



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

Pristina, 13 August 2015
Ref. No.: RK 824/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI187/14

Applicant

Met Gashi

**Constitutional review of the Judgment, Pml. no. 192/2014, of the
Supreme Court, dated 20 October 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and,
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Met Gashi (hereinafter: the Applicant), from Prizren, represented by Mr. Rexhep Kabashi, a practicing lawyer from Prizren.

Challenged decision

2. The challenged decision is the Judgment, Pml. no. 192/2014, of the Supreme Court of 20 October 2014.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court, by which Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 6 (Right to fair trial) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the "ECHR") were allegedly violated, because the regular courts restricted his rights to present evidence and to hear witnesses.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 31 December 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 13 January 2015 the President of the Court, by Decision No.GJR. KI187/14 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision No.KSH. KI187/14 appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 20 January 2015 the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 25 June 2015 the Applicant submitted additional documents.
9. On 2 July 2015 the Review Panel endorsed the Report of the Judge Rapporteur and unanimously recommended to the Court the Referral to be declared inadmissible.
10. On 3 August 2015 the Resolution on Inadmissibility was distributed to the Judges of the Court.

Summary of facts

11. On 18 March 2014 the Basic Court in Prizren-General Department (Judgment P. no. 430/12) found the Applicant guilty of having committed a criminal offence under the Criminal Code of the Republic of Kosovo and sentenced him to imprisonment. In the minutes of the main trial, it is noted that the Applicant

proposed to hear two witnesses for the purpose of confirming the relationship between the Applicant and the damaged party, why they had met and what had been concluded in that meeting. The first instance court rejected the Applicant's proposal because the proposed witnesses were not present during the meeting and cannot objectively know the circumstances by which the Applicant acted in report with the damaged party.

12. The Applicant filed an appeal with the Court of Appeals against the Judgment of the Basic Court because of essential violations of criminal procedure provisions, erroneous and incomplete ascertainment of the factual situation, and a violation of criminal law and the imposed sanction.
13. On 22 July 2014 the Court of Appeals (Judgment PAI. no. 709/2014) rejected the appeal as unfounded and upheld the Judgment of the Basic Court. The Court of Appeals held that the Judgment of the first instance court does not contain the alleged violations and that the judgment is clear and reasoned, containing the decisive facts that characterize the criminal offence.
14. The Applicant filed a request for protection of legality with the Supreme Court against the Judgment of the Basic Court and the Judgment of the Court of Appeals, because of essential violations of the criminal procedure provisions and of the criminal law. The Applicant, for the first time, claimed that the first instance court had refused to hear two proposed witnesses by the Applicant and the proposal of the Applicant to extract the communication messages between the Applicant and the injured party.
15. On 20 October 2014 the Supreme Court (Judgment Pml. no. 192/2014) rejected as ungrounded the request for protection of legality filed by the Applicant. The Supreme Court held that from the minutes of the main trial it is noted that the first instance court had provided well-founded reasons for rejecting the proposal of the Applicant to hear two witnesses and to extract the communication messages *"[...] because of the fact that by the case files, it has been confirmed that the witness [...] was the person who introduced the convict to the injured and that in his office was discussed on development of the livestock, distribution of meat in the factory and on the development project which was in possession of the convict, and he had such projects but he did not see them in person. Also, by the statement of the witness [...], was ascertained the fact that purpose of the meeting of the convict with the injured party allegedly was related to an European Union program on development of agriculture, respectively the livestock and that following this meeting, which was also confirmed by the witness [...], came to an agreement whereby the convict and the witness [...] would ensure the livestock farmers who would have increased production of animals to process the meat at the factory built by the International Community on the Ereniku's land, however through the convicted. Furthermore, by the receipt which are part of the case files, it has been confirmed the bank transfers from 12 March 2007 until the end of December 2008 whereby were transferred the amounts [...] by the injured party to the convict which were never paid back. Furthermore, by the case files has been verified that observing that projects which have been discussed, have no signs to be implemented, the injured party concluded with the convicted party a "debt" pay back agreement. Based on all these verified facts*

by the first instance court and by the second instance court, derives that allegations from the request of the convict and his defense counsel, are ungrounded.”

Applicant’s allegations

16. The Applicant alleges that Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 (Right to fair trial) of the ECHR were violated, because:
 - a. the first instance court had rejected the Applicant’s proposal to hear two witnesses and to extract the communication messages; and
 - b. the first instance court had restricted the Applicant’s right to question the witnesses.

Admissibility of the Referral

17. The Court notes that, in order to be able to adjudicate the Applicant’s Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

18. In this respect, the Court refers to Article 48 of the Law, which provides:

“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”.

19. In addition, Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, provide:

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:

(a) the referral is not prima facie justified, or

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

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

(d) the Applicant does not sufficiently substantiate his claim;

20. The Court notes that in the present case the Applicant complains that the regular courts had rejected his proposals to hear two witnesses, to extract the

communication messages between the Applicant and the injured party and that the first instance court had restricted his right to question the witnesses.

21. In this respect, the Court notes that as a general rule it is for the regular courts to assess the evidence before them as well as the relevance of the evidence which the accused seeks to adduce (see Case of *Laska and Lika v. Albania*, Applications nos. 12315/04 and 17605/04, Judgment of 20 April 2010). With regards to the calling and examination of witnesses, it does not give an accused person an unlimited right to obtain the attendance of witnesses in court and the accused must provide reasons for the calling and examination of witnesses. The regular courts are free to refuse to call witnesses proposed by the defence, for instance, on the ground that the court considers their evidence unlikely to assist in ascertaining the truth (see Case of *Huseyn and Others v. Azerbaijan*, Applications nos. 35485/05, 45553/05, 35680/05 and 36085/05, Judgment of 26 July 2011).
22. The Court reiterates that it is not to act as a court of fourth instance, with respect to the decision rendered by the Supreme Court. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. The Constitutional Court's task is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way evidence was taken, (see Case of *Khan v. the United Kingdom*, Application no. 35394/97, Judgment of 12 May 2000).
23. In this respect, the Court notes that the Applicant made a request before the Basic Court to hear two witnesses and to extract the communication messages. This was rejected by the Basic Court for the abovementioned reasons.
24. The Applicant then raised, for the first time, before the Supreme Court and not before the Appeals Court the claim that the first instance court had refused to hear two proposed witnesses by the Applicant and the proposal of the Applicant to extract the communication messages between the Applicant and the injured party. The Supreme Court gave reasons to the Applicant's allegations in its judgment by stating that the first instance court had reasoned the rejection of the proposal of the Applicant.
25. Moreover, the Supreme Court noted that the Applicant has had ample opportunity to defend himself throughout the regular court proceedings.
26. In the present case, the Court does not find that the relevant proceedings before the Supreme Court were in any way unfair or arbitrary. Moreover, the Court finds that the Applicant has not clearly shown how any of the witnesses whom the Basic Court refused to examine would have been able to assist the Applicants' defence against the specific accusations put forward against him. It is the duty of the Applicant to attach the necessary documents to his Referral and not the duty of the Court to build the case, or to request documents *ex officio*, which would eventually be in his favor.
27. The Court concludes that the Applicant's referral is manifestly ill-founded pursuant to Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure.

FOR THESE REASONS

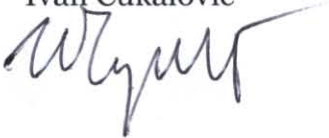
The Constitutional Court pursuant to Article 48 of the Law and Rules 36 (1) (d) and 36 (2) of the Rules of Procedure and Rule 56 (b) of the Rules of Procedure, on 13 August 2015, unanimously

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Applicant;
- 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

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

