



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

Pristina, 14 February 2014
Ref. No.: RK548/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI158/13

Applicant

Prend Prenkpalaj

**Constitutional Review of the Decision, P. nr. 13/09, of the Municipal
Court of Prizren, dated 16 April 2010**

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 Referral is submitted by Mr. Prend Prenkpalaj (hereinafter: the "Applicant"), residing in village Zym, Municipality of Prizren.

Challenged decision

2. The Applicant challenges the Decision, P. nr. 13/09, of the Municipal Court in Prizren, dated 16 April 2010, which was served on the Applicant on 28 April 2010.

Subject matter

3. The Applicant requests the constitutional review of the Decision, P. nr. 13/09, of the Municipal Court in Prizren, which allegedly violates his human rights as guaranteed by the Constitution. However the Applicant did not specify which constitutional provision has allegedly been violated, but only stated that *“The right of the party to receive a just decision within a reasonable time has been violated, because the accused party in this particular case has not been punished because the case was not addressed in time by the institution.”*

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the “Law”) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

Proceedings before the Court

5. On 14 October 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
6. On 4 November 2013, the President of the Constitutional Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
7. On 4 November 2013, the Applicant was notified of the registration of the Referral.
8. On 14 November 2013 the Applicant was asked to supply additional documents to the Court, which were mentioned in the referral, but not attached to it.
9. On 21 November 2013, the Court received the requested documents from the Applicant.
10. On 23 January 2014, 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 17 October 2008, judge V. D. from the Municipal Court in Prizren rendered the decision P. nr. 1096/02 on suspension of criminal proceedings initiated by

the Applicant against P. P., N. P. and Xh. P., who were joint defendants charged with the crime of grave injury against the Applicant.

12. In its decision, judge V. D. from the Municipal Court of Prizren stated that *“According to the provisions of Article 95 paragraph 1.4 of Law on Criminal Procedure, for this type of crime is foreseen a relative prescription...”*
13. On 08 January 2009 a review panel composed of three judges from the Municipal Court in Prizren decided on the appeal of the Applicant as an injured party filed against the decision P. nr. 1096/02, and rendered decision Kp. Nr. 66/08 approving the appeal of the Applicant as grounded and returned the case for retrial.
14. On 25 August 2009, judge V. D. from the Municipal Court in Prizren decided on the case rendering decision P. nr. 13/09, which is identical with the previous decision P. nr. 1096/02.
15. On an unspecified date during 2009, the Applicant filed an appeal with the District Court in Prizren against the decision of Municipal Court in Prizren P. nr. 13/09, alleging *“violations of provisions of criminal law”*. Similarly, the Municipal Public Prosecutor filed an appeal against the same decision of the Municipal Court, alleging *“erroneous verification of the factual situation and violation of criminal law provisions”*.
16. On 15 October 2009, District Court in Prizren adopted decision Ap. nr. 125/2009, which rejected the appeal of Municipal Public Prosecutor as ungrounded and dismissed the appeal of the Applicant as not allowed.
17. On an unspecified date, the Applicant submitted to the Supreme Court a request for the protection of legality, alleging *“essential violations of the provisions of criminal procedure, and erroneous application of material law”*
18. On 16 April 2010, the Municipal Court in Prizren rendered the decision P. nr. 13/09, rejecting as not allowed the request of the Applicant for protection of legality.
19. The Municipal Court in its decision explained that *“The Supreme Court of the Republic of Kosovo has forwarded the request for the protection of legality submitted by the injured party Prend Prenkpalaj, to the Municipal Court, for further proceeding based on its competence.”* [...] *“The court finds that the injured party, Prend Prenkpalaj is unauthorized party for initiating the protection of legality. Pursuant to Article 452 Para 1 of the Code of Criminal Procedure of Kosovo, the request for protection of legality can be submitted by Public Prosecutor of Kosovo, the defendant and his representative...”*
20. On an unspecified date the Applicant filed an appeal with the District Court in Prizren against decision P. nr. 13/09 of the Municipal Court in Prizren.
21. On 22 October 2010 the District Court adopted decision Ap. Nr. 102/2010, rejecting the appeal as ungrounded.

Applicant's allegations

22. The Applicant alleges that the *“The right of the party to receive a just decision within a reasonable time has been violated, because the accused party in this particular case has not been punished because the case was not addressed in time by the institution.”*

Preliminary Assessment on the Admissibility of the Referral

23. The Court notes that to be able to adjudicate upon the Applicant's complaint, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

24. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides that:

“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”.

25. The Court also notes the Article 49 of the Law, which provides:

“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 (...)”.

26. The Court also takes into account Rule 36 (1) b) of the Rules of Procedure, which provide:

“(1) The Court may only deal with Referrals if:

...

b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant...”.

27. Based on the case file, the Court finds that the Applicant filed his referral on 14 October 2013, while the last decision Ap. Nr. 102/2010 of the District Court in Prizren was served upon him on 06 November 2010. The Applicant filed his referral with the Court after the expiry of the time limit prescribed by Article 49 of the Law, and Rule 36 (1) b) of the Rules of Procedure.

28. Notwithstanding the fact that the Applicant in his Referral expressly challenges Decision, P. nr. 13/09, of the Municipal Court in Prizren, dated 16 April 2010, the Court notes that the Applicant challenged that Decision at the District Court in Prizren, from where he received Decision Ap. Nr. 102/2010. The Court considers this to be the last decision and as the date from when the deadline of 4 months starts running.

29. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedures is to promote legal certainty, by ensuring that cases raising issues under the Constitution are

dealt with within a reasonable time and that past decisions are not continually open to challenge (See case O'LOUGHLIN and Others v. United Kingdom, No. 23274/04, ECtHR, Decision of 25 August 2005).

30. Therefore, the Court concludes that the Referral has been filed out of time.

FOR THESE REASONS

Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, Rule 36 (1) b) and Rule 56 (2) of the Rules of Procedure, on 23 January 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this decision to the Parties
- III. TO PUBLISH the 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



Prof. Dr. Enver Hasani