



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

Prishtina, on 5 June 2017
Ref. No.: RK 1081/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI141/16

Applicant

Agrounion LLC

Constitutional review of Decision KA. No. 339/2016 of 15 April 2016 of the Court of Appeals of Kosovo, and Notification KMLK. No. 7/16 of 29 July 2016 of the Chief State Prosecutor of the Republic of Kosovo

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 Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by the Limited Liability Company “Agrounion“ through its General Director Refik Shabani (hereinafter: the Applicant) based in Sllatinë e Madhë, municipality of Fushë Kosovë, represented by the lawyer Bahtir Troshupa.

Challenged decision

2. The Applicant challenges Decision KA. No. 339/2016 of the Court of Appeals of Kosovo, of 15 April 2016, in conjunction with Notification KMLK. No. 7/16 of the Chief State Prosecutor of the Republic of Kosovo of 29 July 2016.
3. The Notification of the Chief State Prosecutor was served on the Applicant on 1 August 2016.

Subject matter

4. The subject matter is the constitutional review of the challenged Decision of the Court of Appeals in conjunction with the Notification of the Chief State Prosecutor.
5. The Applicant alleges violations of its rights protected by Articles 21 [General Principles] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

6. The Referral is based on Article 21.4 and 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 1 December 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 16 January 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Artta Rama-Hajrizi and Bekim Sejdiu.
9. On 13 February 2017, the Court notified the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Court of Appeals in Prishtina.
10. On 14 March 2017, the Court sent a copy of the Referral to the Chief State Prosecutor of the Republic of Kosovo.
11. On 21 March 2017, the Court requested the Applicant to provide additional clarification regarding the Referral and to submit additional document about the power of attorney.
12. On 30 March 2017, the Applicant submitted the requested document and responded to the Court's request.

13. On 03 May 2017, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court inadmissibility of the Referral.

Summary of facts

14. On 10, 15 and 17 April 2014, the Food and Veterinary Agency carried out a three-day inspection of the work of the Applicant and submitted six papers about the situation they encountered (Minutes Nos. 003615, 003616, 003619, 003620, 003625 and 003626 of 10, 15 and 17 April 2014.)
15. On 28 April 2014, based on the abovementioned Minutes the Food and Veterinary Agency submitted a request for the initiation of minor offence proceedings against the Applicant before the Basic Court in Prishtina - Division for Minor Offences. The Food and Veterinary Agency's request stated that the Applicant,

“has put into the market in the territory of the Republic of Kosovo the Plant Protection Products (PPP) which were not authorized or did not have the certificate of authorization issued by the Ministry of Agriculture, Forestry and Rural Development (MAFRD) and obviously they were not included in the Register – list of PPP that are allowed in the market and for use in Kosovo.”
16. On 14 December 2015, the Basic Court in Prishtina with Decision Reg. No. 26553/14 found the Applicant guilty of the offences and imposed a fine of 6,000 €.
17. On 8 January 2016, the Applicant filed an appeal with the Court of Appeals of Kosovo against the Decision of the Basic Court in Prishtina, stating that the Court had not submitted to the Applicant all of the documents and the Minutes of the hearing.
18. On 15 January 2016, the Court of Appeals of Kosovo with Decision Ka. No. 28/2016 annulled the Decision of the Basic Court in Prishtina and remanded the case for retrial.
19. On 31 March 2016, the Basic Court in Prishtina with Decision Reg. No. 26553/14, in retrial, found the Applicant guilty and fined it 6,000 €.
20. The Applicant filed an appeal with the Court of Appeals of Kosovo against the Decision of the Basic Court in Prishtina, reiterating that the Decision was rendered *“by misusing the judge function by a judge,”* and that there had been *“absolute statutory limitation of the alleged violation”*.
21. On 15 April 2016, the Court of Appeals of Kosovo with Decision KA. No. 339/2016 rejected the Applicant's appeal as ungrounded and upheld the Decision, Reg. No. 26553/14, of the Basic Court in Prishtina.

22. On 22 July 2016, the Applicant addressed the Chief State Prosecutor of the Republic of Kosovo asking for a request for protection of legality to be initiated against the final decision of the Basic Court in Prishtina.
23. On 29 July 2016, the Chief State Prosecutor of the Republic of Kosovo by Notification KMLK. No. 7/16 informed Applicant that:

“After the review of the case file and your proposal, the Office of the Chief State Prosecutor NOTIFIES you that it did not find sufficient legal grounds for filing the request for protection of legality”.

Applicant’s allegations

24. The Applicant describes in detail the factual situation and alleges a number of violations of the Law on Minor Offence proceedings related to its rights. These allegations relate to the non-regular notification about hearings and service of documents; to the absolute statutory of limitation of minor offences; to the exceeding charges applied to the minor offence. However, the Applicant does not relate these alleged violations with any particular constitutional violations.
25. The Applicant further alleges that the principle *reformatio in peius* was violated. The Applicant reasons this allegation with the fact that it was punished for the offences committed during the three days when the inspection was conducted while “... *there was no request to initiate the procedure for alleged minor offences committed on 15 April 2014 and 17 April 2014.*”
26. The Applicant claims that the Court of Appeals convicted the Applicant for offences committed on other days than the offences of which the Applicant was initially convicted, thereby changing the accusations to its detriment. The Applicant alleges that this was not within the scope of jurisdiction of the Court of Appeals, because the appeal itself was submitted by the Applicant and not by the prosecutor.
27. Finally, the Applicant maintains that, “... *despite the fact that the Constitution and the Convention for the Protection of Human Rights and Freedoms do not expressively speak about the principle reformatio in peius, essentially, the constitutional principles and the principles of ECHR contain this principle. Therefore, he considers that his rights stipulated by the principle reformatio in peius and accordingly guaranteed by the Constitution, Article 21 [General Principles], and Article 31 [The Right to Fair and Impartial Trial] and Article 6 (Right to Fair Trial) of the ECHR, have been violated*”.
28. The Applicant requests from the Court

“To DECLARE Decision KA. No. 339/2016, of the Court of Appeal, of 15 April 2016 invalid and to remand the case [...] to the Court of Appeal for retrial ...”.

Admissibility of the Referral

29. The Court will examine whether the Applicant has fulfilled the admissibility requirements established in the Constitution, in the Law and the Rules of Procedure.
30. Firstly, 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”.*
31. Then the Court refers to paragraph 4 of Article 21 [General Principles] of the Constitution which establishes,
- “4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable”.*
32. The Court further refers to Article 48 [Accuracy of the Referral] 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 public authority is subject to challenge”.*
33. Furthermore, the Court takes into account Rule 36 (1) (d) and (2) (a) of the Rules of Procedure, which foresee 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:
[...]
(a) the referral is not prima facie justified”.*
34. The Court first considers that, pursuant to Article 21.4 of the Constitution, which provides that *“fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable,”* the Applicant is entitled to submit a constitutional complaint, invoking constitutional rights, valid for individuals and applicable as well for legal persons such as the Applicant.
35. In the present case, the Court considers that the Applicant is an authorized party, it has exhausted all legal remedies available and has filed the Referral within the prescribed deadline. However, the Court should further assess if the

requirements provided by Article 48 of the Law and foreseen by Rule 36 of the Rules of Procedure have been met.

36. The Court considers that the Applicant's allegations concern alleged violations of the law, namely non-regular notification about hearings and service of documents; the absolute statutory of limitation of minor offences; the exceeding charges regarding the minor offence and the principle *reformatio in peius*.
37. The Court notes that the Applicant essentially reiterates the same alleged violations raised by it during the proceedings before the regular courts. In the reopened proceedings the Basic Court and the Court of Appeals took them into account, corrected the alleged violations and reasoned their decisions in details.
38. As far as the Applicant's allegations of "*non-regular notification about the hearings and service of documents*" (Decision KA. No. 339/2016) the Court of Appeals gave a detailed answer, reasoning as follows;

"... after this rejection he appears at the court and receives the court summons and on 25 March 2016 he submitted a request for postponing the session with the same reasoning. Taking into consideration the tendency of the lawyer to delay the proceedings, the Judge orally informed the lawyer that there will be no more postponements of the session, regardless of this, he did not appear at the court on 30 March 2016 whereas the witnesses proposed by him to be heard were present".
39. Furthermore, regarding the Applicant's allegation for "*statutory limitation of committed minor offences and exceeding the charges regarding the minor offence report,*" as well as its allegation that "*the Court is aware of the fact that there is no request for initiation of the procedure for alleged minor offences committed on 15 April 2014 and 17 April 2014,*" the Court notes that the Court of Appeals provided a detailed response regarding these allegations, reasoning;

"... The allegations mentioned in the appeal that the alleged minor offence was committed on 10 April 2013 and consequently, it reached the prescription of the right to conduct the procedure, is not grounded because on 15 April 2014 and also on 17 April 2014 the inspecting control has been done continuously and by the minutes it has been ascertained that the respondent committed the minor offence. Moreover, the request of initiation of minor offence proceedings of 29-30 April 2014 charges the respondent for the commission of the minor offence, beside for 10 April 2016, of 15 April 2016 and of 17 April 2016, based on the minutes of inspections no. 003625 and 003626, therefore, the claim mentioned in the appeal that the first instance court acted contrary to the request for initiation of the minor offence procedure regarding the date of commission of the minor offence, is ungrounded...".
40. Finally, the Court notes that the allegations of a violation of the principle of *reformatio in peius* for imposing a higher sentence although the appeal was made by the Applicant itself are responded by the Court of Appeals, as follows;

“... The panel assesses that the first instance court, during the conduct of the minor offence proceedings, did not violate the provisions of the minor offence procedure, respectively, the Court did not erroneously applied the provisions of the substantive law to the detriment of the respondent, while regarding the gravity of the imposed punishment, pursuant to Article 9 of the LMO, is considered that the decision was imposed under the legal minimum, therefore, there is no legal ground for modifying the Decision and suspension of the minor offence proceedings due to the prescription, as it is proposed in the submitted appeal”.

41. The Court reiterates that it is not its task to deal with errors of facts or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless they may have infringed rights and freedoms protected by the Constitution (constitutionality). When alleging a violation of its constitutional rights and freedoms protected by the Constitution, the Applicant must present substantiated allegations and convincing arguments.
42. The Court recalls that it is not its role to determine what types of evidence are allowed and what evidence should be taken into account, nor to specify what evidence is acceptable and what is not. That is the role of the regular courts. The role of the Constitutional Court is to ascertain whether the regular courts' proceedings were fair in their entirety, including the way the evidence was taken (see ECtHR Judgment of 12 May 2000, *Khan v. the United Kingdom*, Application no. 35394/97, paragraphs 34-35).
43. In addition, the Court also reiterates that the role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution, therefore, it cannot act as a “third or fourth instance court” (See ECtHR Judgment of 21 January 1999, *Garcia Ruiz vs. Spain*, No. 30544/96,; see also Constitutional Court, Resolution on Inadmissibility of 16 December 2011, no. KI70/11, Applicants: *Faik Hima, Magbule Hima and Bestar Hima*).
44. The Court considers that the Applicant had the opportunity to present before the regular courts the material and legal reasons for the resolution of the dispute. The Court considers as well that the Applicant's arguments were duly heard and duly examined by the regular courts and the decisions rendered were fully reasoned.
45. The Court further considers that the Applicant disagrees with the outcome of the proceedings before the regular courts. However, the mere disagreement with the outcome of the proceedings conducted by the regular courts cannot by itself raise an arguable claim for breach of the right to fair and impartial trial (See *mutatis mutandis* case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, Judgment of 26 July 2005).
46. The Court notes that the Applicant did not accurately and specifically state which rights had been allegedly violated and did not explain how and why the judgment of the Court of Appeals might have violated these constitutional rights. The Applicant only emphasized that there had been a violation of constitutional rights. He did not provide any *prima facie* evidence which would

indicate a violation of constitutional rights (see: ECtHR Judgment of 31 May 2005, *Vanek v. Slovak Republic*, no. 53363/99).

47. The Court considers that the Applicant has not substantiated the allegations that the relevant proceedings have been unfair or arbitrary, and that the challenged decisions violated the Applicant's fundamental rights and freedoms guaranteed by the Constitution and the ECHR (see: *mutatis mutandis*, ECtHR Judgment of 30 June 2009, *Shub vs. Lithuania*, no. 17064/06).
48. For these reasons, the Court considers that the admissibility requirements as established in the Constitution, further specified in the Law and foreseen in the Rule of Procedure, have not been met.
49. Therefore, the Court concludes that his Referral is inadmissible as manifestly ill-founded on a constitutional basis.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 48 of the Law, and Rules 36 (2) a) and 56 of the Rules of Procedure, on its session held on 03 May 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



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi