



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

Pristina, 24 July 2014
Ref. No.:RK684/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI58/14

Applicant

Shefqet Hasimi

**Constitutional review of the Decision of the Court of Appeal,
KA. no. 89/2014, of 6 February 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Shefqet Hasimi (hereinafter: the Applicant), with residence in Prishtina.

Challenged decisions

2. The challenged decision is the Decision of the Court of Appeal, KA. no. 89/2014, of 6 February 2014, which was served on the Applicant on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Court of Appeal, KA. no. 89/2014, of 6 February 2014, which upheld Decision, Reg. no. 53490/13, of 20 January 2014 of the Basic Court in Prishtina, General Department, Division for Minor Offence (hereinafter: the Basic Court in Prishtina). The Basic Court in Prishtina by the aforementioned Decision had found the Applicant guilty of a minor offence in the traffic.

Legal basis

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

Proceedings before the Constitutional Court

5. On 31 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 April 2014 the President by Decision No. GJR. KI58/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision No. KSH. KI58/14, appointed Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 28 April 2014 the Constitutional Court notified the Applicant on the registration of the Referral. On the same date, the Court submitted a copy of the Referral to the Court of Appeal.
8. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding certain allegations raised against him.
9. On 1 July 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 Case

10. On 23 August 2013, the Police Station South in Prishtina filed with the Basic Court in Prishtina the request for initiation of minor offence procedure against the Applicant for committing a minor offence (driving the vehicle without using the safety belt) in violation of Article 198, paragraph 1 of the Law No. 02/ L- 70 on the Road Traffic Safety.

11. On 23 September 2013, the Basic Court in Prishtina (Decision Reg. no. 53490/13) found the Applicant guilty of the minor offence (driving a vehicle without using the safety belt) under Article 198, paragraph 1 of the Law on the Road Traffic Safety (hereinafter: LRTS) and fined him in the amount of 35 (thirty five) euro.
12. Against the abovementioned Decision of the Basic Court in Prishtina, the Applicant filed an appeal with the Court of Appeal.
13. On 6 November 2013, the Court of Appeal (Decision, KA. No. 1155/2013) approved the Applicant's appeal as grounded and quashed the Decision (Reg. no. 53490/13, of 23 September 2013) of the Basic Court in Prishtina, by remanding the case to the first instance court for retrial and reconsideration.
14. The Court of Appeal concluded that the Basic Court in Prishtina found the Applicant guilty of a minor offence under Article 198, paragraph 1 of the LRTS, driving the vehicle without using the safety belt, while the abovementioned court did not render any decision regarding two other minor offences, namely driving the vehicle without turning the lights on and improper behavior towards the police officer. Consequently, the Court of Appeal decided that the Basic Court in Prishtina should proceed with the completion of procedure and decide on all minor offences.
15. On 5 December 2013, the Applicant filed a request with the President of the Basic Court in Prishtina for exemption of the Judge from the minor offence procedure, by claiming that the latter showed partiality during the procedure.
16. On 20 December 2013, the President of the Basic Court rejected the Applicant's request.
17. On 20 January 2014, the Basic Court in Prishtina (Decision, Reg. no. 53490/13), found the Applicant guilty of minor traffic offence, under Article 198, paragraph 1 of the LRTS, driving the vehicle without using the safety belt. This Court, further suspended the minor offence procedure against the Applicant, regarding the minor offence under Article 122, paragraph 1 of the LRTS (driving the vehicle without using the lights), while regarding the improper behavior towards the police officer, it concluded that this action cannot be qualified as a minor offence, and issued a warning to the Applicant for the behavior.
18. Against the abovementioned Decision of the Basic Court in Prishtina, the Applicant filed an appeal with the Court of Appeal with allegation of erroneous application of substantive law, erroneous determination of factual situation and violation of the provisions of the minor offence procedure.
19. On 6 February 2014, the Court of Appeal (Decision, KA. no. 89/2014) rejected the Applicant's appeal as ungrounded and upheld the Decision of the Basic Court in Prishtina (Reg. no. 53490/13 of 20 January 2014).
20. The Court of Appeal concluded as it follows:

[...]

“The panel assessed that the first instance court during implementation of the minor offence procedure has not committed violation of procedural provisions, namely the erroneous application of the substantive law, while the fine imposed on the defendant Shefqet Hasimi, pursuant to Article 7 of the LT, in the amount of 35 (thirty five) €, is considered to be set based on the degree of the responsibility, the nature of the committed offence and the circumstances under which the minor offence was committed, therefore in this respect there is no legal ground for modification of the challenged ruling”.

21. On 26 February 2014, against the Decisions of the Basic Court in Prishtina (Reg. no. 53490/13 of 20 January 2014) and the Court of Appeal (KA. no. 89/2014 of 6 February 2014), the Applicant filed a request with the Office of the State Chief Prosecutor for initiation of a request for protection of legality.
22. On 1 July 2014, the State Prosecutor in his Notification (KMLP. I. No. 2/14) considered that there is no legal ground for initiation of the request for protection of legality.

Applicant’s allegations

23. The Applicant addresses the Court as following:

“In this Referral addressed to the Constitutional Court of Kosovo, complaining against the decisions, rendered by violating the Constitution, by violating the citizens’ rights to be equally treated before the law and the Constitution and not to be discriminated and brutally violating the law. When pronouncing the sentence, there is no evidence that I Shefqet Hasimi, the officer in the Ministry of Justice, violated the law on 09.07.2013. I propose to the Panel to consider my referral in a careful manner, in order to find that there is a violation of the Law-the Constitution and in particular when the Panel of the Court of Appeal decides twice on the same matter”.

24. The Applicant does not specify in his referral what rights and freedoms have been violated and what constitutional provision in particular supports his referral.

Admissibility of the Referral

25. 26. In order to be able to adjudicate the Applicant’s referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
26. In this respect, Article 113, paragraph 7 of the Constitution 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.”

27. The Court also takes into account 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”.

28. As it is stated above, the Applicant has addressed the Court with the request, to hold that [...] *“I propose to the Panel to consider the referral in a careful manner, in order to find that there is a violation of the Law-the Constitution and in particular when the Panel of the Court of Appeal decides twice on the same matter”.*
29. In this respect, the Court notes that the Applicant does not state in his Referral what right has been violated and what Article of the Constitution supports his referral.
30. The Court also reiterates that the Constitutional Court cannot replace the role of the regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, case *Garcia Ruiz v. Spain*, ECHR, Judgment of 21 January 1999; see also case KI70/11 of Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).
31. As regards to the Applicant’s allegation cited in the paragraph 28, the Court notes that the reasoning provided in the Decision of the Court of Appeal is clear and, after reviewing the entire proceedings, the Court has also found that the proceedings before the Court of Appeal and the Basic Court in Prishtina, have not been unfair and arbitrary (see case *Shub v. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
32. Moreover, the Applicant has not submitted any *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution (see case *Vanek v. Slovak Republic*, ECHR, No. 53363/99, Decision of 31 May 2005). The Applicant has not specified what rights guaranteed by the Constitution support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.
33. Consequently, the Court considers that the Referral is manifestly ill-founded pursuant to Rule 36 (2) a) and d) of the Rules of Procedure, which provides: *“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: (a) the Referral is not prima facie justified; and (d) when the Applicant does not sufficiently substantiate his claim”.*

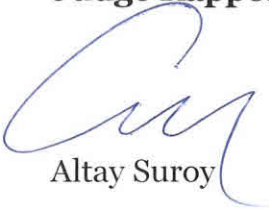
FOR THESE REASONS

The Constitutional Court, pursuant to Article 48 and Rules 36 (2), a) and d) and 56 (2) of the Rules of Procedure, on 1 July 2014, unanimously:

DECIDES

- I. TO DECLARE 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



Altay Suroy



President of the Constitutional Court



Prof. Dr. Enver Hasani