



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

Prishtina, 30 March 2015
Ref. No.: RK 786/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI127/14

Applicant

Agron Latifaj

**Constitutional Review of Judgment Pml. no. 57/2014, of the
Supreme Court, of 25 March 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Agron Latifaj from Kladernica village, Municipality of Skenderaj, who is currently serving imprisonment sentence in Dubrava Prison, represented by Mr. Mahmut Halimi, lawyer from Mitrovica.

Challenged Decision

2. The Applicant challenges Judgment PML. No. 57/2014 of the Supreme Court, of 25 March 2014, by which the Supreme Court rejected the Applicant's request for protection of legality as ungrounded and upheld the Judgments of the Court of Appeal and of the Basic Court in Mitrovica.
3. The Judgment was served on the Applicant on 2 May 2014.

Subject Matter

4. The subject matter is the constitutional review of Judgment, PML. No. 57/2014 of the Supreme Court, dated 25 March 2014, which allegedly violated Article 31 [Right To Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] and Article 102 [General Principles of the Judicial System] par.2 and 3 of the Constitution of the Republic of Kosovo and Article 3 paragraph 2 of the Law on Criminal Procedure of Kosovo (hereinafter: CPCK).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 6 August 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 5 September 2014, the President of the Court by Decision, GJR. KI127/14 appointed Judge Robert Carolan as Judge Rapporteur and by Decision, KSH. KI127/14 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 15 September 2014 the Court sent a copy of the Referral to the Supreme Court.
9. On 24 September 2014 the Court informed the Applicant about the registration of the Referral.
10. On 6 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

11. On 25 May 2012 the District Court in Mitrovica by Judgment, P. No. 43/2010 found the Applicant guilty of the criminal offence: murder and unauthorized ownership, control, possession or use of weapons. The District Court sentenced him to 10 years of imprisonment for criminal offence provided by Article 146 of CCK (enacting clause II) and 3 years of imprisonment provided by Article 328

par.2 of CCK (enacting clause II), with the aggregate imprisonment sentence of 12 years.

12. On 18 October 2013, the Court of Appeal of Kosovo by Judgment PAKR no. 1108/2012 deciding on the appeals of the injured party, E. N. and the Applicant (defendant) and the response to the appeals filed by the Special Prosecutor, approved the appeal of the injured party, E. N., and in the Judgment P. No. 43/2010 of the District Court of Mitrovica, modified the decision on punishment with an aggregate sentence imprisonment of 15 years. In its revised sentence, it gave the Defendant/Applicant credit for the time served during detention from 5 March 2010. The appeal filed by the defence of the accused Agron Latifaj, was rejected as ungrounded.
13. After this, the Applicant filed with the Court of Appeal of Kosovo a request for protection of legality against Judgment PAKR No. 1180/2012 dated 18 October 2013, alleging essential violation of the criminal law and requested that the appealed judgments be modified so that it is determined that because of the mental distress, suffered by the Defendant in this case, pursuant to Article 148 of the Criminal Code, he should be imposed a more lenient imprisonment sentence, and the appeal of the injured party be considered as out of time.
14. On 25 March 2014 the Supreme Court of Kosovo by Judgment PML. No. 57/2014 rejected the appeal of the Applicant as ungrounded.
15. The Supreme Court held that:

“Allegations in the request regarding the lack of reasoning by the defence of the convicted person related to that the court of the second instance acted in contradiction with Article 400, par.2 of CCK when it did not dismiss the appeal of the injured party since it was not announced, are ungrounded. The court of the second instance acted in a fair manner when it took into consideration the review of the appeal of the injured party although it was not announced, since, according to Article 400, par.2 of the CCK, it has been foreseen that if a person entitled to appeal fails within the legally stipulated time period to announce an appeal, he or she shall be deemed to have waived the right to appeal, except in instances from paragraph 4 of the present article, when to the accused is announced the imprisonment punishment. In this case, the appeal of Enver Nika as an injured party authorized to file the appeal is permissible although it was not announced. Conclusion of the defence, whereby the injured party in its appeal has also talked on the flow of the events, stands, however, those allegations have not been assessed by the court of the second instance but only the allegations related to the punishment announced against which the appeal has been filed, have been assessed.”

16. With respect to the Applicant’s request for a more lenient sentence the Supreme Court held that:

“Allegations of the defence in its request for announcement of a more lenient sentence for the convicted party are ungrounded since by the judgment of the court of the first instance have been provided assessed circumstances by

the court of the first instance, in relation to the measurement of the punishment as well as the circumstances that led the court of the second instance, by its judgment to change the decision on the punishment whereby the convicted person was sentenced with an aggregated imprisonment punishment of 15 (fifteen) years, justifying it with aggravating circumstances and by providing reasoning on them. The appeal of the defence was rejected as ungrounded by the court of the second instance since it did not provide any circumstance that had not been assessed by the court of the first instance. In the reasoning of the judgment of the second instance have been provided proper sufficient reasons whereby the decision on the punishment has been justified.

Based on what is stated above and in terms of Article 456 of PCK, it has been decided as in the enacting clause of the Judgment.”

17. Currently, the Applicant is serving his imprisonment sentence which was upheld and thus became final by Judgment PML. No. 57/2014, of the Supreme Court of Kosovo, of 25.03.2014.

Applicant’s allegations

18. The Applicant alleges that the challenged decision violates his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights] and 102 [General Principles of the Judicial System] par.2 and 3 of the Constitution of the Republic of Kosovo and Article 3 par.2 of CCK.
19. The Applicant requests the Court: *“to declare Judgment, PAKR. No. 1108/2012 of the Court of Appeal in Prishtina and Judgment PML. No. 57/2014 of the Supreme Court of Kosovo as anti-constitutional and to order these judgments to be quashed and the matter to be remanded for retrial and reconsideration before the Court of Appeal in Prishtina.”*
20. The Applicant in the end of Referral also requests: *“The appeal of the injured party filed against the Judgment of the first instance to be considered as inadmissible since it has been filed in contradiction with Article 400, paragraph 1 and 2 of the CCK which affects the provision of Article 102, paragraph 2 and 3, as well as Article 31 of the Constitution.”*

Admissibility of the Referral

21. First of all, in order to be able to adjudicate the Applicant’s Referral, the Court has to examine whether the Applicant has met the admissibility requirements, laid down the Constitution and further specified in the Law and Rules of Procedure.
22. In this respect, the Court refers to Rule 36 (1) (d) and 36 (2) (b) of the Rules of Procedure, which provide that:

“(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,

[...]"

23. As mentioned above, the Applicant alleges that Judgment PML. No. 57/2014 of the Supreme Court and Judgment PAKR. No. 1108/2012 of the Appeal Court was rendered in violation of Articles 31 [Right to Fair and Impartial Trial], 54 [Judicial Protection of Rights] and 102 [General Principles of the Judicial System] par. 2 and 3 of the Constitution.
24. In relation to these allegations, the Court recalls the reasoning of the Supreme Court in answering the Applicant's allegations of violation of the law and substantial violation of procedural provisions (see paragraph 15).
25. The Court also notes that the Applicant's allegations in his request for a more lenient sentence for the convict were reasoned by the Supreme Court (see paragraph 16).
26. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.
27. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).
28. 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 is not satisfied 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. The Court notes that the Applicant had ample opportunity to present his case before the regular courts.
29. The Constitutional Court can only consider whether the evidence has been presented in a correct a 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 European Commission on Human Rights adopted on 10 July 1991).
30. In that respect, the Court notes that the reasoning referring to the request for considering the appeal of injured party against the Judgment of the first instance as inadmissible and the request for decision of a more lenient sentence

in the Judgment of the Supreme Court are clear. After having reviewed all the proceedings, the Court has also found that the proceedings before the Court of Appeal have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

31. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights invoked by the Applicant.
32. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible pursuant to Rule 36 (1) (d) and 36 (2) (b) of the Rules of Procedure.

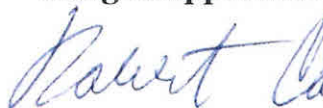
FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1) (d) and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 30 March 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. 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; and
- III. This Decision is effective immediately.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani