



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

Prishtina, 21 August 2017
Ref. no.: RK 1116/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI158/15

Applicant

Minir Krasniqi

**Constitutional review
of Decision PA-II-KZ-II-7/15 of the Supreme Court of Kosovo,
of 26 November 2015**

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 Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Minir Krasniqi from Prizren (hereinafter: the Applicant), represented by Pjetër Përgjoka and Bashkim Nevzati, both lawyers from Prizren.

Challenged decision

2. The Applicant challenges the Decision [PA-II-KZ-II-7/15] of 26 November 2015, of the Supreme Court of Kosovo, which was served on him on 24 December 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial] and Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7 of the Constitution, Article 47 [Individual Requests] of 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

5. On 29 December 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 January 2016, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
7. On 4 March 2016, the Court notified the Applicant about the registration of the Referral and requested him to submit the challenged Decision.
8. On 23 March 2016, the Applicant submitted the requested documents to the Court.
9. On 31 May 2016, the Court requested the representatives of the Applicant to submit their power of attorney representing the Applicant.
10. On 15 June 2016, the Applicant's representatives submitted the requested power of attorney to the Court.
11. On 22 September 2016, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur, replacing Judge Robert Carolan, who on 9 September resigned from the position of the Judge of the Court. The composition of the Review Panel remained unchanged.

12. On 29 September 2016, the Court requested the Applicant to notify the Court if he had taken any other legal action after submitting his Referral to the Court.
13. On 13 October 2016, the Applicant submitted to the Court the Decision of the Supreme Court [Pml. Kzz 14/2016] of 8 March 2016.
14. On 30 May 2017, the Review Panel considered the report of the Judge Rapporteur and by majority made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

15. On 27 February 2013, the State Prosecutor of the Republic of Kosovo (hereinafter: the State Prosecutor) filed an indictment against the Applicant and others, based on the grounded suspicion that they committed the criminal offense of Abusing Official Position or Authority.
16. On 13 March 2014, the Basic Court in Prizren by Judgment [P. No. 171/13; PP. No. 147/2011] found the Applicant guilty of committing criminal offenses of abuse of official position or of authority in continuity and in co-perpetration, in accordance with the provisions of the Criminal Procedure Code of the Republic of Kosovo (hereinafter: CPCK).
17. On 27 May 2014, the Applicant filed an appeal with the Court of Appeals of Kosovo against the Judgment of the Basic Court in Prizren.
18. On 22 July 2015, the Court of Appeals by Decision [PAKR 349/14] approved the appeal filed by the defense counsel of the Applicant and annulled the Judgment of the Basic Court in Prizren, ordering that the case be remanded to the Basic Court in Prizren for retrial on the grounds that *"the appealed Judgment of the Basic Court was legally ungrounded and as such should have been annulled."*
19. On 4 September 2015, the EULEX Prosecutor of the State Prosecution filed appeal with the Supreme Court against the Decision of the Court of Appeal [PAKR 349/14] of 22 July 2015.
20. On 8 and 9 September 2015, the Applicant filed a response to the appeal of the State Prosecutor against the Decision of the Court of Appeals [PAKR 349/14] of 22 July 2015, stating that the appeal of the State Prosecutor is inadmissible based on Article 407 of the CPCK, because the latter accurately describes cases when an appeal may be filed against the decisions of the Court of Appeals, and that the respective appeal of the State Prosecutor is not allowed by CPCK.
21. On 26 November 2015, the Supreme Court of Kosovo by Decision [PA-II-KZ-II. 7/15] approved the appeal of the State Prosecutor, annulled the Decision of the Court of Appeals [PAKR 349/14] of 22 July 2015 and ordered that the case be remanded to the Court of Appeals for reconsideration by a new panel of judges.

22. On 29 December 2015, the Applicant filed a request for protection of legality with the Supreme Court against the Decision [PA-II-CE-II. 7/15] of 26 November 2015 of the Supreme Court.
23. On 8 March 2016, the Supreme Court by Decision [Pml. Kzz 14/2016] rejected the Applicant's request for protection of legality as inadmissible.

Applicant's allegations

24. The Applicant alleges that the challenged Decision violated his rights freedoms guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial] and Article 102 [General Principles of the Judicial System] of the Constitution.
25. The Applicant alleges that the Supreme Court by Decision [PA-II-C2-II. 7/15] of 26 November 2015, violated the provisions of the CPCK and the Constitution, when it approved the appeal of the State Prosecutor as admissible.
26. The Applicant addresses the Court with the request to annul the Decision [PA-II-C2Z-II-7/2015] of 26 November 2015 of the Supreme Court of the Republic of Kosovo.

Admissibility of the Referral

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

"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."

29. In continuation, the Court examines whether the Applicant has fulfilled the admissibility requirements as further specified in the Law. In this respect, the Court refers to Article 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

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...”

30. Regarding the fulfillment of these requirements, the Court finds that the Applicant submitted the Referral as an individual and in the capacity of an authorized party, challenging an act of a public authority, namely the Supreme Court Decision [PA-II-KZ-II-7/15] of 26 November 2015, after having exhausted all legal remedies. The Applicant has also clarified the rights and freedoms that he alleges have been violated, as per the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines prescribed in Article 49 of the Law.
31. However, the Court must further assess whether the criteria foreseen in Rule 36 of the Rules of Procedure have been met.
32. Rule 36 [Admissibility Criteria] paragraphs (1) (d) and (2) (b) and (d) of the Rules of Procedure, stipulates that:

“(1) The Court may consider a referral if:

[...]

d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights

[...]

(d) the Applicant does not sufficiently substantiate his claim.”

33. The Court recalls that the Applicant challenges the Decision [PA-II-C2Z-II-7/15] of 26 November 2015 of the Supreme Court of Kosovo, which approved the appeal of the State Prosecutor against the Decision [PAKR 349/14] of 22 July 2015 of the Court Appeals, annulling the latter and ordering that the case,

namely, the appeal against the Judgment [P. No. 171/13; PP. No. 147/2011] of 13 March 2014 of the Basic Court in Prizren, be remanded to the Court of Appeals for reconsideration by a new panel of judges.

34. The Applicant alleges that the appeal of the State Prosecutor against the Decision of the Court of Appeals is not permitted under Article 407 of the CPCK, and accordingly, the Decision of the Court of Appeals [PAKR 349/14] of 22 July 2015, should remain in force, according to which the Judgment of the Basic Court in Prizren [P. No. 171/13; PP. No. 147/2011] was annulled and that the merits of the question should be retried before the Basic Court in Prizren.
35. In essence, the Applicant alleges that the Supreme Court, by approving the State Prosecutor's appeal as admissible, has erroneously interpreted and applied the provisions of the CPCK and thereby violated Articles 21 [General Principles], Article 31 [Right to a Fair Trial and Impartial Trial] and Article 102 [General Principles of the Judicial System] of the Constitution.
36. The Court also notes that at the same time this Referral has been submitted to the Court, the Applicant also filed a request for protection of legality with the Supreme Court, regarding the admissibility of the appeal filed by the State Prosecutor. In this respect, the Supreme Court decided on 8 March 2016 and by the Decision [Pml. Kzz 14/2016] rejected the request for protection of legality as inadmissible, on the grounds that "*no appeal against the decision of the Supreme Court of Kosovo is allowed*".
37. The Court notes that the merits of the case are under consideration by the Court of Appeals. However, the Court, without prejudice to the merits of the case which is under consideration by the regular courts, notes the Applicant's allegations addressed to the Court in this specific case, pertain only to the final decision, namely Decision [PA-II-CE-II. 7/15] of 26 November 2015 of the Supreme Court, on whether the appeal of State Prosecutor before the Supreme Court against the decision of the Court of Appeals [PAKR 349/14] of 22 July 2015, is permitted.
38. In this regard, the Court considers that the Applicant bases his allegation on the erroneous interpretation of the provisions of the CPCK, allegedly made by the Supreme Court. The Court recalls that this allegation relates to the scope of legality and as such does not fall within the jurisdiction of the Constitutional Court, and, therefore, cannot be considered by the Court.
39. Moreover, the Court considers that the Applicant did not show and prove that the proceedings before the Supreme Court were unfair or arbitrary or that his fundamental rights and freedoms protected by the Constitution were infringed by the alleged erroneous interpretation of Article 407 of the CPCK. The Court emphasizes that interpretation of Article 407 of the CPCK is a matter of legality. No constitutional matter has been substantiated by the Applicant. (See, case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility, of 8 August 2016, para. 44. and see, also case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku dhe Sami Lushtaku*, Resolution on Inadmissibility, 15 November 2016, para. 62.).

40. In addition, the Court considers that the Supreme Court reasoned in detail and specifically addressed and elaborated all the Applicant's allegations regarding the alleged erroneous interpretation of the CPCK.
41. In this regard, the Court refers to the Decision of the Supreme Court of Kosovo [PA-II-KZ-II-7/15] of 26 November 2015, which, *inter alia*, reasons:

“The Criminal Procedure Code of Kosovo does not clearly determine whether the procedures are in two or three instances. Therefore, pursuant to Article 102 (5) of the Constitution, an appeal may be filed against any court decision rendered during the criminal procedure, unless otherwise provided by law. [...] As it clearly results from the expression “unless otherwise provided for under the present code”, this is not a closed catalog of legal remedies [...] This leads to the conclusion that in cases of lack of a specific prohibition, the general constitutional principle prevails, whereas the parties are allowed to file an appeal against the decisions of the Court of Appeals. The Code also provides a specific procedure to empower the right to appeal against a ruling of the Court of Appeals, which at the end is decided by the Supreme Court (Article 411 and 412 of CPC). The mere fact that the Supreme Court finds that the law allows a ruling of the Court of Appeals to be appealed, does not lead to the conclusion that the Code enables the parties to file an appeal against every decision with the third instance court [...] In particular situations, provided for by Article 407 of CPC, the judgment of the Court of Appeals may be appealed before the Supreme Court [...] the decision on annulling the judgment and remanding the case for retrial, is rendered only in particular cases, when it is proved that certain procedural violations exist; the Court of Appeals finds that it cannot act in accordance with Article 403, of CPC and modify the challenged judgment of the court of the first instance. In its decision, the Court of Appeals must present the reasons as to why it was not possible to proceed as determined in the mentioned provision [...]. The Court of Appeals has not clarified why the judgment of the court of the first instance could not be modified pursuant to Article 403 of CPC. Therefore, it is clear that the Court of Appeals has avoided rendering the decision, which is unacceptable, according to the opinion of the majority of the present trial panel.”

42. In fact, it is the role on the regular courts to interpret and apply the relevant rules of the procedural and substantive law. (See, ECtHR case, *Garcia Ruiz v. Spain*, Application No. 30544/96, 21 January 1999, para 28).
43. In this respect, the Court reiterates that it is not its task to deal with errors of facts or law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed the fundamental rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of “fourth instance”, which would be to disregard the limits imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See, case *García Ruiz v. Spain*, ECHR no.

30544/96, of 21 January 1999, par. 28 and see, also case: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution of Inadmissibility, of 16 December 2011).

44. Finally, the Court reiterates that the Applicant has not presented any convincing arguments that would prove that the alleged violations referred to in the Referral, constitute a violation of his rights to a fair and impartial trial. (See case: ECtHR, *Vanek vs. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005).
45. The Court recalls that the fact that the Applicant disagrees with the outcome of the proceedings, cannot of itself raise an arguable claim of a breach of the Constitution. (see case *Mezotur - Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).
46. Therefore, the Court finds that the Applicant's Referral does not meet the admissibility requirements established in the Rules of Procedure.
47. Accordingly, the Referral is manifestly ill-founded on constitutional basis and, in accordance with Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, is to be declared inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 48 of the Law and Rules 36 (1) (d) and 2 (b) and (d) of the Rules of Procedure, on 30 May 2017, by majority

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

Gresa Caka-Nimani
Gresa Caka-Nimani



President of the Constitutional Court

Arta Rama-Hajrizi
Arta Rama-Hajrizi