



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

Prishtina, on 1 February 2016
Ref. Nr.RK881/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI91/15

Applicant

Kadri Sherifi

**Request for constitutional review of Judgment AP. no. 320/2011, of the
Supreme Court of the Republic of Kosovo, of 18 January 2012**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Kadri Sherifi, residing in Prishtina.

Challenged decision

2. The Applicant challenges Judgment AP. no. 320/2011, of the Supreme Court of the Republic of Kosovo, of 18 January 2012 (hereinafter: the Supreme Court), and Judgment P. 491/2009, of the District Court, of 28 March 2011 (hereinafter: the District Court).
3. Judgment AP. no. 320/2011 of the Supreme Court was served on the Applicant on 27 February 2012.

Subject Matter

4. The subject matter of this Referral is the constitutional review of Judgment AP. no. 320/2011, of the Supreme Court, of 18 January 2012 and Judgment P. no. 491/2009, of the District Court, of 28 March 2011, regarding the alleged violations of the Applicant's rights guaranteed by the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
5. In fact, the Applicant in the Referral did not specify any constitutional provision for violation of his rights, however, the Court understands that this is about the right to fair and impartial trial, guaranteed by Article 31 of the Constitution.

Legal Basis

6. The Referral is based on Article 113.7 of the Constitution and Articles 22 and 47 of the Law.

Proceedings before the Constitutional Court

7. On 2 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 19 August 2015, the President of the Court by Decision No. GJR. KI91/15, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI91/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova (member) and Arta Rama-Hajrizi (member).
9. On 7 September 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of this Referral to the Supreme Court.
10. On 1 October 2015, the Court requested additional information from the Court of Appeal in Prishtina, regarding the fact whether the Applicant filed appeal against Decision KP. no. 216/2014, of the Basic Court in Prishtina, of 12 May 2015.
11. On 7 October 2015, the Court requested information from the Basic Court in Prishtina, regarding the date of receipt of the final decision (Judgment, Ap. no.320/2011) by the Applicant.

12. On 22 October 2015, the Basic Court in Prishtina informed the Court that the Applicant was served with Judgment Ap. no.320/2011, of the Supreme Court on 27 February 2012.
13. On 19 November 2015, the Court requested the Basic Court the additional information regarding the fact whether the Applicant filed an appeal against Decision KP. no. 216/2014, of the Basic Court in Prishtina, on 12 May 2015.
14. On 2 December 2015, the Basic Court informed the Court that the Applicant did not file the appeal against Decision KP. no. 216/2014, of the Basic Court in Prishtina.
15. On 18 December 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

16. On 25 November 2010, the District Public Prosecutor's Office in Prishtina (hereinafter: the DPPO) at the request of the injured persons (claimants) filed the indictment DPP 804-3/2009, against the Applicant, his brother and several other accused, requesting that they are found guilty of the criminal offence of smuggling of migrants, pursuant to Article 138, paragraph 2, in conjunction with paragraph 1, and in conjunction with Article 23 of the Criminal Code (hereinafter: the CCK).
17. On 28 March 2011, the District Court in Prishtina (Judgment, P. no. 491/2009), found the Applicant guilty of committing the criminal offense under Article 138 paragraph 1, in conjunction with Article 23 of the CCK. The District Court in Prishtina based the decision on finding the Applicant guilty on the DPP evidence and on the statements of the injured parties. The court in question, taking into account the mitigating and aggravating circumstances of the case, concluded that the Applicant is guilty of committing the criminal offense and sentenced him to imprisonment for a period of 6 (six) years, by counting the time spent in detention on remand.
18. Against the Judgment of the District Court in Prishtina, the Applicant filed the appeal with the Supreme Court. Based on the case file, the appeal was filed also by the DPPO in Prishtina, because of the lenient sentence imposed by the District Court of Prishtina, requesting more severe punishment.
19. On 18 January 2012, the Supreme Court (Judgment, AP. No. 17/2015) rejected as ungrounded the appeals of the Applicant and of the DPPO, by upholding in entirety Judgment P. no. 491/2009, of the District Court, of 28 March 2011.
20. On 14 March 2014, the Applicant filed a request for reopening of the criminal proceedings with the Basic Court in Prishtina, against Judgment P. no. 491/2009 of the District Court of 28 March 2011, which became final, after the Supreme Court upheld it on 18 January 2012 (Judgment, Ap. no. 17/2015).

21. On 12 May 2014, the Basic Court in Prishtina (Decision, KP. no. 216/2014) rejected the Applicant's request for reopening of the criminal proceedings. The abovementioned court based the reason of the rejection on the fact that "*the evidence and the facts on which the Applicant was referred to do not provide reasons for allowing the reopening of criminal proceedings*". By this Decision, the Applicant was given the right to submit an appeal to the Court of Appeal, within three (3) days of receipt of the Decision.

Applicant's allegations

22. The Applicant alleges that the challenged decisions, namely Judgment AP. No. 320/2011 of the Supreme Court and Judgment P. no. 491/2009 of the District Court, violated the rights guaranteed by the Law and the Constitution, because he was unjustly imprisoned, serving the sentence of 6 (six) years.
23. The Applicant alleges that the regular courts erroneously and unjustly charged him with the criminal offense, due to the fact, that he did not participate in the actions, allegedly taken by another person who is on the run, and not by him.

Admissibility of the Referral

24. Before considering a Referral, the Constitutional Court needs to examine whether it meets the procedural admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

25. Regarding this, the Court refers to Article 49 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 (...)"

26. In addition, Rule 36 (1) (c) of the Rules of Procedure of the Court provides:

"(1) The Court may consider a referral if:

[...]

c) the referral is filed within four months from the date on which the decision of the last effective remedy was served on the Applicant".

[...]

27. The Court notes that Judgment AP. no. 320/2011, of the Supreme Court was rendered on 18 January 2012, and was served on the Applicant on 27 February 2012. However, the Applicant submitted the Referral to the Court on 2 July 2015, which indicates that the Referral was filed after three (3) years and four months, since the Judgment of the Supreme Court was served on the Applicant.
28. As it can be noted, the Applicant's Referral, regarding the challenging of the constitutionality of Judgment AP. no. 320/2011, of 18 January 2012, was

submitted to the Court after the deadline provided by the aforementioned provisions of the Law and the Rules of Procedure .

29. The Court also notes that the Applicant attached to his Referral the Decision KP. No. 216/2014, of the Basic Court in Prishtina, by which he requested the reopening of the criminal proceedings (as an extraordinary legal remedy). The Court *ex-officio* requested the additional information from the Basic Court in Prishtina, in order to understand whether the Applicant had filed the appeal with the Court of Appeal against the decision of the first instance court. From the information provided, the Court realized that the Applicant had not used the right to submit an appeal to the Court of Appeal. This means that the Applicant has not exhausted legal remedies, under the applicable law, regardless the legal remedy provided by the abovementioned decision, regarding the right for filing the appeal with the Court of Appeal, within deadline of 3 (three) days of service of the Decision of the Basic Court.
30. However, the Court considers that Decision KP. no. 216/2014, of the Basic Court, cannot be subject of review of this Referral, because the Applicant does not challenge its constitutionality, but of Judgment AP. no. 320/2011 of the Supreme Court and Judgment P. no. 491/2009 of the District Court in Prishtina, which are mentioned in paragraph 2 of this document.
31. In sum, the Court considers that the Applicant's Referral regarding the constitutional review of Judgment AP. no. 320/2011 of the Supreme Court (final remedy), does not meet the procedural admissibility requirements in accordance with Article 49 of the Law, therefore, it is to be declared as out of time.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 49 of the Law and in accordance with Rules 36 (1) (c) and 56 (2) of the Rules of Procedure, on 18 December 2015, 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. This Decision effective immediately.

Judge Rapporteur


Bekim Sejdiu



President of the Constitutional Court


Arta Rama-Hajrizi