



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

Prishtina, 12 September 2014
Ref.no.:RK707/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI54/12

Applicant

Mustafë Xhekaj

**Constitutional review of the Decision of the Supreme Court of the
Republic of Kosovo Ap. nr. 376/2009 dated 23 February 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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Mustafë Xhekaj (hereinafter: the "Applicant") residing in Drenas.

Challenged decision

2. The Applicant challenges Judgment Ap. no. 376/2009 of the Supreme Court of the Republic of Kosovo (hereinafter, Supreme Court), dated 23 February 2011, which was served on him on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly is “unfair”.
4. Furthermore, the Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”) not to disclose his identity.

Legal basis

5. 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 (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

6. On 11 June 2012, the Applicant submitted the Referral to the Constitutional Court.
7. On 4 July 2012, the President of the Court, with Decision No. GJR. KI54/12, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No. KSH. KI54/12, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Enver Hasani.
8. On 11 September 2012, the Supreme Court was notified of the Referral.
9. On 11 March 2014, after having considered the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 14 January 2008, the District Court in Mitrovica (Judgment P. no. 94/2006) found that the Applicant guilty of the criminal offence of aggravated murder in co-perpetration under Article 147 in relation to Article 23 of the Criminal Code of Kosovo. The court sentenced the Applicant to 18 years imprisonment, including time spent in detention. The applicant submitted an appeal against the above mentioned Judgment to the Supreme Court.
11. On 23 February 2011, the Supreme Court (Judgment Ap. no. 376/2009) rejected as ungrounded the appeal submitted by the Applicant against the

Judgment of the District Court in Mitrovica dated 14 of January 2008 holding that *“that the first instance court determined in a right and complete manner the factual situation in this criminal matter and based on the factual situation has applied in a right manner the criminal law and thus by evaluating the judgment related to the decision on punishment, the Supreme Court evaluated that the first instance court has rightly and completely concluded and evaluated all circumstances pursuant to Article 64 of the CCK, which have an impact on the type and height of punishment”*.

Applicant’s allegation

12. The Applicant alleges that an injustice was done to him by the “Kosovo Judiciary” as that he is ‘innocent’ and was convicted based ‘in an unfair and unjust trial’.

Assessment of the admissibility

13. The Court observes that, in order to be able to adjudicate the Applicant complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

14. The Court refers to 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 (...)”.

15. The Court also takes into consideration Rule 36 (1) b) of the Rules of Procedure, which provides that:

“(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 ...”.

16. Under these circumstances, the Court notes that the Judgment that is challenged by the Applicant is dated 23 February 2011, whereas the Referral was submitted on 11 June 2012. The Applicant’s Referral is not in compliance with Article 49 of the Law and Rule 36 (1) (b) of the Rules of Procedure as it was submitted more than 1 year after the date of the challenged decision.

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

18. It results that the Applicant’s Referral is out of time.

19. In addition, the Applicant has not provided supporting grounds and evidence substantiating the request on the Applicant not having his identity disclosed.
20. Therefore, the Court rejects as ungrounded the request not to disclose his identity.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 the Law, Rules 36 (1) b) and 56 (2) of the Rules of Procedure, on 11 March 2014, 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


Kadri Kryeziu



President of the Constitutional Court


Prof. Dr. Enver Hasani