



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

Pristine, 22 May 2012
Ref. No.: RK244/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 108/11

Applicant

Myrteza Dyla

**Constitutional Review of the Decision of the Supreme Court, PN. No. 372/2011,
dated 13 July 2011.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Myrteza Dyla, represented by Mr. Teki Bokshi, a practicing lawyer from Gjakova.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court, PN. No. 372/2011, of 13 July 2011, which was served on the Applicant on 22 July 2011.

Subject matter

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") of the constitutionality of the Decision of the Supreme Court, PN. No. 372/2011 of 13 July 2011, by which, allegedly, his rights as guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102 [General Principles of the Judicial System], and by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, Article 6 [Right to a fair trial] in conjunction with Article 13 [Right to an effective remedy] have been violated.

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 8 August 2011, the Applicant submitted the Referral to the Court.
6. On 23 August 2011, the President, by Decision No. GJR. KI 108/11 appointed Judge Ivan Čukalovič as Judge Rapporteur. On the same date, the President, by Decision No. KSH. KI 108/11, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Snezhana Botusharova and Gjyljeta Mushkolaj.
7. On 24 January 2011, the Court communicated the Referral to the Supreme Court and to the District Public Prosecutor of Peja. So far, no reply has been received from either of them.
8. On 4 May 2012, 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 15 June 2011, a Judge of the District Court of Peja (hereinafter: the "Judge") confirmed the indictment of the District Public Prosecutor filed against the Applicant for having committed the criminal act of Article 339(3) in conjunction with Article 23 of the Criminal Code (hereinafter: "CCK") (Decision KA. no. 90/11). The Judge confirmed that there were sufficient grounds to confirm the indictment in order to ascertain the culpability or innocence of the Applicant in the main trial. The Applicant appealed against this decision to the Panel of Three Judges of the District Court of Peja (hereinafter: the "Panel").
10. On 27 June 2011, the Panel rejected the Applicant's appeal as inadmissible (Decision KA. no. 90/11) and concluded that an appeal against the ruling of the Judge in relation to the confirmation of the indictment could only be submitted by the Prosecutor and

the injured party, when the indictment is dismissed pursuant to Article 317.2 of the CCK. The Applicant appealed against this decision to the Supreme Court.

11. On 13 July 2011, the Supreme Court rejected the Applicant's appeal as unfounded and concluded, on the same ground as the Panel, that an appeal against the ruling of the Judge in relation to the confirmation of the indictment could only be submitted by the Prosecutor and the injured party, when the indictment is dismissed pursuant to Article 317.2 of the CCK (Decision Pn. No. 372/2011).

Applicant's allegations

12. The Applicant alleges that:
 - a. the right to appeal has been violated because the Applicant could not appeal the ruling of the judge concerning the confirmation of indictment of 15 June 2011.
 - b. the right to access to court has also been violated by not giving the Applicant the possibility to appeal.
 - c. the principle equality of arms between the parties in the procedure has been violated.
 - d. the District Court and the Supreme Court has wrongly applied and interpreted the CCK because according to the Applicant there exist a right to appeal under CCK.

Assessment of the admissibility of the Referral

13. The Applicant alleges that his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 102 [General Principles of the Judicial System] of the Constitution and Article 6 [Right to a fair trial] in conjunction with Article 13 [Right to an effective remedy] of ECHR have been violated.
14. As to the Applicant's complaints, the Court observes that, in order to be able to adjudicate his complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
15. In this respect, the Court emphasizes that, under the Constitution, it is not to act as a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I).
16. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants has had a fair trial (see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991).
17. In the present case, the Applicant alleges that there is a violation of his rights as guaranteed by the Constitution since he is not allowed to appeal a decision of a judge confirming the indictment.

18. In this respect, the Court refers to Article 102.5 of the Constitution, which provides: *“The right to appeal a judicial decision is guaranteed unless otherwise provided by law.”* Article 317 (2) of the PCCP does not provide a right to the Applicant to appeal the confirmation of indictment. Notwithstanding, this the District Court and the Supreme Court took into consideration the complaint of the Applicant but ruled that no appeal is possible against the confirmation of indictment pursuant to Article 317 (2) of PCCP, which provides:

“The ruling of the judge to dismiss the indictment can be appealed by the prosecutor and the injured party to the three-judge panel.”

19. Furthermore, the Court notes that the confirmation of indictment do not prejudice the adjudication of the matter during the main trial pursuant to Article 317 (1) of PCCP, which provides:

“All rulings rendered by the judge in connection with the confirmation of the indictment shall be supported by reasoning but in such a way as not to prejudice the adjudication of the matters which will be considered in the main trial.”

20. As a matter of fact, the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his rights and freedoms have been violated by that public authority. Therefore, the Constitutional Court cannot conclude that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
21. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: *“The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.”*
22. If this Court takes into consideration that the Applicant raises the question of compatibility of laws, i.e. the PCCP, with the Constitution, the Court notes that only authorized parties under Article 113.2 of the Constitution are entitled to submit this question. Therefore, the Applicant is not an authorized party under Article 113.2 of the Constitution. However, the Applicant could raise the issue of compatibility of laws with the Constitution before the regular courts who is authorized under Article 113.8 of the Constitution to cease the Constitutional Court.
23. Accordingly, the Referrals must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.2 of the Constitution, Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 4 May 2012, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani

