



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

Pristina, 8 March 2017
Ref. No.:RK 1047/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI103/15

Applicant

Skender Vitia

**Constitutional review of Judgment Pml. no. 88/2015 of the Supreme
Court of the Republic of Kosovo of 29 April 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Mr. Skender Vitia from Hajvalia (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Judgment Pml. no. 88/2015 of the Supreme Court of 29 April 2015, which rejected as inadmissible his request for protection of legality filed against Judgment PK. no. 1045/2013 of the Basic Court in Pristina of 10 December 2014 and Judgment PAKR. No. 33/2015 of the Court of Appeals in Pristina of 26 February 2015.

Subject matter

3. The subject matter concerns the constitutional review of Judgment Pml. no. 88/2015 of the Supreme Court of 29 April 2015 and the Applicant's allegation that his right guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution has been violated

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 22 [Processing Referrals] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure.

Proceedings before the Court

5. On 29 July 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On the same day, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.
7. On 19 August 2015, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 17 January 2017 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

9. On 10 December 2014, the Basic Court in Pristina, by Judgment PKR. No. 1045/13, found the Applicant guilty of having committed the criminal offense of "*Accepting bribes*" under Article 343(3) of the Kosovo Criminal Code (hereinafter: PCKK) and sentenced him to the payment of a fine of 500, 00 Euros.
10. The Basic Court held that all the evidence confirmed that the Applicant, in order to profit materially, requested and received a bribe at the amount of ten (10) Euro.

11. Against this judgment the Applicant filed an appeal with the Court of Appeals in Pristina, proposing that, *“due to the essential violation of the provisions of the PCKK, violation of the Criminal Law, erroneous and incomplete ascertainment of the factual situation, decision on the punishment,”* the Court of Appeals should *“modify the appealed judgment, to acquit the accused person of the charge or to quash the judgment and to remand the case for retrial and reconsideration.”*
12. On 26 February 2015, the Court of Appeals decided, by Judgment PAKR. No. 33/15, to partly approve the appeal of the Applicant, by modifying the Judgment of the Basic Court in Pristina by replacing the punishment of a fine with the punishment of imprisonment (so if the punishment of fine is replaced with the punishment of imprisonment, one day in prison is calculated as 20 € of the fine).
13. The Court of Appeals reasoned, *inter alia*, that *“the first instance court, in the reasoning of the judgment, has provided reasons for each item of the judgment by completely and clearly representing that with facts and why it considers them as confirmed.”*
14. The Court of Appeals further found that *“the allegations of the accused person that the first instance court has incompletely and erroneously ascertained the factual situation, are ungrounded, because the first instance court has ascertained the factual situation completely and correctly.”*
15. At an unknown date, the Applicant’s defense counsel filed a request for protection of legality with the Supreme Court.
16. By Submission KMLP. II. No. 67/2015 of 24 March 2015, the State Prosecutor proposed that the request for protection of legality be rejected as ungrounded.
17. On 29 April 2015, the Supreme Court rejected the request for protection of legality as inadmissible, reasoning that: *“In the present case, the Request for protection of legality was filed by Attorney at Law O.H. from Pristina, while there is no authorization in writing or verbal by the convicted person in the case files.”*
18. The Supreme Court concluded that, *“Due to the above mentioned reasons, the Request for protection of legality was rejected as inadmissible [...]”*

Applicant’s allegations

19. The Applicant claims, *inter alia*, that *“the decision on punishment was rendered based solely on the statement of the injured person, E.L., while it was not proved by any material evidence that I have taken 10 (ten) Euros from him.”*
20. He further alleges that *“the Provision of Article 31 [The Right to Fair and Impartial Trial] of the Constitution has been violated, because the court did not request to prove it [the crime] by material evidence that I have really taken 10 (ten) Euros from E.L.”*

21. The Applicant requests the Court *“to annul all previous decisions and to remand the case for retrial by eliminating the violations and respecting the rights guaranteed by the Constitution, namely Article 31.”*

Admissibility of the Referral

22. The Court must first examine whether the Applicant has met the requirements of admissibility which are foreseen by the Constitution and as further specified by the Law and Rules of Procedure.

23. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which stipulates:

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”

[...]

“7. 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.”

24. The Court also refers to Article 48 of the Law which provides that: *“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.”*

25. The Court further takes into account Rule 36 (1)(d) [Admissibility Criteria] and Rule 36 (2)(b) of the Rules of Procedure which stipulate:

“(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.”

26. As to the present case, the Court notes that the Applicant has sought to protect his rights before the Basic Court in Pristina as well as the Court of Appeals and filed a request for protection of legality with the Supreme Court.

27. In its Judgment of 29 April 2015, the Supreme Court stated that: *“[...] In the present case, the Request for protection of legality was filed by Attorney at law O.H. from Pristina, while there is no authorization in writing or verbal by the convicted person [the Applicant] in the case files. Due to the abovementioned reasons, the Request for protection of legality was rejected as inadmissible [...].”*

28. In the present case, the Court notes that the Applicant is dissatisfied with the result of the procedures before the regular courts, in particular the judgments of the Basic Court in Pristina and the Court of Appeals, because he complains about the assessment of evidence and the establishment of facts by these courts.
29. In this respect, the Court considers that the Applicant's allegations mentioned in the Referral raise issues of legality, which fall in the domain and under the prerogative of the regular courts.
30. The Court reiterates that it is not the task of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
31. The Constitutional Court recalls that it is not a fact-finding court and that the correct and complete determination of the factual situation is within the full jurisdiction of the regular courts, while the role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "*fourth instance court*" (see, *Akdivar v. Turkey*, ECtHR, Application no. 21893, Judgment of 16 September 1996, para. 65; and also, *mutatis mutandis*, Case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
32. In the present case, the Court considers that the Applicant has had the benefit of adversarial proceedings; that he had the opportunity to adduce the arguments and evidence it considered relevant to its case and to challenge the arguments and evidence adduced against him; that all arguments and evidences which were relevant for the adjudication of the case were duly heard and examined by the courts; and that the factual and legal reasons for the impugned decision were set out at length. Accordingly, it results that the proceedings taken as a whole were fair (See the Case of *García Ruiz v. Spain*, [GC], application no. 30544/96, Judgment of 21 January 1999, paragraph 29).
33. Moreover, the Court observes that there is nothing in the present referral which would suggest that the evidence was taken unlawfully or in breach of the pertinent constitutional provisions.
34. In these circumstances, the Court considers that the Applicant has not substantiated his allegations of a violation of fundamental rights and freedoms guaranteed by the Constitution, because the facts presented by him do not indicate that the regular courts denied him the right guaranteed by Articles 31 of the Constitution, as alleged by him.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Article 48 of the Law and Rules 36 (2) (d) and (2) (b) and 56 of the Rules of Procedure, on its session held on 17 January 2017, unanimously

DECIDES

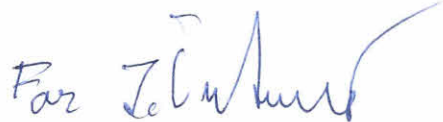
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately;

Judge Rapporteur


Bekim Sejdiu



President of the Constitutional Court


Arta Rama-Hajrizi