



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

Pristine, 10 January 2012
Ref. No.: RK172/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 35/10

Applicant

Skender Zenuni

**Constitutional Review of the Decision of the Municipal Court in Prizren KP No.
3/2010 dated 29 January 2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Skender Zenuni from Gjilan.

2. The Applicant alleges, without specifying any particular provision of the Constitution, that his right to fair trial has been violated due to alleged corruption by a judge of the Municipal Court in Gjilan.
3. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Challenged decision

4. The Applicant challenges the Decision of the Municipal Court in Prizren KP No. 3/2010 dated 29 January 2010 which was served upon him on 03 February 2010.

Proceedings before the Court

5. On 25 January 2010 the Applicant wrote a letter to the Constitutional Court (hereinafter referred to as the Court) alleging the corruption by a judge of the Municipal Court in Gjilan.
6. On 28 January 2010 the Secretariat of the Court wrote a letter to the Applicant recommending him to approach the Office of the Disciplinary Prosecutor in Pristina.
7. On 11 February 2010 the Court received the referral from the Applicant alleging violation of his individual human rights.
8. On 30 March 2010 the Court asked the Applicant to clarify his referral and to submit challenged decision KP No. 3/2010 dated 29 January 2010 which was served upon him on 03 February 2010 as well as a copy of an appeal of to that decision that the Applicant allegedly submitted on 5 February 2010.
9. On 12 April 2010 the Applicant replied to Court's letter of 30 March 2010 and submitted only the Decision of the Municipal Court in Prizren KP No. 3/2010 dated 29 January 2010.
10. On 24 August 2010 the Court notified the Municipal Court in Prizren with the Referral.
11. On 30 August 2010 the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalović and Iliriana Islami. On 28 November 2011, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the Facts

12. According to the Applicant's allegations and documents in the case file the facts of the case may be summarised as follows.
13. On 18 July 2008, the Applicant filed a criminal private charge against a judge M.A. to the Municipal Court in Prizren for, *inter alia*, alleged criminal offence against honour and reputation provided by Article 190 of Provisional Criminal Code of Kosovo (PCKK, UNMIK/REG/2003/25) and the criminal offence of issuing unlawful judicial decisions provided by Article 346 of the PCKK.

14. On 11 January 2010, the Municipal Court in Prizren issued Decision PKA No 163/09 and rejected the Applicant's private criminal charge as well as terminated criminal procedure against respondent. In the reasoning of the Municipal Court in Prizren Decision PKA No 163/09, the Municipal Court stated that the Applicant's private criminal charge is irregular and time-barred.
15. Pursuant to the legal advice given in above mentioned Decision of the Municipal Court in Prizren, the Applicant had possibility to submit an appeal against that decision within 3 days time limit.
16. According to the Applicant's allegations he submitted an appeal against Decision of the Municipal Court of Prizren issued on 11 January 2010.
17. On 29 January 2010, the Municipal Court in Prizren issued Decision No.3/2010 and rejected as ungrounded the Applicant's appeal against Decision of 11 January 2010. In that Decision it was stated, *inter alia* that the Applicant has not acted in accordance with Article 361(1) of the PCCK and has not clarified his private criminal charge. It was further stated that the Applicant's private criminal charge was time-bared.
18. According to the referral it appears that the Applicant received Decision of the Municipal Court in Prizren No.3/2010 on 3 February 2010 and that he appealed against it on 5 February 2010. It seems that procedure against Decision of the Municipal Court is still pending. Furthermore, according to the documents in the case file it appears that on 2 February 2010 the Office of Disciplinary Prosecutor (ODP) informed the Applicant that it had reviewed the Applicant's submissions of 10 July 2008 and of 13 March 2009 in which the Applicant claimed various irregularities in the proceedings in case No 51/200 by judge M.A. and requested his dismissal for the Applicant's case.
19. In the submission of the ODP it was stated, *inter alia*, that "the OPD obtained court files and interviews relevant witness, and has found that the Court proceeded the case as per claim of plaintiff R.H. against M.Z. on validation of property.... The Supreme Court with its decision Rev No 71/02 of 26 June 2003, returned both judgements and the case was reopened for proceedings. The case gained a new number, C.No. 361/03 on which the proceeding was terminated on 6 February 2004, due to death of plaintiff. None of the parties have requested continuation of proceedings terminated on 6 February 2004". The ODP has further stated that "Skender Zenuni (i.e. the Applicant) on 14 May 2008, has initiated a court proceeding C No 212/08 on obstruction of possession... the proceedings is in progress." Based on the above mentioned, OPD has stated that they will not engage in disciplinary investigation for the moment. In case of additional statement the applicant is advised to contact ODP.
20. Background to the Applicant's private criminal charge and submission to the ODP dated back to 1980 when the Municipal Court in Gjilan issued Judgment C. No 30/80, relating to the dispute between two brothers (one of which was the Applicant's farther), in relation to immovable properties left to them by their late father. On 10 June 1986, the Municipal Court in Gjilan adopted Decision on division of the immovable property at issue. In 1988, the District Court rejected claim of another person X.H. who alleged that the property was his. By Decision of the Municipal Court in Gjilan, C. No. 256/90 of date 16 May 1991 the proceedings initiated by X.H. is in recess. However, on 21 January 2001 the Municipal Court in Gjilan Decision C. No 51/2000 granted R.H. (son of X.H.) sole ownership of the property. This was confirmed by the District Court in Gjilan Ac. No. 9/2002 issued on 20 March 2002. However, the Supreme Court by Decision Rev. No. 71/2002 on 26 June 2003 annulled the above mentioned judgment

of the District and Municipal Courts. The case was sent back to the court of first instance.

21. After the death of M.S., the Applicant inherited the property following a Decision of the District Court in Gjilan T. 63/2003. On 14 May 2008 the Applicant initiated a court proceeding C. No. 212/08 on obstruction of possession against R.H. The first session was held on 19 June 2008, when the plaintiff requested dismissal of Judge M.A. from the case. The Appeal Court by its decision CN. No 5/08 on 27 June 2008 rejected the request for dismissal. Later the request for reopening of procedure as confirmed by the appeal court was rejected as well.

Assessment of the admissibility of the referral

22. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and in Article 36 of the Rules of Procedure.
23. Article 113.7 of the Constitution and 47(2) of the Law, state that individuals who submit a referral to the Court, must show that they have exhausted all legal remedies available under the applicable law.
24. The Court emphasizes that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. This rule is based on the assumption that Kosovo legal order will provide an effective remedy for the violation of constitutional rights (*mutatis mutandis*, ECHR, Selmouni v France, no. 25803/94, decision of 28 July 1999). This Court applied the same reasoning, when it issued Resolution on Inadmissibility in the case of AAB-RIINVEST University L.L.C, Pristina vs. Government of Republic of Kosovo, Case KI 41/09 of 27 January 2010.
25. As presented to this Court it appears that the Applicant submitted an appeal against Decision of the Municipal Court of Prizren issued on 29 January 2010.
26. The Court notes the Applicant, although it was asked by the Constitutional Court to clarify his referral and to submit *inter alia* a copy of an appeal against decision of 29 January 2010, he never did that. Notwithstanding that, as it was stated above, it seems that the procedure against Decision of the Municipal Court in Prizren is still pending.
27. The Constitutional Court recalls its task is not to act as a court of appeal, when considering decisions rendered by lower courts. It is the role of the lower courts to interpret and apply the pertinent rules of both procedural and substantive law (see *mutatis mutandis*, Garcia Ruiz v Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECtHR] 1999-I).
28. The Applicant did not submit any *prima facie* evidence indicating a violation of his rights under the Constitution (see Vanek v Slovak Republic, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
29. The Court recalls that the Municipal Court in Prizren found that Applicant's private criminal charge was irregular and time barred. Having taken this into consideration the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v Lithuania, ECtHR Decision as to the Admissibility of Application no.17964/06 of 30 June 2009).

30. With regard to the Applicant's allegation related to the property disputes, the Court must, first establish, whether the matters raised by the Applicant "fall under its jurisdiction". In this respect, the Court considers that the public authorities of the Republic of Kosovo can only be required to answer to facts and acts which occurred subsequent to the entry into force of the Constitution on 15 June 2008. Accordingly, the Court cannot deal with a Referral relating to events that occurred before the entry into force of the Constitution (see, the Court's Resolution on Inadmissibility in Case No 18/10, *Denic et al* of 17 August 2011).

FOR THESE REASONS

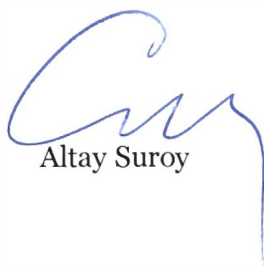
The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 of the Rules of the Procedure unanimously:

DECIDES

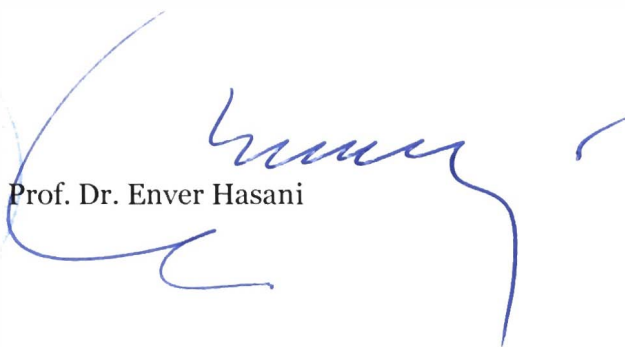
- I. TO REJECT the Referral as Inadmissible.
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court



Altay Suroy



Prof. Dr. Enver Hasani