



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

Pristina, 29 January 2013
Ref. No.: 371/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 123/12

Applicant

Bajrush Gashi

**Constitutional Review of the Decision of the Supreme Court, Pzd. no.
65/2012, dated 10 September 2012.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge.

The Referral

1. The Referral was submitted by Mr. Bajrush Gashi residing in the village, Hoqa e Vogël, Municipality of Rahovec (the Applicant).
2. On 27 January 2012, the Applicant submitted a first Application (Case No. KI 06/12) to the Constitutional Court of the Republic of Kosovo (hereinafter, the “Court”).
3. On 9 May 2012, the Court declared the Referral admissible and found a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the “Constitution”) and Article 6 [Right to a fair trial] of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the “ECHR”).

Subject Matter

4. The present Referral is a follow-up of Case No. KI 06/12. The Applicant complains now that:

“ ...

- a. *The decision of the District Court in Prizren was non-transparent without facts and arguments.*
- b. *The Prosecutor of the case while questioning the key witness of this case expelled him from his office by threatening him that if he does not cooperate he will send him to prison.*
- c. *My request and the request of my defense was that V.E. to be heard as witness. The Prosecutor and Judge V.D. refused this.*
- d. *Judge V.D. in the court of first instance was presiding judge and also member of the Panel in the Supreme Court. Judge V.D. participated directly and indirectly in all my appeals, only to defend the non-transparent decision of the District Court.*
- e. *I filed appeal for this in the Constitutional Court and you have given me this right and you have returned it for review.*
- f. *The Supreme Court has only changed the panel and decided in the same way as before.*

...”

5. In this respect, the Applicant claims that his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of ECHR have been violated.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter, the “Law”) and Rule 56 (2) of the Rules of Procedure of the

Constitutional Court of the Republic of Kosovo (hereinafter, the “Rules of Procedure”).

Proceedings before the Court

7. On 9 May 2012, the Constitutional Court, in previous Case KI. No. 06/12, declared the Referral admissible and found a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of ECHR on the ground that “[...] in the circumstances of the case the impartiality of the Supreme Court is capable of appearing to be open to doubt and that the Applicant’s fears in this respect can be considered subjectively and objectively justified.” because “[...] the same judge that presided the panel in the District Court in Prizren also participated in the Panel of the Supreme Court deciding on his request for mitigation of the sentence”.
8. Then, the Constitutional Court “DECLARED invalid the Decision, Pzd. no. 67/2011, of the Supreme Court of 12 December 2011, which violates Article 31 of the Constitution and Article 6 of ECHR” and “REMANDED the Decision, Pzd. no. 67/2011, of the Supreme Court of 12 December 2011 to the Supreme Court for reconsideration in conformity with the Judgment of this Court, pursuant to Rule 74 (1) of the Rules of Procedure”.
9. On 17 October 2012, the Supreme Court notified the Constitutional Court that they have reconsidered their Decision in conformity with the Constitutional Court Judgment, i.e. taking the decision by a different composition of Judges (Decision Pzd. no. 65/2012 of 10 September 2012).
10. On 4 December 2012, the Applicant submitted a new Referral to this Court.
11. On 10 January 2013, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Enver Hasani.
12. On 29 January 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

13. No new information in relation to the previous case KI 06/12 has been submitted to the Court.
14. The facts, as described in case KI 06/12, were in summary as it follows below.
15. On 19 May 2009, the District Court of Prizren found the Applicant guilty of having committed the criminal act of Article 138.6 in conjunction with 138.1 and Article 328.2 of the Provisional Criminal Code of Kosovo (hereinafter, “PCCK”), and

sentenced him to 4 years and 4 months of imprisonment (Judgment P. no. 26/09). The Applicant appealed against this judgment to the Supreme Court. The Public Prosecutor also appealed against this Judgment as regards the part that had to do with the co-defendant G.M.

16. On 8 December 2010, the Supreme Court rejected as unfounded the Applicant's and the Public Prosecutor's appeal and confirmed the District Court Judgment (Judgment Ap. no. 259/2009).
17. On 12 December 2011, the Supreme Court rejected the Applicant's request for extraordinary mitigation of the sentence as unfounded (Judgment Pzd. no. 67/2011).
18. In this respect, the Applicant alleged before the Constitutional Court that the Judge who was the presiding judge of the District Court in Prizren and decided his case also took part in the decision of the Supreme Court on his request for extraordinary mitigation of the sentence (the judge in question).
19. Furthermore, the Applicant claimed that the judge in question had to inform the Supreme Court that the judge in question was Presiding Judge in District Court in Prizren and was to be disqualified to participate in the Supreme Court panel.

Admissibility of the Referral

20. The Court needs to first examine whether he has fulfilled all admissibility requirements, laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
21. In this respect, the Court refers to Rule 36 (3) (e) which provides: "*A Referral may also be deemed inadmissible in any of the following cases: the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision;*"
22. The Applicant's complaint, as to Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of ECHR, was already dealt with by this Court in its Judgment in Case No. KI. 06/12.
23. The Applicant has failed to provide new facts and sufficient grounds for a new Decision.
24. Furthermore, the Supreme Court has already notified the Constitutional Court that it have acted in conformity with the constitutional Judgment (see Decision Pzd. no. 65/2012 of 10 September 2012).
25. Therefore, pursuant to Rule 36(3) (e) of the Rules, the Court will not deal with this new Referral.

26. In these circumstances, the Court concludes that the Referral, pursuant to Rule 36 (3.e) of the Rules of Procedure, is inadmissible, because the Court has already decided on the concerned matter.


FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (3.e) and Rule 56 (2) of the Rules of Procedure, on 29 January 2013, unanimously,

DECIDES

- I. TO REJECT the Referral as Inadmissible, because the Constitutional Court has already decided the Applicant's case with Case No. KI. 06/12., i.e. the case is *res judicata*;
- II. TO NOTIFY this Decision to the Parties; and
- III. TO PUBLISH this Decision in accordance with Article 20 (4) of the Law.
- IV. This Decision is effective immediately.

Judge Rapporteur


Almiro Rodrigues

President of the Constitutional Court


Prof. Dr. Enver Hasani

