



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

Pristine, 12 December 2011
Ref. No. RK173/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 42/11

Applicant

Dede Bala

**Constitutional Review of the Judgments of, the Municipal Court of Pristina
P.No.2630/2006, the District Court of Pristina Ap.No 242/2007 and the
Supreme Court of Kosovo Pkl.nr.101/2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Dede Bala from the Municipality of Gjakova.

Subject Matter

2. The Applicant claims a violation of Article 7.1 [Values], Article 31 Paragraph [Right to a fair and impartial trial] in conjunction with Articles 6 and 13 of the European Convention on Human Rights (hereinafter the "Convention"), Article 54 [Judicial Protection of Rights], and Article 102 Paragraph 2 [General Principles of Judicial System] of the Constitution of the Republic of Kosovo (hereinafter the "Constitution"). The Applicants also alleges violation of Article 1 Protocol No.1 to the Convention.

Legal Basis

3. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure)

Challenged court decisions

4. In his referral the Applicant challenges the Judgment of the Municipal Court of Pristina P.No.2630/2006 dated 26 March 2007. He also challenges the Judgment of the District Court of Pristina Ap.No.242/2007 dated 27 May 2010 and the Judgment of the Supreme Court of Kosovo Pkl.nr.101/2010 dated 30 December 2010.

Procedure before the Court

5. On 28 February 2011 the Applicant submitted a letter with arguments for appeal to the Constitutional Court of Kosovo (hereinafter the "Court").
6. On 24 March 2011 the Applicant submitted the Referral to the Court.
7. In his Referral, the Applicant is also seeking an interim measure to suspend his prison sentence, until such time as the Constitutional Court decides and evaluates the constitutionality of the challenged decisions.
8. On 18 April 2011 the President appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Kadri Kryeziu.
9. On 29 November 2011, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

10. On 26 March 2007 the Municipal Court of Pristina in its decision, P.No.2630/2006, found the Applicant guilty of committing tax evasion under Article 249 Paragraph 2, in conjunction with Paragraph 1 of the Provisional Criminal Code of Kosovo (UNMIK/REG/2003/25, hereinafter: the "PCCK").
11. The Municipal Court sentenced the Applicant to one year imprisonment to serve after the Verdict becoming final and binding , and fined him €12,000 which he had to pay within one year from the date of the Verdict becoming final and binding, in 12 equal instalment. The sentence was also to cover the time the Applicant spent in detention from 11 December 2006 through 26 March 2007.

12. The Applicant was also obliged to compensate the injured party for the material damage by paying the amount of €31,914.17 within 15 days of the Verdict becoming final.
13. The Municipal Court found that the material benefit acquired by the committing of the criminal offense by the accused amounted to at least €212,761.15. In this case confiscation of the gain made was not possible so the difference between the net gain and the damages (€180,846.98) was to be paid to the Kosovo Consolidated Budget.
14. The Applicant appealed the Judgment to the District Court. He alleged, that there were procedural violations in contradiction with the provisions of Article 403, Paragraph 1, items 9 and 12, Paragraph 2 items 1 and 2, of the Provisional Criminal Procedure Code of Kosovo (UNMIK/REG/2003/26 hereinafter PCPCK). He reached this conclusion because, he was taken into questioning by an officer of the Sector for Investigation of Economic Crimes and Corruption in Pristina, prior to the presentation of evidence, whereby he claims he had his statement truncated and he was precluded from the use and presentation of material evidence during questioning since the day of the arrest and onward. He claimed the verdict was contradictory and does not contain reasons on the decisive facts, the issuance of an indictment was not preceded by investigative actions which, he believed would acknowledge in a righteous and complete manner the factual state, and his rights to a defence were violated since he was not allowed to use documentation that he had at his disposal, to the benefit of his defence, from the moment of his arrest.
15. The Applicant also claims there were violations of Article 404 Paragraph 1 items 1, 2, 4 and 5 of the PCPCK because; the act for which he was prosecuted was not envisaged as a criminal offence under UNMIK Regulation 2000/20 on Tax and Administration which was in force until 30 April 2005. A criminal offence under Article 15 Paragraph 1 of the PCCK requires intention to evade or avoid tax which the Applicant did not have. The verdict was based, among other things, on the provisions of Article 71 of the PCPCK which envisages the possibility for the issuance of penalties on the amalgamation of criminal offences, whereas it is known that the Applicant was only accused of one criminal offence, the conduct of which has not been proven by the Municipal Court and finally the Municipal Court has established the factual situation incorrectly.
16. On 27 of May 2010 the District Court of Pristina in its decision Ap.No.242/2007 partially approved the appeal and amended the sentence with regard to the verdict on penalty, consequently the Supreme Court reduced the Applicant's sentence to nine months. In justifying this decision the Supreme Court claimed that the original verdict of the Municipal Court did not assess all the mitigating circumstances at the required level, in particular that the Applicant had a family and had no previous criminal record.
17. The District Court held that; the challenged verdict was concrete and clear, there were no contradictions within itself and the reasons presented in the confronted verdict. The District Court did not find that in the confronted verdict there were fundamental violation of the PCPCK, the factual state was corroborated in a rightful and complete manner. According to the conclusion and opinion of the Court the financial expert and the Municipal Court rightly applied the criminal law when it concluded that the actions of the Applicant included elements of the criminal offence of tax evasion under Article 249 Paragraph 2 in relation to Paragraph 1 of the PCCK. On this basis the rest of the verdict remained unchanged.

18. On 12 August 2010 the Applicant submitted a request for protection of legality based again on violations of Article 403 Paragraphs 1 and 12 as well as Paragraph 2, item 1 of the PCPCK and Article 404 Paragraph 1 items 1, 2, 4 and 5 of the PCPCK.
19. The Supreme Court of Kosovo, by its Judgment Pkl.nr.101.2010, dated 30 December 2010, rejected the Applicant's request for protection of legality. The Supreme Court held that; the Applicant's complaint that he was taken in for questioning by officers of the Section for Investigating Economic Crimes and Corruption before any evidence was provided was not a violation of Article 403 Paragraph 1, subparagraph 9, none of the evidence was classed as unacceptable and the claims that the Applicant's right to protection was violated turned out to be ungrounded because the minutes of the Court hearing showed that he had enjoyed all rights provided to him by law and that he was given the opportunity to defend himself through all stages of the criminal procedure.
20. The Supreme Court held that while the crime of tax evasion is not foreseen under Regulation 2000/20 on Tax and Administration it is foreseen under Article 249 Paragraph 2 of the PCKK. It was also covered by the Criminal Law of Kosovo (hereinafter "CLK") which was applicable until the year 2004, when the PCKK was adopted. However since the PCKK foresees a more lenient sentence for the crime of tax evasion than the CLK, this was applied, in conformity with the applicable laws, as the most favourable law for the accused.
21. The Applicant's claim that he did not know that such actions were prohibited because he only completed elementary school and was legally and factually misled, according to the Supreme Court, are absurd due to the fact that the Defendant first claimed that an inapplicable law was applied and that the resolution was grounded on unacceptable evidence. He then claimed that there was no confirmation that the accused did commit the crime, only to conclude in the end that the accused did in fact evade taxes, but was misled, which is completely contradictory.

Applicant's allegations

22. The Applicant alleges that there was a violation of Article 7 Paragraph 1 of the Constitution because the courts failed to respect the principles of compliance with human rights and freedoms and rule of law, which the constitutional order of the Republic of Kosovo is based on.
23. The Applicant claims that the courts failed to provide full and proper support to the Applicant in the protection of his rights as guaranteed by the Constitution, namely they failed in properly judging the criminal/legal dispute. According to him, the courts therefore acted in contradiction with the provisions of Article 31, Paragraph 1 and 2 of the Constitution in conjunction with Article 6 and 13 of the European Convention on Human Right (hereinafter "ECHR").
24. The Applicant alleges that the courts failed to offer proper judicial protection to the Applicant, as guaranteed by Article 54 of the Constitution.
25. The Applicant claims that the Courts violated Article 102 Paragraph 2 of the Constitution which states that: "The judicial power is unique, independent, impartial..." because the courts made decisions in opposition with the law and to the detriment of the Applicant.

Preliminary assessment of interim measure

26. As regards the Applicant's request that the Constitutional Court issue an interim measure to suspend his prison sentence, the Court considers that the submissions of the Applicant do not contain sufficient evidence or reasons, which might justify the granting of an interim measure.
27. In particular, the Applicant has not shown, as required by Article 27 of the Law, that he will suffer irreparable damage, if an interim measure is not granted. Moreover, it has not been established that the imposition of interim measures would be in the public interest.
28. Therefore, the requirements for the imposition of interim measures are not satisfied and the Applicant's request must be rejected.

Preliminary assessment of admissibility

29. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court first needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.
30. In this respect the Court recalls that according to Rule 36(1)(c) "*the Court may only deal with Referrals if the Referral is not manifestly ill-founded.*"
31. Rule 36 (2) of the Rules of Procedure further prescribes that:
"The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:
 - a) *the Referral is not prima facie justified, or*
 - b) *when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
 - c) *when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*
 - d) *when the Applicant does not sufficiently substantiate his claim;*"
32. The Applicant has not submitted any prima facie evidence indicating a violation of his rights under the Constitution (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
33. The Court finds the Applicant's claims for, *inter alia*, the finding of a violation of Article 31 of the Constitution in conjunction with Articles 6 and 13 of the Convention as well as Article 1 Protocol No.1 of the Convention entirely unsubstantiated.
34. The Court notes that the Supreme Court addressed the Applicant's allegations in its Judgment Pkl.nr.101.2010 of 30 December 2010. Having taken this into consideration the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v Lithuania, ECtHR Decision as to the Admissibility of Application no.17964/06 of 30 June 2009).
35. The Court concludes, therefore, that the Referral is manifestly ill-founded, within the meaning of Article 36 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 27 of the Law and Rule 36 of the Rules of the Procedure unanimously:

DECIDES

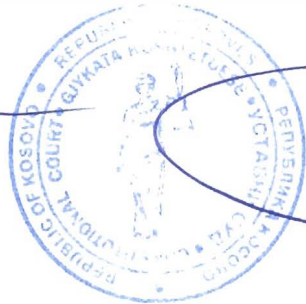
- I. TO REJECT the request for interim measure;
- II. TO REJECT the Referral as Inadmissible;
- III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court



Snezhana Botusharova



Prof. Dr. Enver Hasani