



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

Prishtina, on 4 July 2016
Ref. No.:RK959/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI152/15

Applicant

Rrustem Geci

Constitutional review of Judgment Pml. Kzz. 72/2015, of the Supreme Court of Kosovo, of 13 October 2015

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,
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Mr. Rrustem Geci (hereinafter: the Applicant), from village Llausha, Municipality of Skenderaj, who is represented by his wife Ms. Shehrije Geci.

Challenged decision

2. The Applicant challenges Judgment Pml. Kzz. 72/2015, of 13 October 2015, of the Supreme Court of Kosovo (hereinafter: the Supreme Court).

Subject matter

3. The subject matter is the constitutional review of the abovementioned Judgment, which allegedly violated the Applicant's rights and freedoms as guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] and 13 [Right to an effective remedy] of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is 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 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

5. On 22 December 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 January 2016, the President of the Court by Decision No. GJR. KI152/15 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI152/15 appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Arta Rama Hajrizi and Bekim Sejdiu.
7. On 18 March 2016, the Court informed the Applicant and the Supreme Court about the registration of the Referral.
8. On 20 May 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the full Court the inadmissibility of the Referral.

Summary of facts

9. On 12 September 2013, the Basic Court in Mitrovica, by Judgment (P. no. 14/2013), found the Applicant and two other persons guilty for the commission of the criminal offense of war crimes against the civilian population, in co-perpetration. Regarding this, the Applicant and two other persons were sentenced to imprisonment of 12 (twelve) years.
10. On 21 December 2013, the Applicant filed an appeal with the Court of Appeal of Kosovo against the Judgment (P. no. 14/2013) of the Basic Court in

Mitrovica, due to the erroneous application of the Criminal Law concerning the length of the sentence.

11. Regarding the abovementioned appeal, the Applicant proposed new facts and evidence, namely the hearing of three (3) new witnesses, who according to the Applicant, are relevant to support his alibi.
12. On 29 October 2014, the panel of the Court of Appeal of Kosovo (hereinafter: the Court of Appeal), by Judgment (PAKR 55/14) partially approved the Applicant's appeal, modified the Judgment (P. no. 14/2013) of the Basic Court in Mitrovica regarding the Applicant's punishment, by sentencing the Applicant to 8 (eight) years of imprisonment, and upheld other parts of the aforementioned Judgment.
13. With regard to the admissibility of the Applicant's proposal for new evidence in the relevant part of the Judgment of the Court of Appeal is stated:

"[...] Pursuant to Article 382 (3) of CPC, new pieces of evidence and facts may be presented in an appeal but the person filing the appeal who makes the proposal must provide reasons why these pieces of evidence have not been presented before. Furthermore, the person filing the appeal must show which facts are aimed to be proven through the new proposed pieces of evidence.

...

The Trial Panel rejects the proposal for new pieces of evidence as unsupported and also as unnecessary. The Panel notices that, as regards the alibi of Rrustem Geci, a number of witnesses have already been heard. The Defense Counsel has not made it known as to what new information unheard before by other witnesses would these three new witnesses bring forward. Furthermore, the Defense Counsel has also not shown why they were not able to propose these witnesses earlier during the proceeding [...]"

14. As to the Applicant's claim that the sentence is based solely on the statement of a witness, the relevant part of the Judgment of the Court of Appeal reads:

"[...] the witness J.B. is the main witness in this case against the defendants. The witness however was never a collaborative witness or an anonymous witness, therefore the limitations foreseen by Article (3) and (4) of CPC are not valid for his evidence [...]"

15. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court against the Judgment (PAKR 55/14) of the Court of Appeal and Judgment (P. no. 14/2013) of the Basic Court in Mitrovica.
16. The Applicant in his request for protection of legality stated that "due to the statement provided by S. G. (co-accused) in the session of the Court of Appeal on 28 October 2014, the Court of Appeal was obliged to hold a session to receive evidence from him, to annul the Judgment of the Basic Court and to remand the case for retrial.

...

The Court of Appeal has not provided clarifications for the rejection of his request that the Panel sends him the evidence from the three other additional witnesses [...]”.

17. On 13 October 2015, the Supreme Court of Kosovo, by Judgment (Pml. Kzz. 72/2015) rejected as ungrounded the request for protection of legality filed by the Applicant.
18. In its Judgment, the Supreme Court of Kosovo reasoned that:

“The discretion of the Court of Appeal in finding the basis to hold a review session is provided clearly in Article 392, paragraph 1, ‘...only when necessary to receive new evidence ...’, and the decision to remand the case to the Basic Court as one of the options which the Court of Appeal may choose is provided by Article 398, paragraph 1 (1.3) of CPC. The Defense Counsel has not proven that the Court of Appeal has applied this discretion in violation of the law. The Defense Counsel also asserts that the Court of Appeal has not provided clarifications for the rejection of his request that the Panel sends him the evidence from the three other additional witnesses who, as he claims, could present an alibi for the defendant. The Defense Counsel is instructed to view paragraph 3.6 of the Judgment of the Court of Appeal which provides complete and sufficient reasons for the rejection of the request. The Supreme Court does not find any violation made by the Court of Appeal during the holding of the session, or any flaw in the issued Judgment. All the issues raised in the Appeal were addressed and clear reasons have been provided for their decisions [...]”.

Applicant’s allegations

19. The Applicant alleges that the Judgment (Pml. Kzz. 72/2015) of the Supreme Court and the decisions of the regular courts violated his rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution, as well as rights guaranteed by Article 6 [Right to a fair trial] and 13 [Right to an effective remedy] of the ECHR.
20. The Applicant alleges that “[...] *The Judgment of first instance of the Basic Court in Mitrovica ... contains also legal violations because of erroneous determination of factual situation to the detriment of the accused, which violate the provisions of Article 31, paragraph 4 of the Constitution of the Republic of Kosovo in conjunction with Article 6 of the European Convention on Human Rights because the accused was denied the effective protection [...]*”.
21. The Applicant further alleges that “[...] *By rejection of the request for the protection of legality, the Supreme Court of Kosovo has not applied the law correctly, as it did not act in harmony and as provided by the legal provisions as regards the assessment of legality – counter-legality of the judgments of the lower instance courts [...]*”.

Admissibility of the Referral

22. The Court first examines whether the Applicant's referral has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
23. In this respect, Article 113.7 of the Constitution provides:

"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".
24. The Court refers to Article 48 of the Law, which states:

"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".
25. The Court further refers to Rules 36 (2) (d) of the Rules of Procedure, which foresees:

"(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".
26. In as mentioned above, the Applicant alleges that Judgment (Pml. Kzz. 72/2015) of the Supreme Court and the decisions of the regular courts violated the rights guaranteed by Article 24, Article 31, and Article 32 of the Constitution and Article 6 and 13 of the ECHR.
27. The Court notes that the Applicant has not provided any procedural or substantive reasoning in his Referral. He only mentioned the abovementioned Articles of the Constitution and ECHR, without providing a clear clarification on how these violations occurred.
28. The Court also notes that the Supreme Court rejected the request for protection of legality of the Applicant as ungrounded and fully supported the reasoning of the Court of Appeal of Kosovo.
29. Furthermore, the Court notes that the Supreme Court reviewed each Applicant's allegation, explaining in detail, why the request for protection of legality of the Applicant had to be rejected as ungrounded and the Judgment of the lower instance court to be upheld (*see the Supreme Court's reasoning in paragraph 18 of this document*).
30. The Court considers that although Article 31 of the Constitution and Article 6 of the ECHR guarantee the right to a fair trial, they do not establish any rules on the admissibility of evidence which, under the law applicable in Kosovo are mainly an issue of legality.

31. In this respect, the Court emphasizes that its task is to consider whether the proceedings before the regular courts, were fair in entirety, including the way the evidence was taken (See case *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights, of 10 July 1991).
32. Regarding the allegation of violation of Article 6 (d) of the ECHR, the Court recalls that as a general rule, the regular courts should assess the evidence before them, and the importance of the evidence which the defendants want to present. Article 6 § 3 (d) of the ECHR leaves them, again as a general rule, to assess whether it is appropriate to invite the witnesses. It does not require the presence and examination of every witness on behalf of the accused; Its essential purpose, as indicated by the words “*under the same conditions*”, is “*full equality of arms*” in this matter. In accordance with this, it is not sufficient that the Applicant complains that he was not allowed to hear evidence from witnesses; he must, in addition, support his claim, explaining why it is important that the witnesses in question are heard, and their evidence should be necessary to establish the truth and the rights of the defense (see, among other authorities *Perna v. Italy* [GC], Application no. 48898/99, Judgment of 6 May 2003, para. 29).
33. The Court notes that the regular courts rejected the Applicant's proposal for hearing the certain witnesses on the ground that the Applicant did not provide new information previously unheard by other witnesses.
34. The Court also notes that the Court of Appeal rejected the claim of the Applicant that the decision on punishment is based solely on the statement of a witness, with the reasoning that: “[...] *the witness J.B. is the main witness in this case against the defendants. The witness however was never a collaborative witness or an anonymous witness, therefore the limitations foreseen by Article (3) and (4) of CPC are not valid for his evidence [...]*”.
35. In addition, the Court considers that the Applicant only counts and generally describes the content of the provisions of the Constitution and the ECHR, without accurately proving how these provisions were violated in his case as required by Article 48 of the Law.
36. The Court reiterates that it is not its task to deal with errors of fact or law, allegedly committed by the regular courts, when assessing the evidence or applying the law (legality), unless and insofar as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
37. In fact, the role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (See *mutatis mutandis*, *Garcia Ruiz vs. Spain* [GC] No. 30544/96, para. 28, European Court on Human Rights [ECHR], 1999-I).
38. The Constitutional Court recalls that it is not a fact-finding Court, and that the correct and complete determination of the factual situation is within the full jurisdiction of regular courts, while the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a “fourth instance court” (See

case, *Akdivar v. Turkey*, No. 21893/93, ECHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).

39. In these circumstances, the Court considers that the Applicant has not substantiated his allegations of violation of human rights and fundamental freedoms as guaranteed by the Constitution and the ECHR, because the facts presented by him do not show in any way that the regular had denied him the rights guaranteed by the Constitution.
40. Therefore, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113. 1 and 7 of the Constitution, Article 48 of the Law, and Rules 36 (2) (d) of the Rules of Procedure, in the session held on 20 May 2016, unanimously

DECIDES

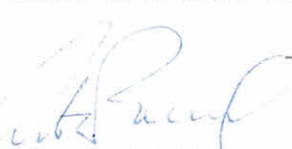
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. This Decision is effective immediately;

Judge Rapporteur



Robert Carolan

President of the Constitutional Court



Arta Rama-Hajrizi

