



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

Prishtina, 27 March 2014
Ref. no.: RK580/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI215/13

Applicant

Selim Emërllahu

Constitutional Review of the “non-application of the Law on Amnesty”

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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is filed by Mr. Selim Emërllahu (hereinafter: the Applicant), village of Ramjan, Municipality of Viti.

Challenged decision

2. The applicant does not challenge any decision of public authorities.

Subject matter

3. The subject matter is “non-application of the Law on Amnesty”.

Legal basis

4. The Referral is based upon Articles 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, (hereinafter: the Law) and Rule 56 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 20 November 2013, the Applicant filed his referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 December 2013, the President of the Court, by Decision No. GJR. KI215/13 appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI215/13 appointed the Review Panel, composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 11 February 2014, having considered the report of the Judge Rapporteur Ivan Čukalović, the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

8. By a final Judgment of the District Court in Gjilan, Ap. no. 23/2012, of 12.03.2012, the Applicant was convicted to imprisonment of three (3) months due to co-perpetration of criminal offence of Election Fraud, as per Article 180, in conjunction with Article 23 of the CCK.

Applicant’s allegations

9. The Applicant claims that “*We are aware that the Law on Amnesty has also included this kind of criminal offenses, in relation to which the Basic Court in Gjilan branch in Viti has rendered to the police the order for serving the sentence, but the Law on Amnesty that amnesties this criminal offense has not been applied, due to the fact that the offense as it is claimed was perpetrated in 2007*”.
10. The Applicant requests from the Constitutional Court “*We seek from you as the above mentioned title and as the President of the Supreme Court of the R. of*

Kosovo to notify us on this matter as well as the Competent Court and the Kosovo Police and if necessary the probation service“.

Admissibility of the Referral

11. The Court notes, that in order to be able to adjudicate the Applicant’s Referral, it needs first to 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.
12. In this regard, the Court refers to the Article 113.7 of the Constitution, which provides:

“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”.
13. The Court also refers to Article 47 of the Law, which provides:

“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.
14. Furthermore, the Court must also take into consideration the Rule 36 (1) a) of the Rules of Procedure, which provides:

(1) The Court may only deal with Referrals if:
...
a) *all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted”.*
15. The Court wishes to reiterate that the rule of exhaustion of legal remedies exists to provide relevant authorities, including the courts, with an opportunity to prevent or rectify the alleged violations of the Constitution. The rule is based upon the assumption that the legal order in Kosovo shall provide effective legal remedies to violations of constitutional rights (see, *mutatis mutandis* ECHR, Selmouni vs. France, no. 25803/94, decision of 28 July 1999).
16. This Court has provided the same reasoning when rendering the Decision of 27 January 2010, on inadmissibility, on the basis of non-exhaustion of all legal remedies in the case AAB-RIINVEST University LLC, Prishtina vs. Government of the Republic of Kosovo, case no. KI41/09, and the Decision of 23 March 2010, in the case Mimoza Kusari-Lila vs. Central Election Commission, case no. KI73/09.
17. Having this in mind, that on the basis of documentation submitted to the Constitutional Court by the Applicant, by which he directly addresses the Constitutional Court, without filing “... *the request by the convicted person, perpetrator of the criminal offence*”, in compliance with Article 7, paragraph 1.2 of the Law on Amnesty, no. 2013/04-L-209, in order that the competent court could render a ruling.

18. Likewise, the Applicant has not exhausted the possibility of filing a complaint against the decision on amnesty, to which the Applicant is entitled to, in compliance with Article 10, paragraph 1, of the Law on Amnesty, no. 2013/04-L-209, which provides:

„1. Against a decision for amnesty an appeal may be initiated in the Court of Appeals within seven (7) days from the day the decision was rendered. The Court of Appeals shall render a decision for the appeal three (3) days from the day that it received the request for appeal”.

19. Therefore, the Applicant has not exhausted all legal remedies provided by the Law on Amnesty, no. 2013/04-L-209, for him to be able to file a referral with the Constitutional Court, and therefore, it must declare the Referral inadmissible, in compliance with Article 47.2 of the Law, and Rule 36 (1) a) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113, paragraph 7 of the Constitution, Articles 20 and 47 of the Law and Rule 36 (1) a) of the Rules of Procedure, in its session held on 11 February 2014, 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

Ivan Čukalović



Prof. Dr. Enver Hasani