitted with the Court within the time limit prescribed by Article 49 of the Law.
24. The Court also notes that even assuming that the Referral was submitted within the legal time limit prescribed by Article 49 of the Law, the Applicant did not *prima facie* justify his Referral. Indeed the facts of the case that are presented by the Applicant to the Constitutional Court "do not in any way justify the allegation of a violation of constitutional rights" contrary to Rule 36.2 (b) and (c) of the Rules of the Procedure.
25. It follows that the Applicant's Referral should be rejected as inadmissible, pursuant to Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 of the Rules of the Procedure unanimously:

DECIDES

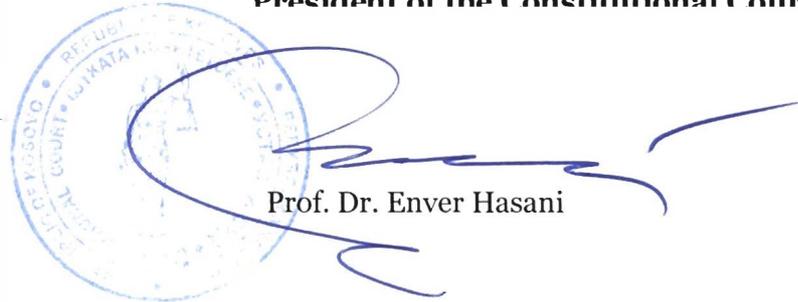
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Prof. Dr. Enver Hasani