



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

Prishtina, on 28 May 2015
Ref. No.:RK 802/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI09/15

Applicant

Ramë Dauti

**Request for Constitutional Review of Judgment PML. no. 205/2014, of
the Supreme Court of Kosovo, of 19 November 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,
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Ramë Dauti with residence in Viti (hereinafter: the Applicant), who is represented by lawyer Mr. Rifat Abdullahi.

Challenged Decision

2. The Applicant requests the constitutional review of Judgment PML. no. 205/2014, of the Supreme Court of Kosovo, of 19 November 2014.

Subject Matter

3. The subject matter is the constitutional review of Judgment [PML. no. 205/2014] of the Supreme Court of Kosovo, of 19 November 2014, which allegedly violated the Applicant's rights and freedoms guaranteed by the Constitution, under: Article 30 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial], of the Constitution of the Republic of Kosovo, and the provisions of Article 6, and of Articles 2 and 4 of Protocol 7, of the European Convention on Human Rights (hereinafter: the ECHR).
4. At the same time, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an Interim Measure and to render a separate decision, by which the execution of the final judgment would be postponed until the constitutionality of the challenged judgment is reviewed.

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: 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 54, 55 and 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 29 January 2015, the Applicant submitted the Referral to the Court.
7. On 9 February 2015, the President of the Court, by Decision GJR. KI09/15, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI09/15, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
8. On 25 February 2015, the Court informed the Applicant and the Supreme Court about the registration of the Referral.
9. On 16 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral and the rejection of the request for Interim Measure.

Summary of Facts

10. On 26 August 2010, the Applicant filed criminal charges against a judge of the Municipal Court of Kamenica for the criminal offence of abusing official position or authority.

11. On 28 March 2011, the Municipal Public Prosecution Office in Gjilan rejected the criminal charges and at the same time filed an indictment against the Applicant for the criminal offense of making False Reports, under Article 306, paragraph 1 of the Criminal Code of Kosovo (hereinafter: the CCK).
12. On 28 April 2014, the Basic Court in Gjilan, Branch in Kamenica, rendered its Judgment [P. no. 462/2013], and sentenced the Applicant to imprisonment for 40 days.
13. The Applicant filed an appeal within the legal time limit with the Court of Appeal against Judgment [P. no. 462/2013] of the Basic Court in Gjilan, Branch in Kamenica, due to violation of the provisions of the CPC and erroneous determination of factual situation.
14. On 21 August 2014, the Court of Appeal, by Judgment [PA1. no. 802/14] rejected the Applicant's appeal as ungrounded with the reasoning that: *„According to this court's assessment the above mentioned allegations are not grounded. The challenged Judgment does not contain substantial violations of the provisions of criminal procedure under Article 384, paragraph 1, item 12 and paragraph 2 in conjunction with Article 370, paragraph 7 of the CPC or in relation to the allegations in the appeal or any other violation which this court notes, ex officio, pursuant to the provision of Article 394 of the CPC. The Judgment is specific and clear...”*.
15. Within the legal time limit, the Applicant filed the request for protection of legality with the Supreme Court, against the Judgment [P. no. 462/2013], of the Basic Court in Gjilan-Branch in Kamenica, of 25 April 2014, and the Judgment [PA1. no. 802/2014] of the Court of Appeal of 21 August 2014.
16. On 19 November 2014, the Supreme Court rendered Judgment [PML. no. 205/2014] by which it rejected the Applicant's request for protection of legality as ungrounded, with the reasoning that: *“In relation to the substantial violations of the criminal procedure provisions under Article 384, paragraph 1, item 12 in conjunction with Article 370, paragraph 7 of the CPCK as well as Article 361, paragraph 2 of the CPCK, the request of the Applicant does not specify where and how these violations are manifested. However, the Judgments of the first and second instance courts are clear and concrete, their reasoning contain sufficient reasons pertaining to all relevant facts”*.

Applicant's Allegations

17. The Applicant alleges that: *„the decisions of the regular courts against now the accused have violated his constitutional rights (the rights of the accused under Article 30, the Right to a Fair and Impartial Trial, under Article 31 of the Constitution of the Republic of Kosovo, and the provisions of Article 6, and of Articles 2 and 4 of Protocol 7 of the European Convention on Human Rights.“*
18. The Applicant requests the Court:

”I. TO DECLARE the Referral admissible;

- II. *TO HOLD that there has been violation of Article 30 [Rights of the Accused] and Article 31 [Right to Fair and Impartial Trial];*
- III. *TO ANNUL Judgment PML. no. 205/2014, of the Supreme Court of Kosovo, of 19 November 2014, Judgment PA1. no. 802/14, of the Court of Appeal of Kosovo, of 21 August 2014 and Judgment P. no. 461/2013, of the Basic Court in Gjilan – Branch in Kamenica, of 25 April 2014;*
- IV. *The case is remanded to the first instance court for retrial but to delegate the subject matter jurisdiction to a different basic court”.*

Admissibility of the Referral

- 19. In order to be able to adjudicate the Applicant's Referral, the Court needs to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure of the Court.
- 20. In that 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”.
- 21. Article 48 of the Law 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.”
- 22. Court also refers to Rules 36 (1) (d), 36 (2) (b) and (d) of the Rules of Procedure, which provide:

“(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:
[...]
(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,
[...], or
(d) the Applicant does not sufficiently substantiate his claim “.
- 23. In the present case, the Applicant stated in the Referral that the Judgment [PML. No. 205/2014] of the Supreme Court of Kosovo, of 19 November 2014 violated his constitutional rights and freedoms under Article 30 (Rights of the Accused), and Article 31 (Right to Fair and Impartial Trial) of the Constitution

of the Republic of Kosovo, as well as the provisions of Article 6, and of Articles 2 and 4 of Protocol 7, of the ECHR.

24. In this regard, the Court reviewed the entire proceedings before the regular courts as a whole, and considers that the proceedings were conducted in such a manner that the Applicant was provided the right to a fair trial, which may be seen from the conclusion of the Supreme Court in its Judgment [PML. no. 205/2014]: "[...] *the judgments of the first and second instance courts are clear and concrete, in their reasoning are given sufficient reasons for all the relevant facts*".
25. The Court also notes that the Applicant was allowed to have counsel, to present his defense, to participate in the proceedings, to follow the course of the proceedings, to exhaust legal remedies, and take other legally allowed procedural activities, and from the reasoning of the Judgment [PML. no. 205/2014] of the Supreme Court it follows that all his objections were ungrounded, and that they did not influence the legality of the decisions rendered on his criminal liability. The Applicant has not specified in his constitutional complaint any reasons from which it could be determined that he did not have sufficient time and possibilities to prepare a defense.
26. Based on the above, the Court considers that the Applicant's allegations of a violation of Article 30 (Rights of the Accused) and Article 31 (Right to Fair and Impartial Trial) of the Constitution, and of Article 6, and of Articles 2 and 4 of Protocol 7, of the ECHR, are ungrounded.
27. The Court recalls that Article 53 of the Constitution (Interpretation of Human Rights Provisions) provides that: "*human rights and freedoms guaranteed by the Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights*".
28. The Court reiterates that under the Constitution it is not its task to act as a fourth instance court with respect to decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, case *Garcia Ruiz v. Spain [GC]*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also Resolution on Inadmissibility in case KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility, of 16 December 2011).
29. The Constitutional Court can only consider whether the evidence has been presented in a correct manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, *inter alia*, case *Edwards v. United Kingdom*, No. 13071/87, European Commission on Human Rights, of 10 July 1991).
30. Therefore, the Court considers that the Applicant did not substantiate his allegations, nor has he submitted any *prima facie* evidence indicating a violation of his rights guaranteed by the Constitution and the ECHR (See, case no. KI19/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Syla*, Constitutional Court of the Republic of Kosovo, Constitutional Review of

Decision of the Court of Appeal of Kosovo, CA. no. 2129/2013, of 5 December 2013, and Decision of the Court of Appeal of Kosovo, CA. no. 1947/2013, of 5 December 2013).

Assessment of the request for Interim Measure

31. The Court notes that the Applicant requests the Court to impose an Interim Measure and to render a separate decision, by which the execution of the final judgment would be postponed, until the constitutionality of the challenged judgment is reviewed.

32. In order for the Court to impose an Interim Measure, pursuant to Rule 55 (4) of the Rules of Procedure, the Court must find that:

“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, 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.

[...]“

33. As concluded above, the Referral is inadmissible, and therefore there is no *prima facie* case for the imposition of the Interim Measure. For these reasons, the request for Interim Measure is to be rejected.

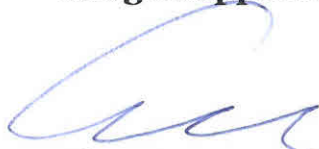
FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Rules 36 (1) (d) and 36 (2), 55 (4) (a) and 56 (2) of the Rules of Procedure, on 28 May 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO REJECT the request for Interim Measure;
- III. TO NOTIFY this Decision to the Parties and to publish this Decision in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court;
- IV. This Decision is effective immediately.

Judge Rapporteur



Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani

