



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

Prishtina, on 05 January 2021
Ref.No.:RK 1689/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI08/19

Applicant

Gafurr Haziri

Constitutional review of Judgment

PML.No.258/2018 of the Supreme Court of Kosovo of 6 November 2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu, 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 Gafurr Haziri, from village Vërban, Municipality of Viti (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment Pml. No. 258/2018 of the Supreme Court of Kosovo (hereinafter: the Supreme Court) of 6 November 2018, which rejected the Applicant's request for protection of legality as ungrounded.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, whereby the Applicant's rights guaranteed by Article 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 for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) have allegedly been violated.

Legal basis

4. The Referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and 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 14 January 2019, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 15 January 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka- Nimani (Presiding), Bajram Ljatifi and Safet Hoxha (members).
7. On 30 January 2019, the Court notified the Applicant about the registration of the Referral. On the same date, the Court notified the Supreme Court about the registration of the Referral and sent a copy thereof.
8. On 10 November 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 30 June 2015, the Basic Prosecution in Gjilan, General Department, filed an indictment (PP. II. No. 1021/2015) against the Applicant on grounded suspicion of having committed the criminal offense "*endangering public traffic*" under Article 378, paragraph 6 in conjunction with paragraph 1 of the Criminal Code of the Republic of Kosovo (hereinafter: the CCRK).

10. On 12 March 2018, the Basic Court in Gjilan-Branch in Viti (hereinafter: the Basic Court) by Judgment P. No. 353/2015, found the Applicant guilty of committing the criminal offense "*endangering public traffic*" under Article 378, paragraph 6 in conjunction with paragraph 1 of the CCRK and imposed on him a fine in the amount of 200 (two hundred) euro.
11. The Basic Court, in its Judgment, stated that it based its decision, *inter alia*, on the two traffic expertise (one private expertise and the other at the request of the Basic Court), conducted in relation to this issue as well as on the basis of super- expertise. Based on the abovementioned expertise, it turns out that the accident occurred as a result of the primary omissions of the injured party A.I. and secondary omissions of the Applicant. The Judgment of the Basic Court also notes that in relation to the determination of factual situation, the testimonies of many witnesses of the case have been taken into account.
12. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against the abovementioned Judgment of the Basic Court, alleging violation of the provisions of criminal procedure, erroneous determination of factual situation and the decision on sentence.
13. On 14 May 2018, the Appellate Prosecution, by letter PPA/I NO. 498/2018 proposed to the Court of Appeals to reject the appeal filed by the Applicant.
14. On 12 July 2018, the Court of Appeals by Judgment PA1. No. 491/2018 rejected the appeal submitted by the Applicant as ungrounded.
15. The Court of Appeals found that the Judgment of the Basic Court does not contain essential violation of the provisions of the criminal procedure, emphasizing that "*the judgment is clear, concrete and comprehensible, in its reasoning are given necessary sufficient reasons on all the decisive facts and reasons for each point of the judgment are presented*".
16. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court against Judgment PA1. No. 491/2018 of the Court of Appeals of 12 July 2018 and Judgment P. No. 353/2015 of the Basic Court, of 12 March 2018, alleging essential violations of the provisions of criminal procedure and violation of criminal law. The Applicant also, without disputing the fact that the accident occurred as a result of his secondary omissions, claimed that the first instance court "*did not remand the indictment for extension also against other person, but only he was found guilty*".
17. On the other hand, the State Prosecutor of Kosovo, by letter KMPL II. No. 180/2018 proposed that the request for protection of legality be rejected as ungrounded.
18. On 30 April 2018, the Supreme Court by Judgment Pml. No. 258/2018 rejected the request for protection of legality submitted by the Applicant as ungrounded.
19. The Supreme Court in its Judgment reasoned that "*the issue of modification of the indictment is a discretionary right of the State Prosecutor and for this the*

court cannot order the Prosecutor [...] The conclusions of both courts regarding the factual description and legal qualification of the criminal offense is the result of a fair assessment of the administered evidence, for which the two courts have given clear legal reasons presented in page 5-6 namely 3-4 pages of the judgment of the second instance, which as fair and lawful is also accepted by this Court since the criminal law has been applied”.

Applicant's allegations

20. The Applicant alleges that the challenged Judgment of the Supreme Court was rendered in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.
21. The Applicant, in his Referral, alleges that the Basic Court found the Applicant guilty, although according to him, by material evidence it has been established that he is not guilty of this criminal offense.
22. The Applicant further alleges that *“The decision of the judge was tendentious, at the beginning, as an accused, I used the right to engage a traffic expert in accordance with Article 141 of the CPCRK, but it is noted that the judge in this procedure only intends to punish me by a sentencing judgment, because the expertise is challenged by the decision even though I submitted a copy to the prosecution in time, but they denied us the right; during the procedure an expertise is issued at the proposal of the court and the prosecution, again this expertise confirms the first expertise, also during the procedural stage a traffic super-expertise compiled by the Technical Faculty UP of Prishtina, by three experts is proposed, where they determine me only a secondary omission, but it is not taken into consideration by the Prosecution and then by the Court”.*
23. Regarding the challenged decision, the Applicant alleges that *“The court should have adjudicated based on the evidence; and I as a citizen except at least from the court to not deny me the right to be innocent because I have a secondary omission, I am not a perpetrator of the criminal offence in any way, the prosecution also during the investigation stage did not conduct investigations at all, there is no expertise, I was not questioned, I was only accused [...]”.*
24. Finally, the Applicant proposes to the Court to approve his Referral and to annul the challenged decision by remanding the case 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. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as required by Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

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.

- 1. 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. Regarding the fulfillment of the abovementioned criteria, the Court finds that the Applicant is an authorized party, who challenges the act of a public authority, namely Judgment Pml. No. 258/2018 of the Supreme Court of Kosovo, of 6 November 2018, after the exhaustion of all legal remedies. The Applicant has also clarified his allegations of those rights and freedoms that he claims to have been violated by the court decisions, in accordance with the conditions required by Article 48 of the Law and has submitted the Referral in accordance with the deadline established in Article 49 of the Law.
29. In addition, the Court also examines whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes that:

“(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.”

30. The Court first recalls that the Applicant by Judgment P. No. 353/2015 of the Basic Court was found guilty of committing the criminal offense “endangering public traffic” under Article 378, paragraph 6 in conjunction with paragraph 1 of the CCRK, and was fined in the amount of 200 euro. Following the Applicant’s appeal, the Court of Appeals rejected the Applicant’s appeal upholding the aforementioned Judgment of the Basic Court. The Supreme Court rejected the request for protection of legality submitted by the Applicant, against the two decisions of lower instances.
31. The Court recalls that the Applicant alleges that the challenged decision was rendered in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR
32. In this regard, the Court notes that the Applicant almost in the entirety of his Referral before the Court repeats the same allegations which he made in his request for protection of legality. With regard to the abovementioned allegations, the Court notes that the Applicant alleges that he was found guilty without conduct of the investigations by the prosecution, and without compiling the traffic expertise. The Applicant further alleges that he was found guilty of committing a criminal offense, although according to the Applicant, based on material evidence, it has been established that he is not guilty of any criminal offense. The Applicant regarding the challenged Judgment, essentially alleges that he was found guilty of committing a criminal offense contrary to the findings of the traffic expertise and super expertise, claiming that the findings of this expertise show that the traffic accident, among others, occurred due to the secondary omissions of the Applicant, namely it has not been established that he was primarily responsible for causing the accident.
33. Therefore, the Court will further elaborate on the Applicant’s allegations in the light of the procedural guarantees, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, which have been interpreted in detail in the case law of the ECtHR, in accordance with which, the Court under Article 53 [Interpretation of Human Rights Provisions] of the Constitution is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.
34. Article 31 [Right to Fair and Impartial Trial] paragraph 1 of the Constitution stipulates:

*Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
[...]*

35. Article 6, paragraphs 1 and 2 of the ECHR provides that:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. [...].”

36. With regard to the abovementioned allegations, the Court considers that the Applicant has built his case on the basis of legality, namely on the allegations of incorrect determination of evidence and facts made by the Supreme Court and those of the lower instances.
37. However, the Court takes into account the reasoning of the Supreme Court in Judgment PML. No. 258/2018, which regarding the evidence stated the following: *“assesses as ungrounded the allegation in question because from the case file it results as indisputable fact that in the accident that occurred Gafurr Haziri was a contributor who according to the expertise did not adapt the speed to traffic conditions and circumstances, while the main cause of the accident was the driver of the vehicle VW/Passat namely here the injured party A.B [...] The allegation that the first instance judgment is based only on the criminal report and police report but not on the traffic expertise, is considered as ungrounded by this court due to the fact that the judgment of the first instance, which was confirmed by the second instance court, does not rely only on the criminal report and the police report, on the contrary it also relies on other formal and material evidence administered in the court hearing, primarily on the expertise of the traffic expert [...]”*.
38. The Court also takes into account the reasoning of the Basic Court P. No. 353/2015, which was also upheld by the second instance and where, among other things, it is stated that 8 (eight) court hearings were held on this issue, all the evidence are administered and, among others, two expertise, one private expertise in the prosecution, the other traffic expertise at the request of the Basic Court, as well as super-expertise, and the testimonies of witnesses in the case were assessed.
39. In the present case, the Court notes that the Supreme Court and the two lower instance courts have provided clear and sufficient reasons for their findings and conclusions. The Court notes that the Supreme Court in its Judgment responded to all allegations of the Applicant.
40. In light of this, with regard to the Applicant’s allegations of a violation of Article 31 of the Constitution, based on the case file, the Court notes that the reasoning given in the Judgment of the Supreme Court is clear and comprehensive even

after review of all proceedings, the Court also found that the proceedings before the Court of Appeals and the Basic Court were not unfair or arbitrary (see, case *Shub v. Lithuania*, No. 17064/06, ECtHR decision of 30 June 2009).

41. In this regard, the Court reiterates that it is not its role to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and insofar as they may have violated the fundamental rights and freedoms protected by the Constitution (constitutionality). If it were otherwise, the Court would be acting as a court of “*fourth instance*”, which would result in exceeding the limits set by its jurisdiction. In line with the case law of the ECtHR and its already consolidated case-law, the Court reiterates that it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law and that no abstract assessments can be made as to why a regular court has decided in one way and not in another (See case *Garcia Ruiz v. Spain*, ECtHR, Judgment of 21 January 1999, paragraph 28; and see, also case KI70/11, Applicant *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011).
42. The Constitutional Court can only consider whether in a proceeding the evidence was presented in a correct way and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial.
43. The Court recalls that it has consistently reiterated that the mere mentioning of articles of the Constitution and the ECHR, is not sufficient for the Applicant to raise an arguable claim of constitutional violation. When such violations of the Constitution are alleged, the Applicants must provide substantiated allegations and convincing arguments (see the case of the Constitutional Court KI136/14, Applicant: *Abdullah Bajqinca*, Resolution on Inadmissibility, paragraph 33; KI187/18 and KI 11/19, Applicant: *Muhamet Idrizi* Resolution on Inadmissibility, of 29 July 2019, paragraph 73, and recently case KI125/19 Applicant: *Ismajl Bajgora*, Resolution on Inadmissibility, of 11 March 2020, paragraph 63).
44. In the case before us, the Court finds that the Supreme Court, when examining the Applicant’s allegations, reasoned that the Court of Appeals has rightly rejected the Applicant’s appeal as ungrounded, as all the evidence shows that the traffic accident, among other things, occurred due to the secondary omissions of the Applicant.
45. In the light of the above, the Court further considers that the Applicant did not substantiate that the proceedings before the Supreme Court or other regular courts were unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution were violated, as a result of erroneous interpretation of the procedural law. The Court reiterates that the interpretation of law is a duty of the regular courts and is the issue of legality (see, case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and see, also case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjokaj, Hysni Hoxha, Driton*

Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku, Resolution on Inadmissibility of 15 November 2016, paragraph 62).

46. Therefore, the Court finds that the Applicant's Referral does not meet the admissibility criteria set out in the Rules of Procedure, as the Referral is manifestly ill-founded on constitutional basis, taking into account that the facts presented do not in any way justify the allegation of violation of a constitutional right and that the Applicant does not sufficiently substantiate his allegation of a constitutional violation.
47. Therefore, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and, in accordance with Rule 39 (2) of the Rules of Procedure, is declared inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and in accordance with Rule 39 (2) of the Rules of Procedure, on 10 November 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

Nexhmi Rexhepi

Arta Rama-Hajrizi

Kopje e vërtetuar
Overena kopija
Certified Copy

This translation is unofficial and serves for informational purposes only