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

Prishtina, on 2 February 2015
Ref. no.:RK764/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI77/14

Applicant

Alban Rexha

Constitutional review of the Judgment Pkl. no. 1/2010 of the Supreme Court of Kosovo, of 3 December 2010

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 was submitted by Mr. Alban Rexha from Peja (hereinafter: the Applicant), represented by Mr. Mahmut Halimi, a practicing lawyer.

Challenged decision

2. The Applicant challenges the Judgment, Pkl. No. 1/2010 of the Supreme Court of Kosovo of 3 December 2010 which rejected his request for protection of legality.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly infringed the right to a fair and impartial trial as well as general principles of the judicial system, guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), the European Convention of Human Rights and Freedoms and the International Covenant on Civil and Political Rights.

Legal basis

4. The Referral is based on Article 113.7 of 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 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 30 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 6 March 2014 the President of the Court by Decision, No. GJR. KI77/14 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur and by Decision, No. KSH. KI77/14 appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.

7. On 23 May 2014 the Court notified the Applicant and the Supreme Court of the registration of the Referral.

8. On 18 June 2014 the Court also notified the Basic Court in Prishtina of the registration of the Referral and requested that it submits to the Court the return receipt as evidence, confirming the date when the Judgment Pkl. No. 1/2010, of 3 December 2010 of the Supreme Court was served on the Applicant.

9. On 10 July 2014 the Court received the reply from the Basic Court in Prishtina.

10. On 16 September 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 26 June 2007, the District Court in Prishtina, by Judgment P. No. 667/06 sentenced the Applicant to a long-term imprisonment of 23 (twenty three) years for committing in co-perpetration, the criminal offence of theft in nature of

robbery, robbery and unauthorized ownership, control, possession or use of weapons.

12. The Applicant filed a request for protection of legality with the Supreme Court against the Judgment, P. No. 667/06 of the District Court of 26 June 2007, Judgment, Ap. No. 488/2007 of the Supreme Court of 11 June 2008 and Judgment, API. No. 5/2008 of the Supreme Court of 11 June 2009. The Applicant requested the Supreme Court to: *"remand the case for retrial to the first instance court or to impose a much more lenient sanction on him* [the Applicant]".

13. On 3 December 2010, the Supreme Court of Kosovo by Judgment, Pkl. No. 1/2010 rejected the Applicant's request for protection of legality as ungrounded and held that:

> *"[...] sufficient factual and legal reasons have been provided, which are recognized by this court as fair and lawful. The first instance court assessed the evidence pursuant to Article 387, paragraph 2 CPCK* [Criminal Procedure Code of Kosovo], *while for the contradictory evidence it acted pursuant to provisions of Article 396, paragraph 7 CPCK, by fully presenting which facts and for what reasons it considers them as proven or unproven. Upon considering the contradictory evidence, it analyzed all the evidence processed during the main hearing and in this regard it has presented its conclusions, which, the second instance court approved as correct, objective and lawful, so did the third instance and as such are also approved by this court.*
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> *It is true that a neuropsychiatric expertise against the convict Alban Rexha has not been conducted. The reasons for not doing so have been provided in the last paragraph of Judgment Ap. no. 488/2007 of 11.06.2008. Except for the proposal to conduct such expertise, no evidence was presented to the court which would show the psychical illness of the convict.*
>
> *[...]*
>
> *Considering the above, this court finds that there is no essential violation of the criminal procedure provisions pursuant to Article 403, paragraph 1, items 8, 12 and paragraph 2, item 1 of the CPCK, the provisions of the material law have been correctly applied, thus the requests for protection of legality have been rejected as ungrounded".*

Applicant's allegations

14. In his Referral, the Applicant alleges a violation of Article 31 [Right to Fair and Impartial Trial] and Article 102 [General Principles of the Judicial System], paragraph 2 and 3 of the Constitution; Article 6 [Right to a Fair Trial], paragraph 3, item d) of the European Convention on Human Rights; as well as Article 14, paragraph 1, item b) of the International Covenant on Civil and Political Rights.

15. The Applicant alleges that these rights have been violated because the regular courts have not approved his request, to undergo: *"a neuropsychiatric examination in order to obtain a professional scientific report whether the latter* [Applicant] *acted in a state of substantially diminished competence in the moment of the commission of the criminal offence."*

16. Finally, the Applicant concludes by requesting the Court to: *"annul all cited Judgments and remand the case for retrial".*

Admissibility of the Referral

17. The Court has to examine beforehand whether the Applicant has met the necessary requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

18. In this respect, the Court refers to Article 49 of the Law which provides:

> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. [...]".*

19. The Court also takes into account Rule 36 (1) (c) of the Rules of Procedure:

> *"(1) The Court may only deal with Referrals if:*
>
> *[...]*
>
> *c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant [...]".*

20. Based on the evidence of the case file, the Court notes that the Applicant filed his Referral on 30 April 2014, while the challenged decision, respectively Judgment Pkl. No. 1/2010 of the Supreme Court has been issued on 3 December 2010.

21. The Applicant, in the Referral form submitted to the Court, emphasizes that the Judgment (Pkl. No. 1/2010, of 3 December 2010) of the Supreme Court *"has not been yet served on the convicted (the Applicant)*". The Applicant did not reason at all this allegation in his Referral, nor he did presented any argument or evidence to prove that the courts did not deliver the said Judgment; he merely states so in the Referral form without any further explanation.

22. Furthermore, the Court notes that the Applicant, exactly on the same date when he submitted his Referral to the Court, i.e. on 30 April 2014, he addressed the Basic Court in Prishtina requesting to be served with the Judgment (Pkl. No. 1/2010, of 3 December 2010) of the Supreme Court, by claiming that he did not receive a copy of the said Judgment.

23. In this respect, the Court notes that even though the Applicant claims that the Judgment (Pkl. no. 1/2010, of 3 December 2010) of the Supreme Court was not served on him, he submitted the same to the Court together with his Referral.

24. Based on the foregoing, the fact that the Applicant is currently serving his sentence because the regular court decisions became final, the fact that the Applicant has submitted to the Court the Judgment which he claims that was not served to him, the Court will consider the date when the Judgment was adopted as the date of service on the Applicant, respectively 3 December 2010.

25. According to this, it results that the Applicant submitted his Referral to the Court after the expiry of legal deadline of four months, as provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, respectively about three (3) years and four (4) months after the legal deadline.

26. The Court recalls that the objective of the four months legal deadline under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures is to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to challenge (See case *O'LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECtHR, Decision of 25 August 2005).

27. However, even if it is presumed that the Applicant has submitted the Referral within the time limit as provided by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, the Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments applicable in the Republic of Kosovo. As a result, the Constitutional Court cannot therefore act as a "fourth instance court (see case, *Garcia Ruiz v. Spain*, No.30544/96, ECtHR, Judgment of 21 January 1999; see also case. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011).

28. As mentioned above, in substance, the Applicant alleges that the regular courts have violated his rights with regard to a fair and impartial trial by not approving his request for "*a neuropsychiatric examination*". The Applicant alleges that such an examination was necessary to prove "*whether he was under the condition of substantially diminished capacity at the moment of the commission of the criminal offence*"

29. From the evidence submitted together with the Referral it can be seen that the Applicant has exhausted all legal remedies available and that the regular courts considered and responded to his complaints regarding his request. In this respect, the Court recalls the reasoning of the Supreme Court on the request of the Applicant for a neuropsychiatric examination. In that case the Supreme Court stated:

> *„It is grounded the fact that a neuropsychiatric expertise against the trialed Alban Rexha has not been conducted. [...]Except one proposal, no evidence is presented to the court which would show the injury of the convict due to psychological illness. On the contrary the convict during all the stages of the procedure provides a logical defense, aimed at easing his situation during*

the criminal procedure, by claiming that he was constrained by the co-perpetrators."

30. In this respect, the Constitutional Court reiterates that it can only consider whether the evidence has been presented in a correct 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 ECHR adopted on 10 July 1991).

31. In this regard, the Court notes that the reasoning referring to the Applicant's allegations that he was not allowed a neuropsychiatric expertise, in the Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court also found that the proceedings before the District Court have not been unfair or arbitrary (see case *Shub v. Lithuania,* No.17064/06, ECHR Decision of 30 June 2009).

32. For the foregoing reasons, it results that the Referral is out of time and must be declared inadmissible pursuant to Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Rules 36 (1) (c) and 56 (b) of the Rules of Procedure, on 16 September 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**

Arta Rama-Hajrizi | Prof. Dr. Enver Hasani