



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

Prishtina, 10 August 2015
Ref. No.: RK 821/15

RESOLUTION ON INADMISSIBILITY

in

Cases Nos. KI152/14 and KI153/14

Applicant

Fatmir Pajaziti

Constitutional Review of the Judgment, P.m.l. No. 194/2013 of the Supreme Court of Kosovo dated 2 April 2014, Decision, PLK. No. 4/14 of the Panel for Conditional Release dated 28 April 2014 and Judgment, Pzd. No. 84/2014 of the Supreme Court of Kosovo of 5 August 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Fatmir Pajaziti, with residence in village Smirë, Municipality of Vitia, currently serving his sentence in Dubrava prison.

Challenged Decisions

2. In his Referral, KI152/14, the Applicant challenges the Judgment of the Supreme Court (P.m.l. No. 194/2013 dated 2 April 2014), by which the Applicant's request for protection of legality was rejected as ungrounded. The aforementioned Judgment was served on the Applicant on 26 May 2014.
3. In his Referral, KI153/14, the Applicant challenges Decision of the Panel for Conditional Release (PLK. No. 4/14 dated 28 April 2014) by which the Applicant's request for conditional release for the remaining part of his imprisonment sentence was rejected. This Decision was served on the Applicant on 29 April 2014.
4. In the same Referral, KI153/14, he also challenges the Judgment of the Supreme Court (Pzd. No. 84/2014 dated 5 August 2014). The Supreme Court rejected the Applicant's request for extraordinary mitigation of his imprisonment sentence imposed by Judgment of the District Court in Prishtina (P. No. 244/2010 dated 17 June 2011).

Subject Matter

Referral KI152/14

5. The subject matter of this Referral is the request for constitutional review of the Judgment, P.m.l. No. 194/2013 of the Supreme Court of Kosovo dated 2 April 2014.
6. In his Referral the Applicant does not specify what rights and freedoms have been violated nor which constitutional provision in particular substantiates his Referral. However, he alleges violation of criminal proceedings completed before the regular courts, where the Applicant was sentenced to imprisonment for committing the criminal offence of Smuggling of migrants.

Referral KI 153/14

7. The subject matter of this Referral is the request for constitutional review of the Decision of the Panel for Conditional Release (PLK. No. 4/14 dated 28 April 2014) and of the Judgment of Supreme Court (Pzd. No. 84/2014 dated 5 August 2014) regarding the Applicant's request for extraordinary mitigation of the imprisonment sentence.
8. In this Referral, the Applicant does not specify what rights and freedoms have been violated and what constitutional provision in particular substantiates his Referral.

Legal basis

9. The Referrals are based on Article 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 Rules 37 and 56 of the Rules of Procedure of

Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

10. On 8 October 2014 the Applicant submitted the Referrals to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
11. On 6 November 2014, the President of the Court by Decision, GJR. KI152/14 appointed Judge Ivan Cukalovic as Judge Rapporteur and by Decision, KSH. KI154/14 appointed the Review Panel composed of Judges, Altay Suroy (presiding), Snezhana Botusharova and Artta Rama-Hajrizi.
12. On 14 November 2014, the Court notified the Applicant of the registration of Referral and requested from him to complete the Referral forms and submit additional documents.
13. On 1 December 2014, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referral KI153/14 with Referral KI152/14. By this order, it was decided that the Judge Rapporteur and the composition of the Review Panel be the same as it was decided by the Decisions (GJR. KI152/14 and KSH. KI152/14) of the President on the appointment of the Judge Rapporteur and the Review Panel on 6 November 2014.
14. On 1 December 2014 the Court informed the Applicant of the joinder of Referrals. On the same date the Court sent a copy of the Referral and notification of joinder of referrals to the Supreme Court and Kosovo Judicial Council.
15. On 22 December 2014, the Applicant submitted the completed Referral form and the additional documents.
16. On 6 February 2015 the Court requested the Basic Court in Prishtina to provide a copy of the receipt of service, which shows when the Judgment, of the Supreme Court (P.m.l. No. 194/2013 dated 2 April 2014), was served on the Applicant.
17. On 2 March 2015, the Basic Court in Prishtina submitted the copy of the receipt to the Court, which shows that the Applicant received the Judgment of the Supreme Court (P.m.l. No. 194/2013 dated 2 April 2014) on 26 May 2014.
18. On 3 July 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referrals as inadmissible.

Summary of facts

A. Summary of facts related to Referral KI 152/14

19. During the night between 14 and 15 October 2009, a group of 18 (eighteen) citizens from Kosovo has crossed the border between Serbia and Hungary by a

boat sailing in river Tisa, near the city of Subotica. The boat was drowned on its way and 15 (fifteen) citizens of Kosovo lost their lives, while 3 (three) of them survived.

20. On 13 September 2010 the Special Prosecution Office of the Republic of Kosovo (hereinafter: SPRK) based on the act PPS. No. 422/09, filed an indictment against the Applicant and six (6) other persons, charging them with the criminal offence of the organized crime under Article 274, paragraph 4, in conjunction with Article 23 of the Criminal Code of Kosovo (hereinafter: CCK), and the criminal offence of Smuggling of migrants under Article 138, paragraph 6 of the same Code.
21. On 17 June 2011, the District Court in Prishtina (Judgment, P. no. 244/10) found the Applicant guilty for committing the criminal offence of Smuggling of migrants under Article 138, paragraph 6 of the CCK and sentenced him to seven (7) years of imprisonment. In addition, with the same Judgment of the District Court in Prishtina four (4) other persons were found guilty for committing the criminal offence of the organized crime in conjunction with the criminal offence of Smuggling of migrants and two (2) other persons were found guilty for committing the criminal offence of Smuggling of migrants and were consequently sentenced to imprisonment.
22. On 1 November 2011, the Applicant filed an appeal with the Supreme Court against the Judgment of the District Court, alleging substantial violation of the provisions of the criminal code and criminal procedure code and erroneous and incomplete determination of the factual situation.
23. On 2 October 2012, the Supreme Court (Judgment, AP-Kz nr. 61/2012) rejected the Applicant's appeal as ungrounded.
24. On an unspecified date, the Applicant submitted a request for protection of legality with the Supreme Court, challenging the judgments of the District Court in Prishtina (P. no. 244/10 dated 17 June 2011) and that of Supreme Court (AP-Kz nr. 61/2012 dated 2 October 2012), alleging that these judgments contain essential violation of the criminal code and criminal procedure code.
25. On 2 April 2014 the Supreme Court (Judgment, P.m.l. nr. 194/2013) rejected the Applicant's request for protection of legality as ill-founded, and held that it did not found any procedural violation.
26. The Court notes that one of the persons who were found guilty by the aforementioned Judgment of the District Court in Prishtina (P. no. 244/10, of 17 June 2011) filed a Referral with the Court requesting the constitutional review of the same Judgment of the Supreme Court, P.m.l. nr. 194/2013, of 2 April 2014. On 16 January 2015, the Court had decided to declare the Referral as inadmissible by reason of being manifestly ill-founded (See Case KI137/14, Applicant: *Shpejtim Ademaj*, Resolution on Inadmissibility of 16 January 2015).

B. Summary of fact related to Referral KI 153/14

As to the Decision of the Conditional Release Panel

27. On 23 May 2013, the Applicant filed a request with the Conditional Release Panel seeking his conditional release for the remaining part of his imprisonment sentence.
28. On 28 April 2014, the Conditional Release Panel (Decision, PLK. No. 4/14) rejected the Applicant's request with the possibility of reviewing his case after one (1) year.
29. The Conditional Release Panel assessed that due to the nature and weight of the criminal offence and the purpose of the criminal sanction, the conditions for his conditional release have not been met.

As to the Applicants' request for extraordinary mitigation

30. On an unspecified date, the Applicant filed a request with the Supreme Court requesting an extraordinary mitigation of the imprisonment sentence imposed by the Judgment of the District Court in Prishtina (P. No. 244/2010 dated 17 June 2011) and upheld by Judgment of the Supreme Court (AP. No. 61/2012 dated 2 October 2012).
31. In his request, the Applicant invoked that he was a father of four children and his spouse was seriously ill.
32. On 5 August 2014, the Supreme Court (Judgment, PZD. No. 84/2014) rejected the Applicant's request for extraordinary mitigation as ungrounded.
33. The Supreme Court assessed that extraordinary mitigation is not permissible because the new alleged circumstances invoked by the Applicant do not meet the criteria for extraordinary mitigation established by law.
34. In this regard, the Supreme Court reasoned that:

"The circumstances mentioned in this request that he is father of 4 children were known and assessed by the courts during the rendering of the decisions on the punishment. Moreover, it should be mentioned that although [the Applicant] invokes the circumstance that his spouse is seriously ill, the court did not confirm this by any circumstances, because no evidences that would prove this circumstance had been enclosed to the request.

Applicant's allegations

A. As to the Referral KI 152/14

35. As mentioned above, the Applicant does not specify what rights and freedoms have been violated nor which constitutional provision in particular

substantiates his Referral, but he alleges violation of criminal proceedings completed before the regular courts, where the Applicant was sentenced to seven (7) years of imprisonment for committing the criminal offence of Smuggling of migrants.

B. As to Referral KI 153/14

36. In his Referral, the Applicant challenges the Decision of the Panel for Conditional Release (PLK. No. 4/14 dated 28 April 2014) and the Judgment of Supreme Court (Pzd. No. 84/2014 dated 5 August 2014) regarding his request for extraordinary mitigation of the imprisonment sentence.
37. However, the Applicant does not specify what rights and freedoms have been violated nor which constitutional provision in particular substantiates his Referral. He declares that he served five (5) years of his imprisonment sentence and addresses the Court with the request to *“intervene with the aforementioned court instances to approve his requests for conditional release or extraordinary mitigation of his imprisonment statement.”*

Admissibility of the Referrals

38. In order to be able to adjudicate the Applicant’s Referrals, it is necessary for the Court to first examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

A. As to Referral KI152/14

39. The Court refers to Article 49 of the Law, which provides:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”

40. The Court also takes into account Rule 36 (1), (c) of the Rules of Procedure, which provides:

“(1) The Court may consider a referral if:

[...]

(c) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant [...]”

41. To determine whether the Applicant has submitted the Referral within the provided time limit of four months, the Court refers to the date when the final decision was served on the Applicant and the date on which the Referral was submitted to the Constitutional Court.

42. The challenged Judgment of the Supreme Court (P.m.l. No. 194/2013 dated 2 April 2014) was served on the Applicant on 26 May 2014, while he submitted his Referral to the Court on 8 October 2014. Based on this, it follows that the Referral was not filed within the legal time limit provided by Article 49 of the Law and Rule 36 (1), (c) of the Rules of Procedure.
43. The Court recalls that the objective of the four month legal deadline under Article 49 of the Law and Rule 36 (1), (c) of the Rules of Procedures, is to promote legal certainty, by ensuring that the cases, raising issues under the Constitution, are dealt within a reasonable time and that the past decisions are not continually open to challenge (See case *O'Loughlin and others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).
44. Therefore, the Referral is inadmissible for being out of time.

B. As to Referral KI 153/14

45. The Court recalls that the Applicant in this Referral challenges:
 - a. Decision of the Panel for Conditional Release (PLK. No. 4/14 dated 28 April 2014); and
 - b. Judgment of Supreme Court (Pzd. No. 84/2014 dated 5 August 2014) regarding his request for extraordinary mitigation of the imprisonment sentence.
46. In this regard, the Court notes that both challenged decisions were rendered in two different sets of proceedings.
47. As to the Decision of the Panel for Conditional Release (PLK. No. 4/14 dated 28 April 2014), the Court notes that this Decision was served on the Applicant on 29 April 2014, while he submitted his Referral on 8 October 2014.
48. Based on the foregoing, the Court concludes that the part of the Referral, whereby the Applicant challenges the Decision of the Panel for Conditional release is out of time because the Referral was not filed within the legal time limit provided by Article 49 of the Law and Rule 36 (1), (c) of the Rules of Procedure.
49. As to the Judgment of Supreme Court (Pzd. No. 84/2014 dated 5 August 2014) regarding his request for extraordinary mitigation of the imprisonment sentence, the Court refers to Article 48 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”.
50. The Court also 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:

[...]

(d) the Applicant does not sufficiently substantiate his claim.

51. Based on the above, the Court observes that the Applicant is not mainly satisfied with the legal qualifications of facts and the outcome of the proceedings completed before the Supreme Court. Legal qualification of facts and applicable law are the matters which fall within the scope of legality.
52. In this respect, the Court reiterates that it is not the duty of the Constitutional Court to deal with errors of facts or law (legality) allegedly committed by the Supreme Court, including the regular courts, unless and in so far as they may have infringed rights and freedoms guaranteed by the Constitution (constitutionality).
53. Moreover, in relation to the Judgment of the Supreme Court regarding his request for extraordinary mitigation, the Applicant does not specify what rights and freedoms have been violated nor which constitutional provision in particular substantiates his Referral.
54. The Constitutional Court can only consider whether the evidence has been presented in such a manner that the proceedings in general and viewed in its entirety have been conducted in such a way that the Applicant had a fair trial. (See, *inter alia*, Report of the European Commission of Human Rights in case *Edwards v. United Kingdom*, No. 13071/87, adopted on 10 July 1991).
55. Furthermore, the Court reiterates that it is not its task under the Constitution to substitute the role of the regular courts, in respect of their decisions. 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*, Resolution on Inadmissibility of 16 December 2011).
56. For the foregoing reasons, the Court concludes that the Applicant has not sufficiently substantiated his claim.
57. Therefore, the part of Referral KI153/14 regarding the challenged Judgment of the Supreme Court related to the Applicant's request for extraordinary mitigation is manifestly ill-founded.
58. Finally, the Court concludes that Referrals, KI152/14 and KI153/14 are to be declared inadmissible.
59. Referral KI152/14 is inadmissible because out of time.
60. Referral KI153/14:
 - A. As to the part concerning the challenged Decision of the Conditional Release Panel is inadmissible because out of time;

- B. Whereas the part of the Referral regarding the challenged Judgment of the Supreme Court related to the Applicant's request for extraordinary mitigation is inadmissible by reason of being manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 48 and 49 of the Law and Rules 36 (1), (c) and (2), (d) of the Rules of Procedure on 10 August 2015, unanimously:

DECIDES

- I. TO DECLARE the Referrals 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

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

