



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

Prishtina, 29 May 2017
Ref. No.:RK 1070/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI137/16

Applicant

Agdi Krasniqi

Constitutional review of Judgment Pml. No. 118/2016, of the Supreme Court, of 23 June 2016

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 Applicant is Agdi Krasniqi from Gjilan (hereinafter: the Applicant), represented by Ymer Huruglica, a lawyer from Gjilan.

Challenged decision

2. The Applicant challenges Judgment (Pml. No. 118/2016) of 23 June 2016 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), in conjunction with Judgment (PKR. No. 171/2014) of 9 October 2015 of the Basic Court in Gjilan (hereinafter: the Basic Court), and Judgment (PAKR. No. 580/2015) of 5 January 2016 of the Court of Appeal of Kosovo (hereinafter: the Court of Appeal).
3. Judgment Pml. No. 118/2016 of the Supreme Court was served on the Applicant on 25 July 2016.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgments, whereby his rights guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments], 31 [Right to Fair and Impartial Trial], and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have allegedly been violated.

Legal basis

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

Proceedings before the Constitutional Court

6. On 29 November 2016, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral submitted through postal services on 24 November 2016.
7. On 14 November 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Bekim Sejdiu and Selvete Gërxhaliu Krasniqi.
8. On 20 December 2016, the Court notified the Applicant's representative about the registration of the Referral and requested him to submit to the Court the power of attorney for the representation of the Applicant. On the same day, the Court sent a copy of the Referral to the Supreme Court.
9. On 6 January 2017, the Applicant's representative submitted to the Court the additional documents, including the power of attorney for the representation of the Applicant.
10. On 25 January 2017, the Applicant's representative submitted to the Court the copy of Judgment (PAKR. nr. 580/2016) of the Court of Appeal supplemented

by some missing pages of the copy of the same Judgment submitted to the Court together with the Referral.

11. On 5 April 2017, the Review Panel, after having considered the report of the Judge Rapporteur, recommended to the Court the inadmissibility of the Referral.

Summary of facts

12. On 16 July 2012, in “Çamëria” neighborhood, Musli Ymeri Street, in Kamenica, after a fight between the Applicant and G. D., the latter died of the injuries sustained in the fight.
13. On 25 September 2012, the District Public Prosecution in Gjilan, by Indictment PP. No. 167/2012, accused the Applicant of committing the criminal offense under Article 146 [Murder] of the Criminal Code of Kosovo (hereinafter: CCK).
14. On 7 February 2014, the Basic Court (P. No. 187/2012) found the Applicant guilty *“of criminal offence of Murder exceeding the limits of the necessary defence as provided for in Article 146, in conjunction with Article 8, paragraph 3 of CCK.”*
15. The defense counsel of the Applicant filed an appeal against the Judgment (P. no. 187/2012) of the Basic Court *“on the grounds of essential violations of the criminal procedure provisions, violation of the criminal law, incomplete and erroneous determination of factual situation and the decision on the criminal sanction.”*
16. The appeals were also filed by the Prosecutor of the Basic Prosecution in Gjilan (hereinafter: Prosecutor of the Basic Prosecution) *“on the grounds of incomplete and erroneous determination of factual situation and the decision of the criminal sanction”*, and by the authorized representative of the injured party *“on the grounds of the decision on criminal sanction.”*
17. On 1 July 2014, the Court of Appeal through Judgment (PAKR. No. 262/2014) approved the appeals of the Prosecutor of the Basic Prosecution and of the defence counsel of the Applicant, and decided *ex-officio* that the case be remanded for retrial to the Basic Court. On 9 October 2015, the Basic Court, after review of the case, through Judgment (PKR. No. 171/2014) found the Applicant guilty *“of the criminal offence of murder under Article 146 of CCK”*.
18. The Applicant’s defence counsel filed an appeal against Judgment (PKR. No. 171/2014) of the Basic Court, on the grounds of *“essential violations of the criminal procedure provisions, violation of the criminal law, incomplete and erroneous determination of factual situation and the decision of the criminal sanction.”*
19. The appeals were also filed by the Prosecutor of the Basic Prosecution and the authorized representative of the injured party. On 5 January 2016, the Court of Appeals by Judgment (PAKR. No. 580/15) rejected the appeals of the Prosecutor’s Office, the representative of the injured party and the

representative of the Applicant, upheld Judgment (PKR. No. 171/2014) of the Basic Court.

20. The defence counsel of the Applicant filed a request for protection of legality with the Supreme Court, on the grounds of “*essential violations of the criminal procedure provisions and violation of the criminal law*”.
21. On 23 June 2016, the Supreme Court (Decision PPr. Kr. No. 174/2016) rejected as ungrounded the request for protection of legality of the Applicant’s representative against Judgment (PKR. No. 171/2014) of the Basic Court and Judgment (PAKR. No. 580/2015) of the Court of Appeal reasoning, *inter alia*, that:

“According to the assessment of the Supreme Court, the allegations in the request for protection of legality on existence of the necessary defence cannot be approved. The reasons emphasized by [the Basic Court and the Court of Appeal] are valid. Notwithstanding the fact that now the deceased [G.D.] initiated the attack against the convict, again, these actions of the [Applicant] cannot be qualified as a necessary defence. In the request is quoted a judgment rendered by the Supreme Court of Kosovo where it was stated that “if now the deceased had initiated the conflict and hit the [Applicant], then it must be assessed whether his reaction was unlawful...because he was entitled to counter attack and was not obliged to stay passive and wait until the injured is done with his job”. These claims are real because the convict was in fact entitled to protect himself from an attack by any other person, however, his defence must meet required elements provided for in provisions of Article 12 of CCK. In this specific case those elements were not met because on the attack with fists the convict reacted with an attack with knife which was not necessary to avert such an attack. Neither in the case file nor in the request for protection of legality exist data whereby is proven that the deceased was extremely physically much stronger and the convict was physically very weak; that there was difference in age and similar data that would influence a more detailed assessment of that the defence with knife (and not with fists) becomes more necessary to avert the attack coming from the deceased.”

Applicant’s allegations

22. The Applicant alleges violation of his rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution.
23. The Applicant alleges that the Judgment (PKR. No. 171/2014) of the Basic Court has contradictions that make the enacting clause of the Judgment inconsistent with itself.
24. The Applicant also alleges that Judgment (PKR. No. 171/2014) of the Basic Court and Judgment (PAKR. No. 580/15) of the Court of Appeal “*contain essential violations of the provisions of the Criminal Procedure Code [...] which were not corrected by the Judgment of the Supreme Court [...].*”

25. The Applicant further emphasizes that the conclusions of the Supreme Court: *“are in contradiction with Judgment Pkl. No. 90/2012 of that court of 22 June 2012, according to which judgment it is concluded that [...] if the injured had initiated first the conflict and hit the accused [...] then must be assessed whether the reaction of [the Applicant] was unlawful after he was hit by the injured, and he is entitled to protect himself, he is entitled to counter attack, he is not obliged to stay passive and wait until the injured is done with his job.”*

Admissibility of Referral

26. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and foreseen in the Rules of Procedure.

27. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish that:

“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.”

28. However, the Court further refers to Article 48 [Accuracy of the Referral] of the Law, 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 public authority is subject to challenge.”

29. Regarding the above, the Court finds that the Applicant filed the Referral as an individual and an authorized party, he specified possible constitutional violations; and that the Referral was filed within the deadlines provided by Article 49 of the Law, and after exhausting all legal remedies provided by the law.

30. In addition, the Court recalls paragraphs (1) (d) and (2) (d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which foresee:

(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.”

31. The Court notes that the Applicant requests the constitutional review, claiming the alleged violations in connection with the determination of the factual situation and the legality of the regular courts' judgments.
32. However, the Court emphasizes 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). In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and material law. (See, *mutatis mutandis*, Judgment of the European Court of Human Rights (hereinafter: ECtHR) of 21 January 1999, *Garcia Ruiz v. Spain* [GC], no. 30544/96, , para. 28.).
33. The role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as a "fourth instance court" (See, ECtHR Judgment of 16 September 1996, *Akdivar v. Turkey*, No. 21893/93, , para. 65, see also, *mutatis mutandis*, case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
34. In fact, the Court notes that the Basic Court, in its Judgment (PKR. No. 171/2014), reasoned its decision on finding the Applicant guilty, emphasizing that, "*The Court [...] came to conclusion that in the actions of the [Applicant] exist all elements of the criminal offence of Murder as provided for in Article 146, and he is criminally liable and guilty for this criminal offence and on the critical moment he acted intentionally as resulted by administered evidence when the defendant decided to react against actions of [G.D] by stabbing him 10 times with his razor-knife due to which [G.D] could not survive and on the way to Gjilani hospital he passed away.*"
35. The Court also notes that the Court of Appeal, in its Judgment (PAKR. No. 560/15), determined the factual situation and the reasons given in the Judgment of the Basic Court, stating that, "*The enacting clause of the appealed judgment is clear, specific and is not inconsistent with itself and with its reasoning. Therefore, in the present case, in this legal-criminal matter, the enacting clause was compiled pursuant to provisions of Article 365 of the CPOK- and in enacting clause were presented all incriminatory actions of the [Applicant] which in fact constitute the figure of the criminal offence of which the defendant was found guilty.*"
36. The Supreme Court upheld the Judgment of the Court of Appeal as fair and also responded to the Applicant's allegations that he acted in necessary defense to avert the attack of [G.D.] and that, according to the Applicant, in another case (Judgment Pkl. No. 90/2012) the Supreme Court decided differently, even though the case was similar to that of the Applicant.
37. Thus, the Applicant was given the opportunity at all stages of the proceedings to present arguments and evidence that he considered relevant to his case.

38. The Court considers that all the arguments of the Applicant that were relevant for the resolution of the case, were duly heard and duly examined by the courts, that the material and legal reasons for the decision challenged by the Applicant were presented in detail, and that the proceedings before the regular courts, viewed in their entirety, were fair (See, *mutatis mutandis*, ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paragraphs 29 and 30).
39. The Court finally notes that the Applicant has not substantiated his allegation of a violation of his human rights and fundamental freedoms as guaranteed by the Constitution, because the facts presented by him, do not show in any way that the regular courts have denied him the rights guaranteed by the Constitution.
40. Therefore, the Court considers that the admissibility requirements, established in the Constitution, provided for in the Law and further specified in the Rules of Procedure, have not been met.
41. For these reasons, the Court concludes that the Applicant has not sufficiently substantiated his allegation and, therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible.

FOR THESE REASONS

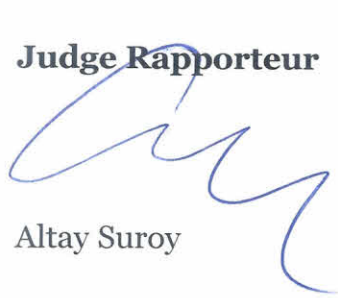
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law, and in accordance with Rule 36 (2) (b) of the Rules of Procedure, on 5 April 2017, unanimously

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

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi

