



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

Prishtina, on 31 May 2018
Ref. no.: RK 1240/18

DECISION TO DISMISS THE REFERRAL

in

Case No. KI155/17

Applicant

Ferit Ademi

against

**The Basic Court in Prishtina, the Court of Appeals of Kosovo, the
Kosovo Judicial Council and the Ministry of Justice of Kosovo**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Ferit Ademi from Gllogovc (hereinafter: the Applicant) represented by the Non-Governmental Organization Kosova Rehabilitation Center for Torture Victims (hereinafter KRCT).

Challenged decision

2. The Applicant alleges that the Basic Court in Prishtina, the Court of Appeals of Kosovo, the Judicial Council of Kosovo and the Ministry of Justice of Kosovo (hereinafter: the Public Authorities) did not take actions that they were obliged to take under the positive legal rules. Accordingly, the Applicant does not challenge the decisions or actions of the Public Authorities but considers that the violation of his rights is a consequence of the failure of the Public Authorities to act.

Subject matter

3. The subject matter is the constitutional review of the non-action of the Public Authorities, which, according to the Applicant, failed to take actions that, according to the positive legal rules, they were obliged to take, violated the Applicant's rights guaranteed by Articles 1 [Definition of State], 21 [General Principles], 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], 32 [Right to Legal Remedies], 34 [Right not to be Tried Twice for the Same Criminal Act], 35 [Freedom of Movement], 53 [Interpretation of Human Rights Provisions] and 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. At the same time, the Applicant considers that by this failure to act, the public authorities violated the rights guaranteed by Article 13 (Right to an effective remedy) of the European Convention on Human Rights (hereinafter: the ECHR) and Article 2 (Freedom of movement) of Protocol No. 4 of the ECHR.

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 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 22 December 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 22 December 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel, composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Arta Rama Hajrizi.
8. On 16 January 2018, the Court sent a copy of the Referral to the Kosovo Judicial Council, notified the Applicant about the registration of the Referral and requested him to submit to the Court a power of attorney authorizing KRCT to represent him before the Court.

9. On 22 January 2018, the Applicant submitted to the Court the power of attorney authorizing KCRT to represent him before the Court.
10. On 30 January 2018, the Court requested the KRCT to submit the following additional documentation:
 - A registered written request that KRCT had submitted to the Basic Court in Prishtina regarding the allegations made in Referral KI155/17.
 - Any written evidence proving the allegations "*that the Applicant has been informed by the Police of Kosovo that the Interpol arrest warrant for extradition to the Republic of Serbia has been re-activated against the Applicant.*"
11. On 8 February 2018, the KRCT provided additional documents to the Court, noting that "*the KRCT does not have any evidence/material proof of the allegations in our submission that the Kosovo Police had re-activated Interpol's extradition order in the Republic of Serbia.*"
12. On 20 April 2018, the Court considered the case and decided to dismiss the Referral.

Summary of facts

13. On 13 June 2004, by means of a passenger vehicle with reg. plates KR-0137, the Applicant traveled from Glogovc through Serbia to Germany. When crossing the border crossing points, he used a falsified passport that was not in his name. In the passenger vehicle driven by the Applicant, 20 packages of heroin were hidden, with a total weight of 10393 grams.
14. On 13 June 2004, the Applicant was stopped in Subotica at the border crossing between Serbia and Hungary, due to illegal entry into Serbia. The state authorities of the Republic of Serbia confiscated the vehicle driven by the Applicant, released the Applicant and ordered him to pay a fine for illegal entry into Serbia. Upon payment of the fine, the Applicant's vehicle would be returned to him.
15. The state authorities of the Republic of Serbia later searched the vehicle and found 20 hidden packages of heroin in the total weight of 10393 grams. In the meantime, the Applicant had returned to Kosovo.
16. On 15 July 2009, the District Prosecutor's Office in Prishtina filed an indictment no. PP. No. 348-4/05 against the Applicant for the following criminal offenses; 1) Unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, 2. Falsifying of documents and 3. Unauthorized ownership, control, possession or use of weapons.
17. On 2 December 2010, the District Prosecutor's Office in Prishtina reached a guilty plea agreement no. PP. No. 348-4/2005 concluded between the District Prosecutor's Office in Prishtina, the Applicant and his defense counsel.

18. On 21 December 2010, the District Court in Prishtina, based on the guilty plea agreement, by Judgment P. br. 356/2009 found the Applicant guilty of the criminal offense of unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances and of criminal offense unauthorized ownership, control, possession or use of weapons.
19. By Judgment P. No. 356/2009, the Applicant was sentenced to an aggregate punishment of imprisonment for a period of six (6) years and a fine in the amount of 500,00 Euro.
20. By the same Judgment, the charge for the criminal offense of Falsifying of documents was rejected, because the public prosecutor, when negotiating a guilty plea agreement, had renounced the criminal prosecution for this charge.
21. On 23 July 2014, the Basic Court in Prishtina, by Judgment Kp. No. 558/2014, *ex officio*, based on the Law on Amnesty, modified Judgment P. No. 356/2009 of the District Court in Prishtina.
22. By Judgment Kp. No. 558/2014, the Basic Court in Prishtina absolved the Applicant of the execution of punishment for the criminal offense of unauthorized ownership, control, possession or use of weapons, as it was also covered by the Law on Amnesty.
23. By Judgment Kp. No. 558/2014, the Basic Court in Prishtina imposed on the Applicant the imprisonment sentence for a period of six (6) years and a fine in the amount of 450,00 Euro, which will include the time spent in detention from 18 June 2009.
24. On 18 March 2015, Correctional Center in Smrekovnica issued a release document stating that the Applicant had served a sentence from 18 June 2009 until 18 March 2015, and ordered the Applicant to keep the decision on early release with him everywhere until 18 June 2015.
25. On 18 April 2015, the Applicant was arrested at the Kukes border crossing point and placed under extradition custody in the Republic of Albania based on an Interpol arrest warrant issued by the High Court in Subotica, Serbia. The High Court in Subotica, based on the Interpol arrest warrant, wanted the Applicant for the criminal offense of possession and trafficking in narcotic drugs.
26. On 25 May 2015, the KRCT sent a letter to the High Court in Subotica through the Helsinki Committee for Human Rights in Serbia requesting it to withdraw the Interpol arrest warrant against the Applicant on the grounds that the Applicant had already been charged, convicted and served the sentence in Kosovo for the same criminal offences.
27. On 28 May 2015, the High Court in Subotica replied to a request submitted by the Helsinki Committee for Human Rights in Serbia on behalf of the Applicant. The reply, *inter alia*, reads: "*If the criminal offense is the same as that for which the accused was convicted, the requesting state may refuse the extradition request... As for your request to withdraw an arrest warrant, you*

do not have a procedural power of attorney for such a request. Moreover, we would like to remind you of the provisions of Article 1, paragraph 1 of the Law on Judges (Official Gazette of the Republic of Serbia No. 116/08...) "The judge is independent in the conduct and decision-making process."

28. On 2 June 2015 – the KRCT addressed with a request the Ministry of Justice of the Republic of Albania. The request was aimed at preventing the extradition of the Applicant according to the Interpol arrest warrant, as the Applicant had already been charged, convicted and served the sentence in Kosovo for the same criminal offences.
29. On 17 June 2015, the District Court of Kukes, by shortened decision prot. no. (55- 2015- 69) and the Order of Enforcement of 17 June 2015, ordered the Administration of Detention in Kukes:
 - “- Not to extradite a citizen Ferit Ademi from the Republic of Albania to the Republic of Serbia.*
 - Ceasing the measure of personal security "arrest"*
 - His instant liberation is ordered“.*
30. The Applicant alleges that, several days after his release, he was informed by the Police of Kosovo that against him was re-activated again the Interpol arrest warrant for extradition to Serbia, and that he could be arrested again as soon as he crosses the state border of the Republic of Kosovo. (The Applicant does not attach any document to support these allegations).
31. On 9 September 2015, the KRCT sent an e-mail to the Ministry of Justice of the Republic of Kosovo, the Department for International Legal Cooperation, with a request to be involved in this case in order to forward the necessary letters to the state authorities in the Republic of Serbia to enable the withdrawal of the Interpol warrant issued by the High Court in Subotica.
32. On 9 September 2015, the Ministry of Justice responded via e-mail to the KRCT. The reply states that the Applicant should address the competent court *“which will then reply by letter (describing in full the facts and circumstances) together with the attached decisions for the further procedure of the receipt of these documents, we will communicate with the authorities in Serbia through the procedures specified by EUSR.”*
33. On 19 February 2016, the KRCT sent an e-mail to the Office of the European Union Special Representative in Kosovo (hereinafter: the EUSR) with a request to be included in this case in order to forward the necessary letters to the state authorities in the Republic of Serbia, in order to enable the withdrawal of the Interpol arrest warrant issued by the High Court in Subotica.
34. On 19 February 2016, the EUSR replied via e-mail that *“In connection with your request, please bear in mind that the EUSR role in mutual legal assistance between Belgrade and Prishtina is based on requests for legal assistance (and reply to it) sent by both sides of the Serbian and Kosovo MPs. We are not in a position to initiate the transfer of legal documents from any authority.”*

35. On 29 March 2016, the KRCT sent an e-mail to the President of the Basic Court in Prishtina with a request to be included in this case to forward the necessary letters to the state authorities in the Republic of Serbia in order to enable the withdrawal of Interpol arrest warrant issued by the High Court in Subotica.

36. On 29 March 2016, the President of the Basic Court in Prishtina responded by e-mail the following;

“The criminal case, of the previously convict Ferit Ademi, registered with the no. P. No. 356/2009 (which I once have decided in the District Court in Prishtina as the Presiding Judge of the Trial Panel) was completed. Regarding the fact that this criminal offense was committed, this court, in the event when the convict Ferit Ademi was stopped by the authorities of the Republic of Albania, gave sufficient clarification and, as far as I know, this person was not extradited to Serbia by the authorities of the Republic of Albania.

The Basic Court in Prishtina does not know that there is any procedure for the extradition of the convict Ferit Ademi to Serbia.

Regarding the influence of this court and the KJC on INTERPOL, that Mr. Ademi is not stopped at any border crossing point upon the request of Serbia, it should be clear to you that neither this court nor the KJC have any chance to influence, because this issue is outside the authority of these institutions.”

37. On 17 June 2016, the KRCT addressed the Kosovo Judicial Council with a request to take actions regarding the abolition of the Interpol arrest warrant issued by the High Court in Subotica.

38. On 18 July 2016, the Kosovo Judicial Council responded to the KRCT by letter No. 01/180, emphasizing that *“The solution of the case of Mr. Ferit Ademi is a procedural issue and that the Kosovo Judicial Council has no mandate to influence the work of the courts, in this case the work of the Basic Court in Prishtina.”*

39. In May 2016, the Applicant submitted a personal letter to the Minister of the Ministry of Justice requesting *compensation for the time spent in serving the sentence and taking measures to abolish the international arrest.*

40. On 25 May 2016, the Minister of the Ministry of Justice replied to the Applicant:

“In connection with your request for compensation, I notify you that such requests will be forwarded to the respective authorities of the Kosovo Judicial Council. On the other hand, the Ministry of Justice will take appropriate legal measures that fall within the scope of the Ministry in terms of your request.”

41. On 26 September 2016, the Applicant addressed the Department for International Legal Cooperation at the Ministry of Justice, by letter protocol number 01-2415/3, to take legal actions after constant institutional silence in order to stop his extradition to Serbia. (The Applicant claims that “*No reply was received on this letter.*”)
42. On 15 September 2017, the KRCT addressed the President of the Court of Appeals of Kosovo with a request to review the Applicant's case and – to stop his extradition to Serbia. (The Applicant claims that “*No reply was received on this letter.*”)

Applicant's allegations

43. The Applicant first refers to the case law of the Constitutional Court, case KI 41/12 *Gëzim and Makfire Kastrati v. the Basic Court in Prishtina and the Judicial Council*, which further states that similarities in “*this case that the judicial authorities did not act in accordance with the legally prescribed obligations*” while “*the difference between these two cases, according to us, is in the fact that in the case KI41/12 the result of this non-action was unfortunately fatal, while in this case it is a matter of another freedom - the right to freedom of movement.*”
44. The Applicant then quotes Articles 1, 21, 22, 24, 32, 34, 35, 53 and 102 of the Constitution, as well as Article 13 of the ECHR and Article 2 of Protocol No. 4 to the ECHR. The Applicant further cites Articles 7 and 11 of the Law No. 03/L-199 on Courts as well as Article 13 of the Law No. 04/L-213 on International Legal Cooperation in Criminal Matters.
45. In addition, the Applicant reasons in accordance with the positive obligations of the state that, according to his interpretation, the abovementioned Articles of the Constitution, the ECHR, and the Law “*obliged the courts and other authorities in the Republic of Kosovo to take certain actions in this case.*”
46. Subsequently, the Applicant reasons that “*despite this undisputed legal clarity, the Basic Court in Prishtina failed to take the necessary actions. These actions, according to us, are that this Court should have forwarded the necessary letters to the Department for International Legal Assistance in order that this Department forwards the latter to the authorities of the Republic of Serbia and INTERPOL in order to allow the withdrawal of the request for arrest.*”
47. The Applicant further considers that “*the non-actions of the authorities of the Republic of Kosovo, the authorities which were supposed to perform in a cumulative manner through the Basic Court in Prishtina and the Ministry of Justice ... violated the right to freedom of movement.*”
48. The Applicant further claims that “*the authorities of the Republic of Kosovo violate this constitutional right of the Applicant permanently, since he cannot at this moment exercise this right to freedom of movement.*”

49. The Applicant reasons that *“the authorities of Kosovo failed to fulfill a legal obligation to submit letters to the requesting state. Through the correspondence of the High Court in Subotica, the Republic of Serbia confirmed that “the legal requirements for withdrawal of the request for arrest or that the request for extradition is withdrawn were not fulfilled.”*
50. The Applicant alleges that *“The authorities of the Republic of Kosovo, by failing to inform the competent office of INTERPOL and the authorities of the Republic of Serbia that the abovementioned person has served the sentence, act in violation of the law “Ne bis in idem” and “indirectly placed Mr. Ferit Ademi in a position with a justified risk of being convicted twice for the same criminal offense.”*
51. The Applicant further considers that *in this case there was a violation of Article 13 of the ECHR and Article 32 of the Constitution in conjunction with Article 2 of Protocol 4 to the Convention [...] that this violation was caused in a cumulative way, partly as a consequence of current resolutions, but also as a consequence of the non-action of the Basic Court in Prishtina and Ministry of Justice, the respective Department.”*
52. The Applicant in support of his claims refers to case *Reiner v. Bulgaria* (2006) 46343/99 where ECtHR stated *“Where there is an arguable claim that an act of the authorities may infringe the individual’s right to leave his or her country, guaranteed by Article 2, paragraph 2 of Protocol No. 4 to the Convention, then Article 13 of the Convention requires that the national legal system must make available to the individual concerned the effective possibility of challenging the measure complained of and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality - within the meaning of the Convention – of the imposed measure.”*
53. The Applicant finally states that there are no legal remedies that could be exhausted and referred to case *KI06/10 Valon Bislimi v. The Ministry of Internal Affairs, the Kosovo Judicial Council and the Ministry of Justice where the Constitutional Court found that the rule of exhaustion of legal remedies “should be applied flexibly and without excessive formalities.”*
54. The Applicant considers that his Referral is very similar to the cases *KI41/12* and *KI06/10*, because as in the case decided, in this case also, 1. *The regular courts have not rendered any decision (which refuses to submit the requested letters to the appropriate authorities) and 2. The Judicial Council again refused to take measures against specific judges for failure to act under the Law on Judicial Council.*
55. Based on the foregoing, the Applicant requests that *“the Court finds that there has been a violation of the freedom of movement (protected by Article 35 of the Constitution and Article 2 of Protocol 4 to the Convention), which was committed as a result of the failure to act of the Basic Court in Prishtina and the Ministry of Justice, Department for International Legal Cooperation.*

56. The Applicant also requests *“the Court to also find a violation of the right to legal remedies (protected by Article 32 of the Constitution of the Republic of Kosovo and Article 13 of the Convention).”*
57. Finally, the Applicant requests the Court to find that the violations were committed in a *“cumulative manner as a consequence of:*

unclear legal remedies for cases of the court non-action that cause a violation of the rights of individuals, and

the refusal of the courts and the Judicial Council to perform their legal duties in similar cases.”

Admissibility of Referral

58. The Court examines whether the Applicant has fulfilled the admissibility requirements, established in the Constitution and further specified in the Law and foreseen in the Rules of Procedure.
59. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. 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.

60. The Court also refers to Articles 22.4 and 48 of the Law, which foresee:

Article 22 [Processing Referrals]

4. If the referral or reply to the referral is not clear or is incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for clarifying or supplementing the respective referral or reply to the claim. The Judge Rapporteur may request additional facts that are required to assess the admissibility or grounds for the claim.

Article 48 [Accuracy of the Referral]

In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.

61. In addition, the Court takes into account Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure, which establishes:

*“(2) The referral shall also include
[...]*

(h) the supporting documentation and information “...

62. The Court further recalls Rule 32 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which establishes:

„[...] The Court may summarily reject a referral if the referral is incomplete or not clearly stated despite requests by the Court to the party to supplement or clarify the referral [...].“

63. Regarding the fulfillment of these requirements, the Court notes that the Applicant alleges that the violation is a permanent situation *„caused in a cumulative manner as a result of the non-action of the public authorities of the Republic of Kosovo.“*
64. Given that the Applicant does not challenge any act of a public authority, but claims that the public authorities did not fulfil the positive obligations which, according to the Applicant's claims, had to be taken, the Court recalls that the Applicant is obliged to support these allegations with valid evidence.
65. The Court first recalls that, in the present case, in accordance with Article 22 of the Law, the Court requested the Applicant and his legal representative to submit to the Court *„any written evidence proving your claims “that you were informed by the Police of Kosovo that according to the Applicant, the Interpol arrest warrant for extradition to the Republic of Serbia was re-activated.“*
66. In their response on 8 February 2018, the Applicant and his legal representative stated that *„the KRCT does not have any evidence/material proof of the allegations in our submission that the Police of Kosovo informed that the Interpol arrest warrant has been re-activated for the extradition of the party to the Republic of Serbia.“*
67. The Court finds that the Applicant did not respond to the request of the Court to submit the basic documentation without which no public authority of the Republic of Kosovo could take any action.
68. The Court notes that the Applicant based on verbal knowledge tried to initiate the proceedings also before other public authorities (the Basic Court in Prishtina, the Court of Appeals of Kosovo, the Kosovo Judicial Council and the Ministry of Justice of Kosovo).
69. The Court notes that the Applicant was also notified about this by the Basic Court in Prishtina, which stated in its reply that *„the Basic Court in Prishtina does not have any knowledge that there is any procedure for the extradition of the convict Ferit Ademi to Serbia.“*
70. The Court emphasizes that it is not a fact-finding court and the burden of proof lies with the Applicant who failed to meet the procedural requirements established in the Constitution, the Law and the Rules of Procedure (See for example: case No. KI03/15, Applicant *Hasan Beqiri*, Decision to Reject the Referral of the Constitutional Court of the Republic of Kosovo, of 5 June 2015).

71. Therefore, the Court notes that the Applicant, in addition to his general and abstract Referral, did not submit any decision of a public authority of Kosovo which restricts to him any right guaranteed by the Constitution; ii) he did not prove that the Interpol arrest warrant has been re-activated by the Republic of Serbia; iii) he did not prove that the Interpol arrest warrant has been activated by the Republic of Kosovo; iv) he failed to submit an indictment or any other new indictment issued by the public authority of the Republic of Serbia; and v) he did not submit the supporting documents requested by the Court to substantiate his allegations.
72. Therefore, the Court finds that the Referral in question is incomplete, because the Applicant did not provide supporting documents requested by the Court to substantiate his allegations.
73. In sum, the Court finds that the Referral does not meet the procedural requirements for further review in accordance with Rule 29 of the Rules of Procedure. Considering that the Applicant did not complete and did not provide the necessary reasoning of the Referral, the Referral is to be summarily rejected, in accordance with Rule 32 (5) of the Rules of Procedure.

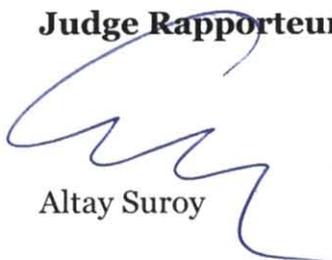
FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 32 (5) of the Rules of Procedure, on 20 April 2018, unanimously

DECIDES

- I. TO DISMISS the Referral;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

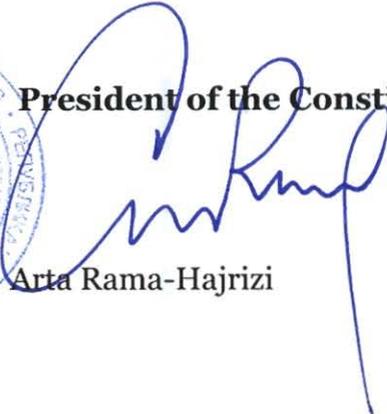
Judge Rapporteur



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi