



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

Prishtina, on 16 May 2016
Ref. no.:RK937/16

RESOLUTION ON INADMISSIBILITY

In

Case No. KI43/16

Applicant

Mehdi Kryeziu

**Constitutional review of Judgment Pml. No. 181/15 of the Supreme Court
of the Republic of Kosovo, of 6 November 2015**

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
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was filed by Mr. Mehdi Kryeziu, from Suhareka (hereinafter, the Applicant). He is represented by Mr. Naim Qelaj, a lawyer from Prizren.

Challenged Decision

2. The Applicant challenges the Judgment Pml. No. 181/15 of the Supreme Court, of 6 November 2015, which upheld the Judgments PAKR. No. 606/14 of the Court of Appeal, of 25 February 2015, and P. No. 11/13 of the Basic Court in Prizren, of 11 September 2014, finding the Applicant guilty of a criminal offence.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by Article 24 [Equality before the Law], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] and Article 33, paragraph 1 [The Principles of Legality and Proportionality in Criminal Cases] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) in conjunction with Article 6 [Right to Fair Trial] and Article 13 [Right to an Effective Remedy] as guaranteed by the European Convention on Human Rights (hereinafter, the ECHR).
4. In addition, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely "*to suspend the execution of the final Judgment of the Basic Court in Prizren P. No. 11/13 of 11.09.2014 [...]*".

Legal Basis

5. The Referral is based on Article 113 (7) of the Constitution, Articles 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law), and Rules 29 and 54 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

Proceedings before the Court

6. On 25 February 2016, the Applicant submitted the Referral to the Court through postal services.
7. On 14 March 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Ivan Čukalović (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
8. On 31 March 2016, the Court informed the Applicant about the registration of the Referral and requested him to file a power of attorney in case he chooses to be represented by Mr. Naim Qelaj, as stipulated in his Referral.
9. On 13 April 2016, the Applicant filed the requested document with the Court. On the same date, the Court sent a copy of the Referral to the Supreme Court.
10. On 14 April 2016, the Court deliberated on the case and decided to declare the Referral inadmissible and to reject the request for interim measures.

Summary of facts

11. Following a quarrel between three families, the Public Prosecution Office in Prizren issued an indictment against the Applicant under the suspicion of having committed the criminal offence of “*grave bodily injury*”.
12. On 11 September 2014, the Basic Court in Prizren (Judgment P. No. 11/13) found the Applicant guilty of committing the indicted criminal offence and sentenced him with 2 (two) years of imprisonment.
13. The Applicant filed an appeal with the Court of Appeal due to “*essential violation of the procedural law, substantial violation of the material law, wrong ascertainment of the factual situation and the imposed sanction*”.
14. On 25 February 2015, the Court of Appeal (Judgment PAKR. No. 606/14) rejected as ungrounded the Applicant’s appeal whilst confirming the Judgment of the Basic Court in Prizren. The Court of Appeal reasoned as follows:

“[...] The challenged judgment [...] is clear and concrete, contains the right and correct reasons on all the decisive facts of this criminal case. [...] the first instance court has correctly and completely ascertained the factual situation in regard to these defendants concerning the criminal case, from which it results that the actions of the defendants contain all of the objective and subjective elements of the criminal offences, for which they have been found guilty, therefore, the allegations [...] are ungrounded”.
15. The Applicant filed with the Supreme Court a request for protection of legality alleging “*essential violations of the procedural and material law*”.
16. On 6 November 2015, the Supreme Court (Judgment Pml. No. 181/15) partly accepted the Applicant’s request for protection of legality. It decided that there had been a substantial violation of the material law since the Applicant’s time spent in detention on remand was not calculated when imposing the sanction. In this respect, the Supreme Court modified the Judgments of the lower courts by calculating the time spent in detention by the Applicant. On the other hand, the Supreme Court rejected all other allegations submitted by the Applicant.
17. In more detail, the Judgment of the Supreme Court ascertained that “*[...] Mehdi Kryeziu was assigned on detention on remand since 02 August 2012 [...]. Since the time spent on detention on remand has not been calculated in the imposed sentence, the allegation on violation of criminal law is grounded, which allegation was approved and other judgments modified, as in the enacting clause of this judgment*”.
18. On the other side, the Supreme Court noted that “*[...] in the enacting clause 1.4., of the judgment of the first instance, have been described the actions of convicted Mehdi Kryeziu*”.
19. The Supreme Court considered that “*the fact that it has not been specified which object was used by the convicted Mehdi Kryeziu, represents no*

ambiguity, because in the present case, a grievous bodily harm was caused regardless of the specific object that was used”.

20. The Supreme Court also considered as *“ungrounded and not argued”* the alleged suspicions on the objectivity of the trial panel, as *“it does not belong neither to the basis of essential violations of provisions of criminal procedure nor to violations of law, and as such, was not approved”*. [...].
21. At the end, the Supreme Court concluded that the assessment of the circumstance of suffering of injuries as a mitigating circumstance, *“does not represent neither a procedural violation nor a violation of criminal law. It is in the discretion of the court/s which of the circumstances are evaluated as mitigating or aggravating in each concrete case”*.

Applicant’s allegations

22. The Applicant claims that the decisions of the regular courts have violated his rights to equality before the law, to fair and impartial trial, to legal remedies and the principles of legality and proportionality in criminal cases.
23. In fact, the Applicant considers that he faced a *“biased adjudication”* and as a result he alleges that his right to equality before the law was violated. The Applicant further considers that *“during the proceedings conducted before the first instance court, the accused [the Applicant] was denied the right to appear as an injured party”*.
24. The Applicant claims that the Judgment of the Basic Court in Prizren was *“contradictory, unclear and confusing”* and that *“the entire trial at all its stages”* has been conducted in violation of the abovementioned articles of the Constitution and the ECHR.
25. The Applicant also claims that the appeal trial panel was biased *“because the Court of Appeal requested the change of the trial panel for the retrial, when granting the appeal of the first three [other] accused as grounded”*, whereas for him and some other defendants it did not. He considers that the Court of Appeal endorsed *“selective justice”* in his criminal case.
26. Furthermore, the Applicant claims that the Judgment of the Supreme Court is *“unclear and confusing”* as it was delivered to his detriment *“despite the fact that it considered the request for protection of legality as grounded”*.
27. As a result, the Applicant alleges that the Basic Court in Prizren, the Court of Appeal and the Supreme Court have violated his right to fair and impartial trial.
28. The Applicant also claims that the Court of Appeal did not review his appeal and the allegations set forth by him. He further claims that his allegations *“were not analysed at all, thus confirming that the accused [the Applicant] was denied to have his appeal dealt with as an effective legal remedy”*. As a result, the Applicant alleges that the Court of Appeal violated his right to an effective legal remedy.

29. The Applicant further claims that he was not provided with a fair trial in compliance with the “*principle of legality*”, because the regular courts violated his right as protected by the principle of legality and proportionality in criminal cases.
30. In the end, the Applicant requests the Court to impose an interim measure in order to suspend the execution of the Judgment of the Basic Court in Prizren.

Admissibility of the Referral

31. The Court first examines whether the Applicant has met the requirements of admissibility as established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
32. In this respect, the Court refers to Article 113 (7) of the Constitution, which establishes:

“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.”

33. The Court also refers to Article 48 [Accuracy of the Referral] 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 a public authority is subject to challenge”.

34. Furthermore, the Court refers to Rule 36 (1) d) and (2) d) of the Rules of Procedure which foresees:

“(1) 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:

[...]

(d) the Applicant does not sufficiently substantiate his claim”.

35. The Court recalls that the Applicant challenges Judgment (Pml. No. 181/15, of 6 November 2015) of the Supreme Court, which upheld the Judgment (PAKR. No. 606/14, of 25 February 2015) of the Court of Appeal and the Judgment (P. No. 11/13, of 11 September 2014) of the Basic Court in Prizren. All these judgments determined that the Applicant was guilty of the criminal offence as indicted and that he should serve a 2 (two) year imprisonment sentence.
36. The Court recalls that the Applicant alleges that the regular courts have violated his right to equality before the law, to fair and impartial trial, to an effective legal remedy and the principle of legality and proportionality in criminal cases.

37. The Court notes that the Applicant claims a violation of his “*right to equality before the law*” and “*the principle of protection of legality and proportionality in criminal cases*”. However, the Applicant merely referred to Article 22 and 33 of the Constitution, claiming that the proceedings were “*biased*” and that he did not have a fair trial as “*required*” by the “*principle of legality*”. In fact, he did not provide any further reasoning or constitutional arguments as to how and why such rights and principles have been violated by the regular courts. In other words, the Applicant did not substantiate and prove his allegations on constitutional basis even though it is the burden of the Applicant to do so.
38. The Applicant also claimed a violation of his right to “*fair and impartial trial*”, alleging that the Judgment of the Basic Court in Prizren was “*contradictory, unclear and confusing*”. He further claimed that he was denied the right to “*appear as an injured party*” although he was also one of the individuals who suffered injuries in the quarrel between families. The Applicant lastly claimed that the trial panel of the Basic Court in Prizren was biased and that the Court of Appeal adopted “*selective justice*” by ordering the change of the trial panel for some defendants and not for him.
39. In this respect, the Court notes that the Basic Court in Prizren, the Court of Appeal and the Supreme Court have comprehensibly and extensively reasoned their decisions referring to the provisions of the law in force. Moreover, the regular courts have addressed the allegations of violation of procedural and material law that were submitted by the Applicant. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.
40. In relation to this, the Court recalls the reasoning of the Supreme Court in answering the Applicants’ allegation of violations of the material and procedural law allegedly committed by the Court of Appeal when it rejected his appeal. The Supreme Court, in relation to the Applicant’s allegation that the Judgment of the Basic Court in Prizren was allegedly contradictory, unclear and confusing, stated that: “*[...] the judgment of the first instance have described the actions of the convicted Mehdi Kryeziu. [...] The fact that it has not been specified which object was used by [him], represents no ambiguity*”.
41. Furthermore, the Court observes that, in relation to Applicant’s allegations as to why he was not recognized the status of an injured party, the Supreme Court reasoned that “*[...] almost all the injured in this event have suffered bodily injuries, so that they are also injured. Therefore the fact that upon deciding for the sentence of the convicted [the Applicant], this circumstance has not been evaluated as a mitigating circumstance does not represent neither a procedural violation nor a violation of criminal law. It is in the discretion of the court/s which of the circumstances is evaluated as mitigating or aggravating in each concrete case*”.
42. The Court further observes that in relation to the alleged “*selective justice*” endorsed by the Court of Appeal in respect of the changes ordered for the trial panel for some defendants, the Supreme Court maintained that “*the judgment of the first instance has been annulled for the part of criminal offence of*

murder for [three other defendants] and it has been requested to give the case to another trial panel. In relation to that, the defence of the convicted [the Applicant] alleges that the court of second instance has had suspicions on the objectivity of the trial panel, whereas the case should have been annulled completely, in respect to other convicted persons as well. However, this allegation is ungrounded and not argued, it does not belong neither to the basis of essential violations of criminal procedure not to violations of law, and as such, was not approved”.

43. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, the Court of Appeal or the Basic Court in Prizren, unless and in so far as such errors may have infringed the Applicant’s rights and freedoms protected by the Constitution (constitutionality).
44. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant does not agree with the outcome of the proceedings in his case does not give rise to an arguable claim of a violation of his rights as protected by the Constitution and the ECHR.
45. The Court notes that the Applicant had ample opportunities to present his case before the Basic Court in Prizren, the Court of Appeal and the Supreme Court. The alleged violations of the material and procedural law have been extensively and comprehensively addressed by all regular courts. The Court of Appeal and the Supreme Court have responded to all allegations of the Applicant as to whether the Judgment of the Basic Court in Prizren was fair or not. Both courts, the Court of Appeal and the Supreme Court, maintained that the Judgment of the first instance court was clear, not contradictory, impartial and that all decisive facts have been established correctly.
46. In fact, the Court further observes that the Supreme Court accepted one of the Applicant’s arguments of a substantial violation of the material law when it decided to correct the calculation of the time spent by the Applicant in detention. However, it concluded that the Court of Appeal and the Basic Court in Prishtina did not commit any other violations of law. In line with this, the Applicant’s argument that the Judgment of the Supreme Court decided to his detriment despite the fact that it approved his request for protection of legality is also ungrounded. It is ungrounded because the Supreme Court only partly accepted the Applicant’s request for protection of legality with regards to the calculation of the sentence by making it clear that all other allegations of the Applicant are “*ungrounded*”.
47. In this respect, it is important to note that the Constitutional Court 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 Applicants had a fair trial. (See *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).

48. The Court notes that the reasoning of the Judgment of the Supreme Court, referring to the Applicant's allegations of various violations of the law, is clear and the Court finds that the proceedings before the regular courts have not been unfair or arbitrary. (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
49. The Court recalls that the Applicant further claims a violation of his "*right to an effective legal remedy*", because his "*allegations were not analyzed at all*" by the Court of Appeal and thus he was "*denied the right to have his appeal dealt with as an effective legal remedy*". In this respect, the Court recalls that having an effective legal remedy does not equal to that remedy being necessarily successful for the Applicant, which is what he is mainly complaining about. The Court of Appeal has in fact addressed the allegations raised by the Applicant and has decided that "*[...] the challenged judgment [...] is clear and concrete, contains the right and correct reasons on all the decisive facts of this criminal case*".
50. In that connection, the Court reiterates that the European Court of Human Rights established the standards on what amounts to an effective legal remedy. These standards in principle do not require that each and every allegation brought by an Applicant should be dealt with. More importantly, such standards should not be translated to mean that an effective legal remedy is one which proves to be successful for the Applicant. To the contrary, that is not a condition required neither by the ECHR nor the Constitution. In accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Constitutional Court is bound to interpret human rights and fundamental freedoms consistent with the court decisions of the European Court of Human Rights.
51. The Court concludes that the Applicant's right to an effective legal remedy was respected. He filed an appeal with the Court of Appeal and a request for protection of legality with the Supreme Court. The allegations submitted by him were reviewed and it was decided that no violations of law were committed. The fact that the Applicant does not agree with the conclusion of the Court of Appeal or of the Supreme Court does not render the remedy ineffective as such.
52. For the foregoing reasons, the Court considers that the Applicant has not accurately explained how and why his rights and freedoms have been violated and that he has failed to substantiate his claims on constitutional basis.
53. Therefore, according to Article 113.7 of the Constitution, Article 48 of the Law and Rules 36 (1) d) and (2) d) of the Rules of Procedure, the Referral is manifestly ill-founded on a constitutional basis and thus is inadmissible.

Request for Interim Measure

54. The Applicant requested the Court to impose interim measure, namely to suspend the execution of the Judgment (P. No. 11/13, of 11 September 2014) of the Basic Court in Prizren, until deciding on the matter.
55. The Applicant did not provide any arguments or reasons as to why the interim measure should be granted by the Court. He merely requested it in his Referral.
56. In order for the Court to decide on an interim measure, pursuant to Rule 55 (4) and (5) of the Rules of Procedure, it is necessary that:
- “(a) the party requesting interim measures has shown (...), if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
- (b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*
- [...]
- If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.”*
57. As emphasized above, the Applicant has not shown a *prima facie* case on the admissibility of the referral. Therefore, the request for interim measure should be rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution; Article 47 of the Law; and Rule 36 (1) d) and (2) d), 55 (4) a) and (5), and 56 (3) and (5) of the Rules of Procedure, on 14 April 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for interim measure;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- V. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi