



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

Pristina, 24 May 2013
Ref. No.: RK411/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI04/13

Applicant

Zahir Hasani

**Request for Constitutional Review of the Judgment of Supreme Court
Pkl.nr.5/2011, of 27 January 2011**

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 and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Mr. Zahir Hasani, from village Sharban, Municipality of Prishtina, now serving a prison sentence, represented by his brother, Mr. Sabit Hasani, also from village Sharban, Prishtina.

Challenged decision

2. The challenged decision of the public authority is the Judgment of Supreme Court of Kosovo Pkl.nr.5/2011 of 27 January 2011, which, according to Applicant's claim, was served on Applicant on 20 August 2012.

Subject matter

3. The subject matter of the Referral submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), on 14 January 2013 is the constitutional review of the Judgment of the Supreme Court of Kosovo by which was rejected the request of the convict Zahir Hasani for protection of legality, filed against the final Judgment of Municipal Court in Prishtina, P.nr.297/05 of 21 April 2010, and against the Judgment of the District Court in Prishtina AP.nr.260/2010, of 3 December 2010.

Legal basis

4. Article 113.7 in conjunction with the Article 21.4 of the Constitution; Article 22 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009, and Rules 54, 55 and 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

5. On 14 January 2013, the Applicants representative submitted the Referral to the Court. The Referral has been registered in the respective register under Nr.KI04/13.
6. On 30 January 2013, by Decision GJR.KI04/13, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur, and by Decision KSH04/13, the President appointed Review Panel composed of Judges: Robert Carolan (presiding), Prof.dr. Enver Hasani and Almiro Rodrigues (members).
7. On 13 February 2013, the Court informed the Applicant and the Supreme Court on the registration of the Referral.
8. On 30 April 2013, 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

9. On 21 April 2010, the Municipal Court in Prishtina issued Judgment P.no.297/05, by which the accused, Mr. Zahir Hasani, from village Sharban, Municipality of Prishtina, was found guilty for criminal offence of forest theft,

pursuant to Article 285.2, of the Criminal Code of Kosovo (hereinafter: CCK), and punished with an imprisonment sentence in duration of 6 (six) months.

10. Against this Judgment, Mr. Hasani filed a complaint to the District Court in Prishtina, by denying his guilt and claiming that he was denied the right of presenting the witnesses who would testify in his favor.
11. On 3 December 2010, the District Court in Prishtina, by deciding on the complaint filed by Mr. Hasani, issued the Judgment Ap.nr.260/10, by which, APPROVED partially the complaint of the accused Zahir Hasani, and the Judgment of the Municipal Court in Prishtina, P.nr.297/05, of 21 April 2010, CHANGED only the sentencing part, therefore the District Court in Prishtina, for the criminal offence forest theft, punishable according to the Article 285 of CCK, found guilty the accused Hasani and imposed a sentence of 3 months imprisonment, while concluded that the Municipal Court in Prishtina has established the complete and correct factual situation and it has administered evidence submitted by the parties in legal and regular manner.
12. Against these two Judgments, now final, Mr. Hasani filed a request for protection of legality to the Supreme Court, with the same allegations as in the first complaint submitted also to the District Court in Prishtina.
13. On 27 January 2011, the Supreme Court issued Judgment Pkl. No.5/2011, by which rejected as unfounded the request for protection of legality, filed against the final Judgments of the Municipal Court in Prishtina, P.no.297/2005, of 21 April 2010, and the District Court in Prishtina, AP.no.260/2010, of 3 December 2010, because it found no essential procedural and legal violations in the Judgments challenged by the Applicant.
14. On 10 January 2013, the Basic Court in Prishtina executed the sentence of imprisonment in compliance with the final Judgment of the Municipal Court in Prishtina, P.no.297/2005, and the Judgment of the District Court in Prishtina, AP. no.260/2010.

Applicant's allegations for constitutional violations

15. The Applicant alleged that the Judgment of the Supreme Court violated his rights guaranteed by the Constitution of Kosovo which is: the Right to Fair and Impartial Trial (Article 31).
16. The Applicant also claimed violation of the provision of the Provisional Criminal Code of Kosovo.

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 all the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

18. In relation to this, the Court refers to the Article 113.7 of the Constitution, which provides:

"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."

The Court also takes into account:

Article 49 of the Law, which explicitly provides that:

"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. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."

19. In determining whether the Applicant has submitted the Referral within the period of four month deadline, the Court refers to the time upon which the Applicant has been served with the last decision, and it also refers to the date of submission of Referral with the Constitutional Court.
20. From the copy of the standard referral form in the Constitutional Court, the Court found that the Applicant has specified that the Judgment of the Supreme Court Pkl. No. 5/2011, of 27 January 2011, has been served on him on 20 August 2012, whereas the Referral was submitted to the Constitutional Court on 14 January 2013, which means that the Referral was submitted to the Court 24 days after the four month deadline according to the Article 49 of the Law on the Constitutional Court.
21. In these circumstances the Applicant did not fulfill the admissibility criteria concerning the deadlines within which the Referral should be submitted to the Constitutional Court, therefore the Referral shall be declared as inadmissible.
22. The Court consistently emphasizes that the purpose of the four month rule is to promote legal certainty, and to ensure that the cases raised on constitutional matters would be reviewed within a reasonable deadline, in order to protect authorities and other concerned parties from being in any uncertain situation for a long period of time (see: *mutatis mutandis* PM v United Kingdom, Referral no. 6638/03, 19 July 2005).
23. Before all the foregoing, the Applicant has not fulfilled the admissibility criteria, and the matter was not referred to the Court *in a legal manner* by the Applicant because pursuant to article 49 of the Law of Court the Referral is out of time, therefore,

FOR THESE REASONS

The Constitutional Court, pursuant to 113 (1) of the Constitution, Article 49 of the Law of Court and the Rule 36.1 (b)) of the Rules of Procedure, on 24 May 2013, unanimously

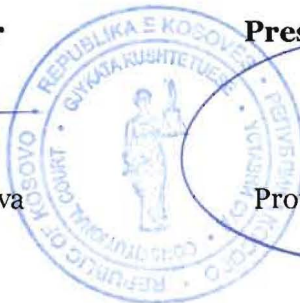
DECIDES

- I. TO REJECT the Referral as 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 immediately effective.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani