



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

Prishtina, on 21 April 2020
Ref. no.:RK 1550/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI75/19

Applicant

Naim Prokshi

**Constitutional Review of the Judgment Pml.no.4/2019 of the Supreme
Court of Kosovo, of 4 February 2019**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Naim Prokshi, residing the Municipality of Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant is challenging the Judgment [Pml.no.4 /2019] of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), of 4 February 2019, in conjunction with the Judgment [PA1.no.345/2018] of the Court of Appeals], of 26 October 2018, and Judgment [P.no.125/2017] of the Basic Court in Mitrovica-Branch in Skenderaj (hereinafter: the Basic Court), of 25 January 2018.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged judgment which according to the Applicant, his fundamental rights and freedoms guaranteed by Articles 233 [Human Dignity], 24 [Equality before the Law] and 31 [Right to Fair and Impartial trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

Legal Basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03 / L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 8 May 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 10 May 2019, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel, composed of judges: Bajram Ljatifi (presiding), Safet Hoxha and Radomir Laban (members).
7. On 21 May 2019, the Court notified the Applicant about the registration of the Referral.
8. On 21 May 2019, the Court notified the interested party FB about the registration of the Referral.
9. On 21 May 2019, the Court notified the Supreme Court about the registration of the Referral and provided it with a copy thereof.
10. On 17 January 2020, the Applicant addressed the Court with urgency, seeking the resolution of his case "*with priority*".

11. On 11 March 2020, the Court reviewed the preliminary report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. On 1 March 2016, the person F.B. had filed a criminal complaint against the Applicant at the Police Station in the Municipality of Skenderaj in connection with the criminal offence of Threat as per Article 185 of the Criminal Code of the Republic of Kosovo (hereinafter: CCRK).
13. On 18 October 2016, the Police Station in Skenderaj, having investigated the case, filed a request for the conduct of the minor offence proceedings against the Applicant in the case no. 2016-BF-0084, pursuant to paragraph 1 of Article 5 (Verbal Assault) of the Law Mo. 03 / L-142 on Public Order and Peace.
14. On 11 July 2017, the Minor Offences Division of the General Department of the Basic Court, by Judgment [K.No.5034/2016], suspended the minor offence proceedings against the Applicant due to the impossibility of determining the factual situation.
15. On 1 November 2017, the Applicant gave a statement to the Kosovo Police in the capacity of the injured party, claiming that the interested party F.B. had on purpose fabricated the above-mentioned event concerning the criminal offense of Threat and had made a false report, consequently committing the criminal offense of false report or charge stipulated by paragraph 1 of Article 390 (False report or charge) of the CCRK.
16. On 2 November 2017, the General Department of the Basic Prosecution in Mitrovica (hereinafter: the Basic Prosecution) filed an indictment [PP.II.no.634/2017] against F.B., due to the criminal offense of notification or report false determined through paragraph 1 of Article 390 of the CCRK.
17. On 25 January 2018, the Basic Court, through its Judgment [P.no.125/2017], found the interested party F.B. guilty of the criminal offence of False report or charge as provided by paragraph 1 of Article 390 of the CCRK; (ii) and sentenced him to a fine in the amount of three hundred (300) Euros; (iii) stating that in event of failure to pay of the fine, the sentence shall be replaced with imprisonment on the basis of paragraph 3 of Article 46 (Punishment of fine) of the CCRK; (iv) obliging him to pay the costs of the criminal proceedings; and (v) instructed the Applicant pursue his legal-property claim in a civil dispute.
18. On an unspecified date, the interested party F.B. filed an appeal with the Court of Appeals, alleging essential violations of the provisions of the criminal procedure, erroneous and incomplete determination of the factual situation and the decision on the sentence, by proposing to the Court of the Appeals to approve the appeal as grounded and annul the appealed Judgment, thus acquitting him of the charge. On the other hand, on 17 April 2018, the Appellate Prosecution, through the submission [PPA/11.no.354/2018] proposed that the appeal of the interested party F.B. be approved and the case be remanded for retrial.

19. On 26 October 2018, the Court of Appeals, through its Judgment [PA1.nro.345/2018], rejected as unfounded the appeal of the defence counsel of the convict, respectively F.B. and confirmed the Judgment of the Basic Court.
20. On an unspecified date, the interested party F.B. filed a request for protection of legality with the Supreme Court, alleging substantial violations of the provisions of criminal procedure and a violation of the criminal law, by proposing that the appealed judgment be annulled he be acquitted of the charge or alternatively his case be remanded to the Basic Court for retrial. On the other hand, on 17 January 2019, the State Prosecutor through the submission [KMLP.II.no.4/19] proposed that the request for protection of legality be rejected as unfounded.
21. On 4 February 2019 the Supreme Court, by its Judgment [Pml.no.4/2019], approved the request for protection of legality as founded and amended the Judgment of the Basic Court respectively of the Court of Appeals, by acquitting the person F.B. of the charge. The Supreme Court had assessed that in the circumstances of the concrete case, the legal criteria of the criminal offence of false report or charge envisaged by Article 390 of the CCRK had not been met. In this respect, the Supreme Court, among other things, had reasoned as follows:

“[...the most distinct element of the criminal offence is the reporting not of the real person but of another person, as the perpetrator of the criminal offence, while in the present case the convict has reported the correct person. The second element is the reporting of the criminal offence which is prosecuted ex officio and this element has been ignored by both the court of first instance and the court of second instance.]”

Applicant’s allegations

22. The Applicant alleges that the Judgment [Pml. no. 4/2019] of the Supreme Court, of 4 February 2019 had violated his fundamental rights and freedoms guaranteed by Articles 23 [Human Dignity], 24 [Equality before the Law] and 31 [Right to a Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).
23. The Applicant alleges that the challenged Judgment of the Supreme Court, whereby the interested party F.B. was acquitted of charge, was issued in violation of the above-mentioned provisions of the Constitution because *“the said person has on purpose fabricated the event that he was allegedly threatened by the Applicant, thus infringing his personal and moral integrity in the family and society”*.
24. The Applicant requests from the Court to declare his Referral admissible whereas the Judgment [Pml.no.4/2019] of the Supreme Court, of 4 February 2019 to be declared invalid, and the case to be remanded for retrial.

Admissibility of the Referral

25. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.
26. 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".

27. Further, the Court shall also examine whether the Applicant has met the admissibility requirements, as defined by law. In this regard, the Court first refers to Article 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which determine:

Article 47 [Individual Requests]

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."

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 ".

Article 49 [Deadlines]

"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..."

28. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, which is challenging an act of a public authority, namely the Judgment [Pml. no. 4/2019] of the Supreme Court, of 4 February 2019 after

exhausting all legal remedies defined by law. The Applicant has also clarified the rights and freedoms he claims to have been violated, in accordance with the requirements of Article 48 of the Law, and has submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

29. In addition, the Court examines whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. In the circumstances of the present case, the Court considers that it is important to assess the fulfilment of the criteria of the Rules of Procedure provided for by: (i) item (b) of paragraph 3 of Rule 39 of the Rules of Procedure, according to which the Court may consider a referral inadmissible if the same is incompatible *ratione materiae* with the Constitution; and (ii) paragraph 2 of Rule 39, according to which the Court may consider an a referral inadmissible if the referral is manifestly ill founded, because the Applicant has not sufficiently proved and substantiated his claim. The first is important regarding the allegations of the Applicant which concern the Article 31 of the Constitution in conjunction with Article 6 of the ECHR, while the second concerns the allegations of the Applicant in respect of Articles 23 and 24 of the Constitution.

(i) *With regard to item (b) of paragraph 3 of Rule 39 of the Rules of Procedure*

30. The Court first recalls the content of this rule as follows:

(3) The Court may also consider a referral inadmissible if any of the following conditions are present:

[...]

(b) The Referral is incompatible ratione materiae with the Constitution;

31. As stated above, in the circumstances of the present case, the Court must assess the fulfilment of the criteria set out under item (b) of paragraph 3 of Rule 39 of the Rules of Procedure, according to which the Court may consider a Referral inadmissible if the same is incompatible *ratione materiae* with the Constitution.
32. This is because the circumstances of the concrete case involve a criminal procedure initiated and conducted against the person F.B as a result of the criminal report of the Applicant concerning the criminal offence of False report or charge. This criminal report resulted in the filing of an Indictment against the person F.B and the latter was found guilty by the respective Judgment of the Basic Court which was confirmed by the Court of Appeals. These two judgments were declared invalid by the Supreme Court, which declared the person F.B. innocent and acquitted him of all charges. Consequently, the Applicant before the Court challenges this decision of the Supreme Court which concerns a "criminal charge" against a third person, alleging that his constitutional rights and freedoms have been violated.
33. In this context, the Court refers to its relevant case law and relates to circumstances in which applicants allege violations of their fundamental rights and freedoms guaranteed by the Constitution as a result of regular court

decisions regarding criminal proceedings against third parties. In such circumstances, the Court based on the case law of the European Court of Human Rights (hereinafter: the ECtHR), in accordance with which, pursuant to Article 53 [Interpretation of the Provisions of Human Rights] of the Constitution is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution, has decided that such referrals, in principle, are incompatible *ratione materiae* with the Constitution, consequently declaring them as inadmissible referrals. These cases include but are not limited to the cases of Court KI97/14, Applicant, *Velibor Jokić*, Resolution on Inadmissibility of 8 December 2015; KI52/18, Applicant, *Zoran Stanišić*, Resolution on Inadmissibility of 16 January 2019; and KI12/19, Applicant *Arben Mërxha*, Resolution on Inadmissibility of 3 May 2019, which are based upon the case law of the ECtHR, including but not limited to cases *Istvánné Rékási v. Hungary*, Decision of 25 November 1996, and *Perez v. France*, Judgment of 12 September 2004.

34. The rationale for this case law relates to the interpretation of Article 6 of the ECHR by the ECtHR, which, insofar as it is relevant to the circumstances of the present case, relates to the expressions “as to any criminal charges” and “rights and obligations”, as integral part of Article 31 of the Constitution and Article 6 of the ECHR.
35. Regarding the first, it is emphasized that the interpretation of the expression “as to any criminal charges” contained in Article 31 of the Constitution in the light of Article 6 of the ECHR, results in the finding that the same means “as to any criminal charges filed against the applicant”. In this way, the allegations of the applicants for violations of their fundamental rights and freedoms as a result of criminal charges which have not been filed against them, but against third parties, cannot fall within the scope of the expression “as to any criminal charges” contained in Article 31 of the Constitution and Article 6 of the ECHR. (See in this respect the cases of the Court, KI 97/14, Applicant *Velibor Jokić*, cited above, paragraph 35; KI52/18, Applicant *Zoran Stanišić*, quoted above, paragraph 49; and KI12 / 19, with submitter *Arben Mërxha*, cited above, paragraph 40).
36. In this respect, the Court has also emphasized that the Constitution and the ECHR “do not provide the right to prosecute or sentence a third party for a criminal offence. Nor does the Constitution provide such a right.” (See the cases of the Court KI97/14, Applicant *Velibor Jokić*, cited above, paragraph 38; KI52/18, Applicant *Zoran Stanišić*, cited above, paragraph 51; and KI12/19, Applicant *Arben Mërxha*, cited above, paragraph 39).
37. Whereas, as regards the second issue, respectively, the interpretation of the expression “rights and obligations” contained in Article 31 of the Constitution in the light of Article 6 of the ECHR, it results in the finding that the same, as far as it is relevant to the circumstances of the concrete case, does not imply the right to prosecute third parties, but that the exercise of this right in the context of circumstances related to a criminal charge against a third party, implies the possibility of the victim’s exercise to bring civil proceedings even if only to secure a symbolic reparation or to protect a civil right, including those that may relate to the reputation. (ECtHR cases *Perez v. France*, cited above, paragraphs 70 and

71; *Rekić v. Bosnia and Herzegovina*, Decision of 29 March 2018, paragraph 24; and the cases of the Court KI 97/14, Applicant *Velibor Jokić*, cited above, paragraph 36; KI52/ 18, Applicant *Zoran Stanišić*, cited above, paragraph 50; and KI12/19, Applicant *Arben Mërxa*, cited above, paragraph 41).

38. In this respect, the Court also recalls the case of the ECHR of the *Istvánné Rékási v. Hungary*, which, among other things, stated that:

“[...] while maintaining the general principle that the right to enjoy a good reputation constitutes a “civil right” within the meaning of the above provision, the Commission nevertheless considers that the procedures chosen by the Applicant for [...] initiating criminal proceedings do not fall within the scope of Article 6 paragraph 1 of the Convention. Unlike a civil action [...] the purpose of the criminal procedure in question is to punish the person concerned for having committed a criminal offence. However, the right of access to the courts which Article 6 para.1 of the Convention grants to anyone who seeks the determination of his civil rights, but does not include any right to bring criminal proceedings against a third person.”

39. The Court reiterates that also the circumstances of the concrete case involve allegations of violations of the fundamental rights and freedoms of the Applicant which relate to the results of criminal proceedings, as a consequence of a “*criminal charge*” against a third person, and against whom, the Supreme Court had issued a judgment of acquittal. Moreover, neither the circumstances of the case nor the allegations of the Applicant encompass the possibility nor are they related to any civil dispute and which could have resulted as a consequence of the victim’s exercise of a right related to criminal proceedings against a third person.
40. Therefore, as explained above, on the basis of the ECtHR case law and the case law of the Court, such allegations of applicants do not fall within the scope of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and are incompatible *ratione materiae* with the Constitution.

(ii) With regard to paragraph 2 of Rule 39 of the Rules of Procedure

41. The Court first recalls the content of this rule as follows:

“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”

42. In this context, the Court also recalls that the Applicant alleges that the challenged Judgment of the Supreme Court was also issued in violation of his fundamental rights and freedoms guaranteed by Articles 23 and 24 of the Constitution.
43. Nevertheless, and in respect of these allegations, the Court recalls its case law according to which only the mention of an article of the Constitution, without clear and adequate reasoning as to how that right has been violated, is not sufficient to build an argument to activate the defence machinery provided by

the Constitution and the Court, as an institution that takes care for respect of fundamental rights and freedoms. (See, in this context, the cases of the Court KI 02/18, brought by the Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning], Resolution on Inadmissibility, of 20 June 2019, paragraph 36; KI95/19, brought by Ruzhdi Bejta, Resolution on Inadmissibility of 8 October 2019, paragraphs 30-31; and KI99 /19, Applicant Persa Raičević, Resolution on Inadmissibility of 7 November 2019, paragraph 52).

44. Such position of the Court is based upon the case of the ECtHR, on the basis of which, unjustified and unsubstantiated claims or complaints having no support of arguments and evidence are declared inadmissible as manifestly ill founded. (See the ECtHR Guide of 30 April 2019 on Admissibility Criteria; Part I. Inadmissibility based on the Merits; A. Manifestly Ill Founded Applications; 4. Unsubstantiated Complaints: Lack of Evidence, paragraphs 280 to 283).
45. Consequently, the Applicant's Referral concerning his allegations regarding the violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR as well as the violations of Articles 23 and 24 of the Constitution must be declared inadmissible based on (i) item (b) of paragraph 3 of Rule 39 of the Rules of Procedure; (ii) paragraph 2 of Rule 39 of the Rules of Procedure, respectively.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, Articles 20, 47 and 48 of the Law and Rules 39 (2) and 39 (3) (b) of the Rules of Procedure, on 11 March 2020, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- 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

President of the Constitutional Court

Gresa Caka-Nimani



Arta Rama-Hajrizi

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