



REPUBLIKA E KOSOVËS
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Prishtina, 16 August 2010
Ref. no.: RK39/10

Decision on the Request for Interim Measures

in

Case No. KI 02/10

Roland Bartetzko

against

The Decisions of The Supreme Court of Kosovo, S.C. AP-KZ 181/2002 of 12 November 2002

The Constitutional Court of the Republic of Kosovo

The Constitutional Court, composed of

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

Unanimously adopts the following decision denying the request for interim measures, without prejudice to any final Decision on the Referral as to admissibility or the merits.

The Applicant

1. The Applicant is Mr. Roland Bartetzko. He is a German national. He is serving a sentence in Dubrava Prison near Istok, Kosovo. He is represented by Dr. Kolë Krasniqi of Gllaviçicë, Pejë.

The Challenged Decisions

2. The Supreme Court of Kosovo, S.C. AP-KZ 181/2002 of 12 November 2002.

Subject Matter

3. The Applicant argues that his rights guaranteed by Articles 30 (rights of the accused), 32 (right to legal remedies), and 102.5 (right to appeal) of the Constitution of the Republic of Kosovo, and his rights under the European Convention of Human Rights, and the Universal Declaration on Human Rights have been violated. He argues that he was deprived of his fundamental right to appeal because his defense counsel erroneously informed him that he did not have the right to appeal his conviction.

4. He requests that the Court impose a temporary interim measure to reinstate the legal timeline of his appeal against Judgment Ap.Nr. 181-2002 of the Supreme Court of Kosovo, which became final over six years before the Constitution of Kosovo entered into force.

Legal Basis

5. Art. 116.2 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Art. 27 of Law No. 03/L-121 on the Constitutional Court of Kosovo (hereinafter referred to as: the Law), and Art. 52.1 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

The Facts

6. On 10 May 2002, the District Court of Pristina found the Applicant guilty of, among other things, a criminal act of terrorism under Article 125 in relation to Article 129 paragraph 2 in connection with paragraph 1 (amended on 16 June 1993, Official Gazette of the FRY-No. 37-193) of the Criminal Code of Yugoslavia. The Court found that on 18 April 2001 the Applicant placed explosive material outside the offices of the Centre for Peace and Tolerance, where representatives of the Former Yugoslavia worked. The explosion caused the death of a senior representative of the Serbian government there. It also injured four staff members of the Centre. The Court sentenced Mr. Bartetzko to 23 years in prison. (D.C.P. Nr. 1722-2001).
7. On 12 November 2002, the Supreme Court of Kosovo modified the verdict of the District Court. The Court partially adopted the Applicant's appeal and found that he was guilty of a criminal act of terrorism under Article 125 in relation to Article 139 paragraph 2 of the Criminal Code of Yugoslavia. The Court amended his sentence to 20 years imprisonment, including time spent in detention from 20 April 2001. (S.C. Ap.Nr. 181-2002).
8. According to the Applicant his attorney, Tome Gashi, did not appeal the decision of the Kosovo Supreme Court, nor did he inform him of his right to appeal. Instead, he told the Applicant that he had no right to appeal. After the fifteen day deadline for filing an appeal expired, the decision became final.
9. On 31 December 2002, the Applicant received a copy of the judgment of the Supreme Court of Kosovo.
10. After the deadline expired, Mr. Gashi asked the Supreme Court to modify the decision. He argued that the parties should have the right to appeal because the decision did not contain a legal remedy. On 8 June 2003, the Supreme Court informed the Applicant that it could not accept his request because it was filed more than half a year from the date of receipt of the verdict.
11. On 15 June 2002, the Applicant withdrew Mr. Gashi's power of attorney.
12. On 8 August 2003, the Applicant requested through his attorney, Fazli Balaj, that the District Court of Pristina restore the legal timeline of the appeal. On 6 January 2004, the

District Court of Pristina dismissed the Applicant's request because it was filed after the statutory period prescribed by Article 92, paragraphs 1 and 2, of the Criminal Code of Yugoslavia.

13. On 10 November 2009, the State Prosecutor of Kosovo informed the Applicant that his request to the Supreme Court of Kosovo was dismissed because it lacked a legal basis.

Proceedings before the Constitutional Court

14. On 7 December 2009 the Applicant filed his Referral with the Constitutional Court. On 5 January 2010, the Applicants supplemented the Referral with further arguments requesting the Court to issue Interim Measures ordering "reinstatement of the legal deadline for the appeal."

15. On 13 May 2010 the Review Panel, considered the Report of Judge Suroy and recommended that the full Court deny the request for an interim measure.

The Applicant's Complaints

16. The Applicant complains that his right to appeal guaranteed by Article 102 of the Constitution and Article 394 (1) of the Provisional Criminal Procedure Code of Kosovo has been violated. According to him, Article 30 of the Constitution that guarantees rights of the accused has been also violated.

17. The Applicant argues that he was denied his ability to exercise these fundamental rights. The decision of the Supreme Court of Kosovo of 12 November 2002 did not include legal instructions regarding his right to appeal, nor did the presiding judge give him any verbal instructions. Furthermore, his attorney told him that he did not have a right to appeal. The decision against him only became final because (1) his attorney gave him incorrect advice; and (2) he did not know the official language of the applicable law in Kosovo. Thus, he was unable to exercise his right to appeal.

18. Finally the Applicant argues that this violates the Provisional Criminal Procedure of Kosovo and the Provisional Criminal Code of Kosovo, as well as the Constitution of Kosovo, the law of the European Union, the European Convention of Human Rights, and the Universal Declaration on Human Rights. In order to remedy this violation, the legal timeline of his appeal should be reinstated.

Assessment of the Request for Interim Measures

19. The Applicant has not submitted any evidence that would justify ordering an interim measure to reinstate the legal timeline of his appeal. He has not proven that the proposed

interim measure is necessary to avoid any risk of irreparable damage, or whether such a measure is in the public interest, as required by Article 27 of the Law on the Constitutional Court. It follows that the request must be denied.

For These Reasons

20. The Constitutional Court, pursuant to Article 20 of the Law, and Section 54(b) of the Rules of Procedures, unanimously

Decides

- I. To REJECT the request for interim measures
- II. The Secretariat shall notify the Parties of the Decision and shall publish it in the Official Gazette in accordance with Article 20.4 of the Law.
- III. This Decision is effective immediately.

