



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 26 January 2015

Ref. no.:RK760/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI130/14

Applicant

Fidan Hyseni

Constitutional Review of Judgment, Pml. no. 107/2014 of the Supreme Court of the Republic of Kosovo, dated 30 May 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Mr. Fidan Hyseni residing in Mitrovica (hereinafter: the Applicant). He is represented by Mr. Gani Rexha, lawyer from Mitrovica.

Challenged decision

2. The Applicant challenges the Judgment, Pml. no. 107/2014 of the Supreme Court of the Republic of Kosovo (hereinafter, the Supreme Court) of 30 May 2014 in relation with the Decision, PA1. no. 320/2014 of the Court of Appeal of the Republic of Kosovo (hereafter, the Court of Appeal) of 27 March 2014.
3. The last decision (Judgment, Pml. no. 107/2014 of 30 May 2014) was served on the Applicant on an unspecified date.

Subject matter

4. The subject matter is the request for constitutional review of the challenged Judgment and the challenged Decision which have allegedly violated the Applicant's rights guaranteed by Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereafter: the Constitution), Article 14, paragraph 5, of the International Convention on Civil and Political Rights and Article 2 [Right to Education] of the Protocol to the European Convention on Human Rights (hereafter: the Protocol to 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 18 August 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 5 September 2014 the President of the Court by Decision, GJR. KI130/14 appointed Judge Snezhana Botusharova as Judge Rapporteur and by Decision, KSH. KI130/14 appointed the Review Panel composed of Judges, Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.
8. On 15 September 2014 the Court notified the Applicant of the registration of the Referral and requested that he files a power of attorney for the representative that he had announced in his Referral.
9. On 22 September 2014 the Applicant submitted the requested document to the Court.
10. On 15 October 2014 the Court notified the Supreme Court and the Court of Appeal of the registration of the Referral and sent a copy of it to them.
11. On 9 December 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

12. On 5 December 2012 the Municipal Public Prosecution in Mitrovica filed a criminal charge against the Applicant based on the suspicion that he had committed the criminal offence of Endangering the Public Safety.
13. On 29 January 2014 the Basic Court in Mitrovica (Judgment, P. no. 168/2012) sentenced the Applicant to imprisonment of six (6) months for having committed the criminal offence as charged by the Municipal Public Prosecution. The Municipal Court also imposed an accessory punishment on the Applicant whereby he was prohibited from driving a motor vehicle for one (1) year.
14. The Applicant filed an appeal against the Judgment of the Basic Court with the Court of Appeal due to *“substantial violations of the provision of criminal procedure, erroneous and incomplete ascertainment of the factual situation, violation of material law, decision on sanction and decision on accessory punishment.”*
15. On 27 March 2014 the Court of Appeal (Decision, PA1. no. 320/2014) rejected the appeal of the Applicant as out of time. In its Decision, the Court of Appeal held:

“[...] The appeal of the defendant’s lawyer [...] is out of time.

The case file, respectively delivery note for personal service indicated that the Judgment rendered by the first instance court P.no.168/2012 dated 29.01.2014 is served on the defendant on 30.01.2014 and the defendant confirmed receiving the challenged judgment by signing it. The defendant’s lawyer filed an appeal with the Court against the challenged judgment on 24.02.2014. Given that an appeal against the judgment is allowed within 15 days when the defendant is served with the judgment, in this case it turns out that the appeal of the defendant was submitted after the deadline therefore it is decided as in the enacting clause of this decision.”

16. The Applicant filed a request for protection of legality with the Supreme Court due to *“substantial violations of the provision of criminal procedure”*. In his request, the Applicant claimed that

“[...] the first instance Judgment was not served on the defendant nor did the defendant confirm that he was served with it by his signature. Case files, especially delivery note for personal service confirms that it is not the defendant’s personal signature, but of someone else who signed the judgment service instead of him.”

17. On 30 May 2014 the Supreme Court (Judgment, Pml. no. 107/2014) rejected the Applicant’s request for protection of legality and held as follows:

“[...] the request for protection of legality is ungrounded. [...] the delivery note for serving the sentenced person with the Judgment of the Basic Court in Mitrovica [...] can be found in case files. This delivery note contains the

name, surname and address of the sentenced person, number and date of judgment, signature of the sentenced person. This delivery note has no note for eventual remarks. Therefore, this Court concluded that all legal rules for personal service of judgment were considered when the judgment of the first instance was served on the convicted person."

Applicant's allegations

18. The Applicant alleges that the Court of Appeal and the Supreme Court violated his rights as guaranteed by Article 32 [Right to Legal Remedies] of the Constitution, Article 14, paragraph 5 of the International Convention on Civil and Political Rights, and Article 2 [Right to Education] of the Protocol to the ECHR.
19. The Applicant states that *"the defendant was not served with the first instance Judgment at all."* In this regard, he claims that his right to *"file an appeal against the Judgment of the first instance"* was violated because according to him *"the Court of Appeal should have [...] determined the fact whether the defendant was personally served with the first instance Judgment and then observe the timelines of the appeal."*
20. Furthermore, the Applicant claims that *"the ascertainment of the Supreme Court in Prishtina that all legal rules for personal service of the Judgment were considered when the first instance Judgment was served on the sentenced person is also ungrounded."*
21. The Applicant concludes by requesting the following from the Court:

"[...] to declare the Judgment of the Supreme Court, Pml. no. 107/2014 of 30.05.2014 and the Decision of the Court of Appeal in Prishtina, PA1. no. 320/2014 of 30.05.2014, as invalid as a result of violating the right to a legal remedy and remand the matter to the Supreme Court of Kosovo in Prishtina for retrial."

Admissibility of the Referral

22. The Court examines whether the Applicant has met the admissibility requirements which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
23. In this respect, the Court refers to Rule 36 (2) (b) of the Rules of Procedure, which provide that:

"(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,

[...]"

24. As mentioned above, in substance, the Applicant complains that his right to a legal remedy has been violated by the Court of Appeal and the Supreme Court because allegedly he did not receive nor sign the receipt form for the delivery of the Judgment of the Basic Court.
25. The Court takes note of the Applicant's allegations that his right a legal remedy has been violated following an alleged failure of the Court of Appeal and the Supreme Court to fully respect the provisions of the criminal procedure law when serving him the Judgment of the Basic Court.
26. However, the Court also notes that the Court of Appeal reasoned its Decision when it rejected the Applicant's appeal as out of time by referring to provisions of law. Furthermore, the Court also notes that in the procedure for the review of protection of legality, the Supreme Court reasoned its decision regarding these particular allegations of the Applicant.
27. In this respect, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.
28. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegation of violation of the criminal procedure law allegedly committed by the Court of Appeal when it rejected his appeal as out of time. The Supreme Court stated that:
- "[...] this appeal was dismissed as out of time by the decision of the Court of Appeal [...] since the time limit for filing an appeal by the defence of the sentenced person stems out from the day when the judgment was served on the sentenced person and in this case, the defence filed an appeal after legal time limit had expired."*
29. Furthermore, the Court also recalls the reasoning of the Supreme Court in regards to Applicant's allegations on *"possible misuse when serving the Judgment"*. The Supreme Court held as follows:
- "However, the issue highlighted within the request for protection of legality, is not an issue which can be reviewed by this Court. Other remedies should be used in order to confirm any possible misuse when serving the Judgment."*
30. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).
31. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December

2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution.

32. The Constitutional Court can only consider whether the evidence has been presented in a correct a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
33. In relation to this, the Court notes that the reasoning in the Judgment of the Supreme Court referring to Applicant's allegations that he was not served with the Judgment of the Basic Court in compliance with provisions of the criminal procedure law is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Court of Appeal and the Basic Court have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
34. In the present case, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violations of the constitutional rights invoked by the Applicant.
35. Consequently, the Referral is manifestly ill-founded and should be declared inadmissible pursuant to Rule 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Rules 36 (2) b) and 56 (b) of the Rules of Procedure, on 9 December 2014, unanimously

DECIDES


- I. TO REJECT the Referral as 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur


Snezhana Botusharova



President of the Constitutional Court


Prof. Dr. Enver Hasani