



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

Prishtina, 18 November 2013
No. ref.:RK495/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI69/13

Applicant

Hysen Muqa

**Constitutional Review of the Judgment of the Supreme Court of Kosovo
Ap. no. 157/2009, of 25 May 2011**

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 Applicant

1. The Referral was submitted by Mr. Hysen Muqa, residing in Vraniq village, Municipality of Suhareka.

Challenged decision

2. The Applicant challenges the Judgment of the District Court in Prizren P. no. 132/08 of 30 December 2008 and the Judgment of the Supreme Court of Kosovo Ap. no.157/2009 of 25 May 2011, which was served on the Applicant on 27 October 2011.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the District Court in Prizren P. no. 132/08 of 30 December 2008, and the Judgment of the Supreme Court of Kosovo Ap. no.157/2009, of 25 May 2011. According to these decisions, the Applicant was found guilty for the criminal offence of Contracting Disproportionate Profit from Property and was sentenced to 18 months imprisonment.

Legal basis

4. Article 113.7 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 (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

5. On 14 May 2013, the Applicant submitted the Referral with the Court.
6. On 27 May 2013, the President with Decision No. GJR.KI-69/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President with Decision No. KSH. KI-69/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding Judge), Almiro Rodrigues and Ivan Čukalović.
7. On 6 June 2013, the Court notified the Applicant and the Supreme Court on registration of the Referral.
8. On 26 June 2013, the Court requested from the Applicant to submit to the Court, within the shortest time limit, the evidence that shows when the Applicant received the Judgment of the Supreme Court of Kosovo Ap.No. 157/2009 of 25 May 2011.
9. On 24 July 2013, the Applicant submitted to the Court the return receipt, which proves that the Judgment of the Supreme Court of Kosovo Ap. No. 157/2009 25 May 2011 was served to him.
10. On 16 October 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

11. On 30 December 2008, the District Court by Judgment P. no. 132/08 finds guilty the Applicant and five other accused of the criminal offence of Contracting for Disproportionate Profit from Property under Article 270 of the Provisional Criminal Code of Kosovo. The Applicant was sentenced to 1 (one) year and 6 (six) months imprisonment.
12. The District Public Prosecutor in Prizren filed an appeal against the Judgment P. No. 132/08 of 30 December 2008. The appeal of the District Public Prosecutor had to do with the assumption that *“the sentences imposed upon the accused are too lenient and the first instance court has underestimated the aggravating circumstances and it is proposed that the Judgment be modified and impose harsher sentences upon the accused.”*
13. On 25 May 2011, the Supreme Court of Kosovo, deciding upon the appeal of the District Public Prosecutor in Prizren, rendered the Judgment Ap. No. 157/2009, on what occasion rejected the appeal of the District Public Prosecutor as ungrounded with a reasoning that *“the first instance court has correctly and completely determined factual situation and correctly applied the criminal law, when it found that the other accused and the Applicant in this case have committed criminal offence of Contracting for Disproportionate Profit from Property under Article 270 in conjunction with Article 23 of the Criminal Code of Kosovo. The Supreme Court also finds that the imposed punishments against the accused are fair and in proportion with the social danger of the committed offences...”*

Applicant's allegations

14. The Applicant alleges that the Judgment of the District Court in Prizren P. no. 132/08, of 30 December 2008 and the Judgment of the Supreme Court of Kosovo Ap. no.157/2009 of 25 May 2011, are unlawful because they are based on a partial quasi evidence, on what occasion they decided in contradiction with provision of Article 31 of the Constitution and Article 6.1 of the European Convention on Human Rights.

Preliminary assessment of the admissibility of the Referral

15. In order to be able to review the Applicant's Referral, the Constitutional Court has to assess beforehand whether the Applicant has met all admissibility requirements laid down in the Constitution and specified in the Law and the Rules of Procedure.
16. Regarding the request of the Applicant, the Court refers to Article 49 of the Law, which 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.”

17. From the documents submitted by the Applicant, the Court concludes that the Referral was not submitted within the time limit provided by Article 49 of the Law, because the Judgment of the Supreme Court of Kosovo Ap.no. 157/2009 was served on the Applicant on 27 October 2011, while he submitted his Referral to the Constitutional Court Secretariat on 14 May 2013, what means that the Referral was filed about 1 year and a half beyond the time limit provided by the law.
18. Therefore, the Referral should be rejected as inadmissible, because of non-compliance with the legal time limit, provided by Article 49 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law and Rule 36.1 of the Rules of Procedure, in its session held on 16 October 2013, unanimously

DECIDES

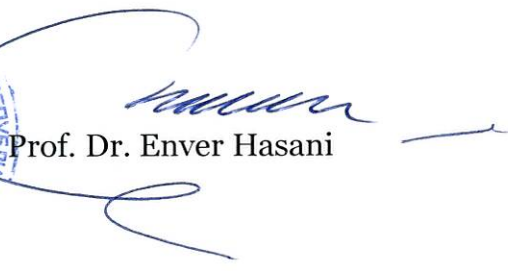
- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. Decision is effective immediately.

Judge Rapporteur


Kadri Kryeziu

President of the Constitutional Court




Prof. Dr. Enver Hasani