



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

Prishtina, 16 February 2017
Ref. No.:RK 1040/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI84/16

Applicant

Hilmi Krasniqi

**Constitutional review of Judgment PAKR 13/2014,
of the Court of Appeal of Kosovo of 27 March 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Hilmi Krasniqi from Vushtrri (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment [PAKR 13/2014] of the Court of Appeal of 27 March 2015, which was served on him on 11 April 2015.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Court of Appeal, which according to the Applicant's allegations, "*violated his rights and freedoms, guaranteed by the Constitution of the Republic of Kosovo*" (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 26 May 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 June 2016, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel, composed of Judges: Robert Carolan (Presiding), Altay Suroy and Gresa Caka-Nimani.
7. On 27 July 2016, the Court notified the Applicant and the Court of Appeal about the registration of the Referral and requested him to submit the evidence when the challenged Judgment was served on the Applicant.
8. On 23 August 2016, the Court received the acknowledgment of receipt as to when the Judgment of the Court of Appeal was served on the Applicant.
9. On 13 October 2016, the President of the Court appointed Judge Ivan Čukalović as a member of the Review Panel instead of Judge Robert Carolan, who resigned from the position of a judge of the Constitutional Court, while by age, Judge Altay Suroy was appointed as Presiding Judge.
10. On 20 October 2016, 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

11. On 19 February 2009, due to grounded suspicion of having committed a criminal offense of aggravated murder, the Kosovo Police arrested the Applicant.

12. On 8 October 2013, the Basic Court in Prishtina- the Serious Crimes Department (hereinafter: the Basic Court) after nine sessions rendered Judgment [P. no. 322/09] which declared the Applicant guilty and sentenced him to a term of imprisonment of 22 (twenty two) years.
13. Within legal deadline, the Applicant filed an appeal with the Court of Appeal against the Judgment of the Basic Court, of 8 October 2013, by alleging *“essential procedural violation, violation of the criminal law, and erroneous and incomplete determination of factual situation.”*
14. Within legal deadline, the Office of the State Prosecutor also filed appeal with the Court of Appeal against the Judgment of the Basic Court.
15. On 27 March 2015, the Court of Appeal rendered Judgment [PAKR 13/2014] which modified the Judgment of the Basic Court in Prishtina, of 8 October 2013, regarding the punishment and sentenced the Applicant to a term of imprisonment of 25 (twenty five) years.

Applicant’s allegations

16. The Applicant alleges: *“many legal violations were committed against him, namely that he had no room to present his defense and by this, all the rights and freedoms guaranteed by the Constitution of Kosovo have been violated to him.”*
17. The Applicant requests the Court to carefully review all the evidence and the decisions of the courts, because he wants to have a fair and impartial trial, and that he has allegedly been kept unjustly in prison for 8 (eight) years.

Admissibility of Referral

18. The Court first examines whether the Applicant fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.
19. In this respect, the Court refers to Article 113.7 of the Constitution, which establishes:

“Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.”

20. The Court, also refers to Article 49 of the Law, which foresees:

“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...”

21. The Court further takes into account 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.”

22. Having reviewed the Applicant's Referral, the Court notes that he challenges Judgment [PAKR 13/2014] of the Court of Appeal, of 27 March 2015, which was served on him on 11 April 2015.
23. The Court also notes that the Applicant submitted his Referral to the Court on 26 May 2016.
24. Accordingly, the Court concludes that the Applicant's Referral was served out of legal deadline of 4 (four) months.
25. The Court recalls that the purpose of the 4 (four) months 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 cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to constitutional review (See case *O'Loughlin and Others v. United Kingdom*, Application No. 23274/04, ECHR, Decision of 25 August 2005, and see also Case no. KI140/13, *Ramadan Cakiqi*, Decision on Inadmissibility of 17 March 2014, paragraph 24).
26. Therefore, the Referral is to be declared inadmissible for review because it is filed out of time, as it is established by Article 113.7 of the Constitution, provided for in Article 49 of the Law, and as further specified in Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, in the session held on 20 October 2016, 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; and
- IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Arta Rama-Hajrizi

