



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

Prishtina, 9 March 2015
Ref. no.: RK778/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI158/14

Applicant

Bahri Veseli

Request for Constitutional Review of Judgment PML. no. 153/2014, of the Supreme Court, of 4 August 2014, Judgment PAKR. no. 314/2013, of the Court of Appeal, of 29 April 2014, and Judgment P. no. 17/2013, of the Basic Court in Prizren, of 7 May 2013

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 Applicant is Mr. Bahri Veseli, with residence in Prishtina, who is represented by a lawyer, Mr. Mentor Neziri from Prishtina.

Challenged decision

2. The Applicant challenges Judgment PML. no. 153/2014, of the Supreme Court, of 4 August 2014, Judgment PAKR. no. 314/2013, of the Court of Appeal, of 29 April 2014, and Judgment P. no. 17/2013, of the Basic Court in Prizren, of 7 May 2013.

Subject matter

3. The subject matter is the constitutional review of Judgment [PML. no. 153/2014], of the Supreme Court of 4 August 2014, Judgment [PAKR. no. 314/2013] of the Court of Appeal, of 29 April 2014, and Judgment [P. no. 17/2013], of the Basic Court in Prizren, of 7 May 2013, which allegedly violated the provisions of the criminal procedure to the Applicant's detriment.

Legal basis

4. Article 113. 7 of the Constitution, Article 49 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 21 October 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 November 2014, the President of the Court, by Decision no. GJR. KI158/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, by Decision no. KSH. KI158/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
7. On 14 November 2014, the Court notified the Applicant and the Supreme Court of the registration of Referral.
8. On 22 January 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 7 May 2013, the Basic Court in Prizren rendered the Judgment [P. no. 17/2013] by which the Applicant was sentenced to a period of imprisonment of two (2) years and 6 (six) months, as well as to a fine of 2,500 Euros for the criminal offence of unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances, pursuant to Article 229.2, in conjunction with Article 23, of the Provisional Criminal Code of Kosovo.

10. The Applicant filed an appeal within legal time limit against the Judgment of the Basic Court [P. no. 17/2013], of 7 May 2013.
11. On 29 April 2014, the Court of Appeal rendered the Judgment [PAKR. no. 314/2013], by which the Applicant's appeal was partly approved and the imprisonment sentence was decreased from 2 years and 6 months to 2 years, whereas the fine was upheld.
12. The Applicant filed a request for protection of legality with the Supreme Court due to substantial violation of the criminal procedure provisions.
13. On 4 August 2014, the Supreme Court rendered the Judgment [Pml. no. 153/2014] by which the Applicant's request for protection of legality was approved. In its Judgment, the Supreme Court noted: *"By approving the request for protection of legality of the convict's defense counsel, the Judgment P. no. 17/2013 of 07.05.2014 rendered by the Basic Court in Prizren and Judgment PAKR. no. 314/2013 of 29.04.2014 rendered by the Court of Appeal of Kosovo ARE MODIFIED only in terms of legal qualification so that, the Supreme Court of Kosovo, the actions of the convict legally qualifies as a criminal offence of attempted unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and psychotropic substances provided in Article 229, paragraph 1, in conjunction with Article 20 of the Criminal Code of Kosovo, whereas in the other part, the judgment is not modified"*.

Relevant law

Provisional Criminal Code of Kosovo

Article 20. Attempt: *"Whoever intentionally takes an immediate action toward the commission of an offence and the action is not completed or the elements of the intended offence are not fulfilled has attempted to commit a criminal offence."*

Article 229. *Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances:*

[...]

Paragraph 2. *"Whoever, without authorization, distributes, sells, transports or delivers substances or preparations which have been declared to be dangerous narcotic drugs or psychotropic substances, with the intent that that they shall be distributed, sold or offered for sale shall be punished by a fine and by imprisonment of one to eight years."*

Applicant's allegations

14. The Applicant stated in his referral that he considers that all courts committed substantial violations of the criminal procedure to the detriment of the convict, by which the Criminal Code and the Criminal Procedure Code were violated.
15. The Applicant addresses the Court with the request :

„To approve the request for constitutional review of the appealed judgments as grounded, to hold that the three courts, when rendering their judgments, have violated the criminal law and the constitutional provisions on the rights of the accused to fair trial and to annul all these judgments and acquit the convict of the indictment due to lack of evidence.“

Admissibility of Referral

16. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine beforehand whether he has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

17. In this respect, Article 113, paragraph 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”.

18. In this case, the Court refers to Rule 36 (1) (d) of the Rules of Procedure, which provides:

(1) “The Court may only deal with Referrals if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.“

19. The Court notes that the Applicant's referral is examined in terms of violation of the rights and freedoms guaranteed by the Constitution and the ECHR, however, the Court notes that the Applicant in his Referral has not specified what rights and freedoms guaranteed by the Constitution have been violated by the judgments, challenged by him, despite the fact that Article 48 of the Law 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.”

20. In addition, the Court further notes that the Applicant has based his request on violation of the Criminal Code and the Criminal Procedure Code, and therefore, the Court finds that what the Applicant raises in his referral is an issue of legality and not of constitutionality.

21. Furthermore, the Court considers that the Supreme Court in its Judgment [PML. no. 153/2014] responded to Applicant's allegations for violations of the Criminal Code and Criminal Procedure Code, when it stated:... *„ that the criminal law was violated to the detriment of the accused (Applicant) given that he was found guilty on the criminal offence provided in Article 229, paragraph 2 in conjunction with Article 23 of CCK: unauthorized purchase, possession, distribution and sale of dangerous narcotic drugs and*

psychotropic substances, therefore it decided as per enacting clause of this judgment” [...]. The Supreme Court concluded in its Judgment: „although it modified the legal qualification of the criminal offences based on which the convict was sentenced, as far as the punishment is concerned, it did not find any circumstance that would have impact on decrease of the imposed sentence, therefore, the judgment in this regard also remained unchanged.”

22. Based on this, the Court considers that the reasoning given in the Judgment of the Supreme Court and in the Judgments of the lower instance courts is clear and legally substantiated, and that the proceedings have not been unfair or arbitrary (see, *mutatis mutandis*, *Shub v. Lithuania*, no. 17064/06, ECHR decisions of 30 June 2009).
23. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect to the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999, see also case No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
24. The Court reiterates that the Applicant's dissatisfaction with the outcome of the case cannot of itself raise an arguable claim for breach of the constitutional provisions (See Case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No.5503/02, ECHR, Judgment of 26 July 2005).
25. In sum, the Court finds that the Applicant's referral does not meet the admissibility requirements, considering that the Applicant has not shown that the challenged decision violates his rights guaranteed by the Constitution or ECHR.
26. Accordingly, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (d) of the Rules of Procedure, in the session held on 22 January 2015, 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



Prof. Dr. Enver Hasani

