



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

Prishtina, 29 December 2014
Ref. No.: RK740/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI123/14

Applicant

Lalushe Boneshta

**Constitutional Review of the
Judgment PML. No. 123/2014 of the Supreme Court
dated 19 June 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 Referral was submitted by Mrs. Lalushe Boneshta (hereinafter: the Applicant) with residence in Gjakova. The Applicant holds citizenships of both the Republic of Kosovo and Republic of Serbia.

Challenged Decision

2. The challenged Decision is the Judgment, PML. No. 123/2014 of the Supreme Court of Kosovo dated 19 June 2014, which was served on the Applicant on an unspecified date.

Subject Matter

3. The subject matter is the constitutional review of the Judgment, PML. No. 123/2014 of the Supreme Court of Kosovo dated 19 June 2014, which approved the Applicant's request for protection of legality and modified the Decisions of the lower courts by substituting the measure of house arrest with a more lenient measure, that of appearance in the Police Station twice (2) a week. The Applicant in particular alleges that the imposed measure by the aforementioned Judgment has limited her freedom of movement and that she has been discriminated against.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 25 July 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 8 August 2014 the President by Decision, GJR. KI123/14 appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President by Decision, KSH. KI123/14 appointed the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.
7. On 22 August 2014 the Court notified the Applicant of the registration of the Referral and requested to submit the Decisions of the Basic Court in Prishtina and the Court of Appeal of Kosovo. On the same date, the Court sent a copy of the Referral to the Supreme Court.
8. On 12 September 2014 the Applicant submitted the requested documents to the Court.
9. On 9 December 2014 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

10. On 21 March 2014, based on the criminal report (2014 YNM 007 dated 21 March 2014) the Basic Prosecution in Prishtina issued a Decision on initiation

of investigation against the Applicant. The Applicant was suspected of committing a criminal offence of smuggling of migrants as foreseen in Article 170, paragraph 1, in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo.

11. On 21 March 2014, at the request of the Basic Prosecution in Prishtina, the Pre-trial Judge in the Basic Court in Prishtina decided to impose on the Applicant the measure of house arrest until 19 April 2014.
12. On 18 April 2014, at the request of the Basic Prosecution in Prishtina, the Basic Court in Prishtina rendered Decision, PPR. KR nr. 107/2014 and extended the measure of house arrest for the Applicant with two (2) months.
13. Against the aforementioned Decision of the Basic Court in Prishtina (PPR. KR nr. 107/2014 dated 18 April 2014), the Applicant filed an appeal with the Court of Appeals.
14. On 12 May 2014, the Court of Appeals by Decision, PN.1.892/14 rejected the Applicant's appeal as ungrounded. In its Decision, the Court of Appeals confirmed the decision of the first instance court to extend the measure of house arrest, because of the existence of the risk that the Applicant could hide or escape also due to the fact that the Applicant was also a holder of the citizenship of the Republic of Serbia.
15. The Applicant filed a request for protection of legality with the Supreme Court against the Decision of the Court of Appeals.
16. In her request for protection of legality, the Applicant alleged substantive violations of Criminal Code and Criminal Procedure Code, and violation of Article 5 (Right to Liberty and Security) of the European Convention on Human Rights (hereinafter: ECHR). She further argued that her husband, as a first defendant in this process was released from detention.
17. On 18 June 2014, the State Prosecutor in its response (KMLP 111. No. 30/14) to the Applicant's request for protection of legality, proposed that her request is to be rejected as ungrounded.
18. On 19 June 2014, the Supreme Court (Judgment, PML. 123/2014) approved the Applicant's request for protection of legality and substituted the measure of house arrest with a more lenient measure, that of appearance to the closest Police Station twice (2) a week.
19. In its Judgment, the Supreme Court held that:

“At the same time, this Court considers that there is no legal reason for extending the house arrest measure, under Article 178, paragraph 1 subparagraph 1.1 and 1.2 in conjunction with Article 187 paragraph 1 subparagraph 1.2 item 1.2.1 and 1.2.2 of CCRK [Criminal Code of Republic of Kosovo] given that there are no special circumstances which would justify the grounded fear that her being free, would affect the injured party and the first defendant. It is not disputable the fact that the injured party,

[...] is a brother of the defendant Lalushe Boneshta and considering family relations, they have been in contact during this time and since the date when detention is abrogated against the first defendant, she is in ongoing contact considering that they are spouses and therefore they could have influenced each other as co-defendants and the injured party.”

Applicant’s allegations

20. As stated above, the Applicant alleges that, the imposed measure by the challenged decision has limited her freedom of movement. In this regard, she argues that: *“I also own a house in Subotica, Republic of Serbia. I was not allowed to go to my place of residence. My family owns a shop there. Due to this imposed measure, I am not able to go to my shop. The case files confirm that no restrictive measure is imposed against my husband as an accomplice. I find myself in a discriminatory position. We have 7 children from our marriage with my husband. Now, our children cannot go to their home in Subotica, since there is no one who could look after them.”*
21. The Applicant further alleges that the Judgment, PML. No. 123/2014 of the Supreme Court of Kosovo dated 12 May 2014 violated the Applicant’s rights guaranteed by Article 21 [General Principles], paragraph 2, Article 24 [Equality Before the Law], Article 29 [Right to Liberty and Security], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], and Article 53 [Interpretation of Human Rights Provisions] of the Constitution.
22. She concludes by requesting the Court to annul the Judgment of the Supreme Court (PML. No. 123/2014 dated 19 June 2014).

Admissibility of the Referral

23. 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 requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
24. In this respect, the Court refers to Rule 36 of the Rules of Procedure, which provides:

(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”.

25. As mentioned above, the Applicant alleges that the Judgment of the Supreme Court, PML. No. 123/2014 dated 19 June 2014 violated her rights guaranteed by the Constitution, in particular she argues that with the imposed measure her

freedom of movement has been limited and that she has been discriminated against.

26. However, the Applicant does not explain and substantiate how her rights and freedoms guaranteed by the Constitution, in particular her freedom of movement has been limited.
27. The Court notes that the investigation procedure is still ongoing and an indictment has not yet been issued.
The completed procedure before the regular courts refer to the restrictive measure imposed on the Applicant during the investigation phase.
28. The Constitutional Court cannot substitute the role of 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).
29. The Court further notes that the challenged decision approved her request for protection of legality and substituted the measure of house arrest with a more lenient measure. Thus, the mere fact that the Applicant is not satisfied with the outcome of the proceedings in her case do not give rise to an arguable claim of a violation of her rights and freedoms as protected by the Constitution.
30. Furthermore, as mentioned above, the Court notes that the reasoning given in the Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the Basic Court in Prishtina and the Court of Appeals 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 alleged violation of the constitutional rights and freedoms invoked by the Applicant and the Applicant has not sufficiently substantiated her allegation.
32. Therefore, the Court concludes that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (2), b) and d) and 56 (b) of the Rules of Procedure, on 9 December 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral as 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; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani