



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

Prishtina, on 28 May 2015
Ref. No.:RK 800/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI169/14

Applicant

Osman Osmanaj

Constitutional Review of Judgment PML. no. 124/2014, of the Supreme Court, of 2 July 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
Arta Rama-Hajrizi, Judge and
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Osman Osmanaj, with residence in Istog (hereinafter: the Applicant).

Challenged Decision

2. The challenged decision is Judgment PML. No. 124/2014 of the Supreme Court, of 2 July 2014, by which the Supreme Court rejected the Applicant's request for protection of legality as ungrounded and upheld the Judgments of the Court of Appeal and of the Basic Court.
3. This Judgment was served on the Applicant on 23 July 2014.

Subject Matter

4. The subject matter is the constitutional review of Judgment PML. No. 124/2014, of the Supreme Court, of 2 July 2014, which allegedly violated Article 31, paragraph 4 [Right to Fair and Impartial Trial] and Article 102 paragraph 1 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo, and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Legal Basis

5. The Referral is based on Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 24 November 2014, the first official business day after Sunday, on 23 November 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 8 December 2014, the President of the Court by Decision GJR. KI169/14 appointed Judge Robert Carolan as Judge Rapporteur and by Decision KSH. KI169/14 appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 26 January 2015, the Court informed the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.
9. On 15 April 2015, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

Summary of Facts

10. On 28 May 2013, the Basic Court in Peja, Branch in Istog, [P. No. 463/2011] found the Applicant guilty of the criminal offense of false reports. The Basic Court by this Judgment imposed on the Applicant the sentence of imprisonment of 3 months, suspended for 2 years.

11. The Applicant filed an appeal against Judgment [P. No. 463/2011], of the Basic Court in Peja, Branch in Istog, of 28 May 2013.
12. On 21 October 2013, the Court of Appeal of Kosovo, [PA1. No. 771/2013] rejected the Applicant's appeal and upheld the Judgment of the Basic Court. The Court of Appeal considered that the Applicant was not deprived of any rights guaranteed by the Criminal Code of Kosovo, which can be confirmed by the examination of the case file, in particular the minutes of the main trial.
13. The Applicant then submitted a request for protection of legality to the Supreme Court of Kosovo, claiming an essential violation of the criminal law, and proposed that the court modifies the judgments of the first and second instance court, and dismisses the indictment filed against him.
14. On 2 July 2014, the Supreme Court of Kosovo, [PML. no. 124/2014] rejected the Applicant's request for protection of legality as ungrounded.
15. The Supreme Court reasoned and held:

“The allegation in the request for protection of legality according to which the witness, without specifying who is the witness, did not respond “to the questions of the defense counsel and this was allowed by the Court”, has no grounds because it is determined by the minutes of the main hearing that the witnesses- Tahir Jahaj, Bashkim Blakaj, and Besim Osmanaj responded to all the questions of the defense counsel and it was determined in the minutes that after the being questioned the defense counsel did not have any other questions to the witness.

From the court minutes of the main hearing, after questioning the witness- Bashkim Blakaj by the defense counsel and the accused- Osman Osmanaj, the defense counsel proposed to make “the comparison of two statements (that of Tahir Jahaj and that of Bashkim Blakaj)”, a proposal which the court rejected by a decision fairly reasoning that the court first makes the assessment of the statements of the witnesses and thereafter it decides to which shall be given the trust.

As regards the rejection for providing the list of telephone calls of 28 October 2011, the Court rendered a well-reasoned decision when it referred to the impossibility to provide this evidence due to the long period of time lapsed (the proposal was made in the session of 23 May 2013) and the impossibility to ensure this evidence”.

16. As regards to the Applicant's complaint on the composition of the Panel of the Court of Appeal, the Supreme Court reasoned and held:

“The alleged violations of the law made by the second instance court that the Judge Mejreme Memaj does not meet the requirements to exercise the profession of a Judge in the Court of Appeal, are ungrounded. The President of the Court of Appeal, pursuant to Article 20, paragraph 3, subparagraph 3.1 of the Rules of Procedure of the Court of Appeal, assigns the Judges in the departments in order to

provide an efficient adjudication of cases, and, if necessary, he can assign temporarily the judges in the departments in order to resolve the pending cases or provide a timely resolution of them“.

Applicant’s Allegations

17. The Applicant claims that the procedure in the trial of the challenged decision violated his constitutional rights in three different ways: (1) The Applicant claims that he was not allowed to confront certain witnesses and that failure violated his rights guaranteed by Article 31, paragraph 4 [Right to Fair and Impartial Trial]; (2) The Applicant further claims that one of the judges in his trial did not have the minimal legal qualifications to serve as a judge in that court and in his trial violating his rights guaranteed by Article 102, paragraph 1 [General Principles of the Judicial System] of the Constitution; and (3) the Applicant claims that the trial court did not consider evidence of the list of certain telephone calls, violating his rights guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
18. The Applicant requests the Court: *“.....to declare invalid the Judgment PML No. 124/14 rendered by the Supreme Court and the Judgment No. PA1. No. 771/13 rendered by the Court of Appeal, and to remand the case for consideration to the Court of Appeal, by a Panel composed based on the law”.*

Admissibility of the Referral

19. In order to be able to adjudicate the Applicant’s Referral, the Court has to first examine whether the Applicant has met the admissibility requirements, laid down in the Constitution, as further specified in the Law and the Rules of Procedure.
20. In this respect, 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.”
21. In addition, the Court takes into account Rule 36 (1) (d) and 36 (2) (b) of the Rules of Procedure, which provide 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:
[...]
(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,
[...]*

22. As mentioned above, the Applicant alleges that the Judgment [PML. No. 124/14] of the Supreme Court and the Judgment [PA1. No. 771/2013] of the Court of Appeal have violated the rights guaranteed by Article 31, paragraph 4 [Right to Fair and Impartial Trial] and Article 102, paragraph 1 [General Principles of the Judicial System] of the Constitution, and Article 6 of the European Convention for Protection of Human Rights and Fundamental Freedoms.
23. In this regard, the Court recalls the reasoning of the Supreme Court, in answering the Applicant's allegations of violation of the law and substantial violation of procedural provisions in his request to confront the witnesses and to present the evidence of the list of telephone calls (see paragraph 15).
24. The Court also notes that the Applicant's allegations of alleged irregularities in the procedure of the establishment of the Court of Appeal Panel are reasoned by the Supreme Court (see paragraph 16).
25. In this regard, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.
26. In this regard, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of facts and law (legality) allegedly committed by the Supreme Court, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
27. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by 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). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case does not give rise to an arguable claim of a violation of his rights as protected by the Constitution. The Court observes that the Applicant had ample opportunity to present his case before the regular courts.
28. The Constitutional Court can only consider whether the evidence has been presented in such a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see *inter alia* case *Edwards v. United Kingdom*, Application No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
29. In that respect, the Court notes that the reasoning referring to the request for confrontation of witnesses, alleged irregularities in the procedure of the establishment of the panel of the Court of Appeal and also for non-presentation of the evidence of the list of telephone calls, in the Judgment of the Supreme Court is clear. After having reviewed all the proceedings, the Court has also

found that the proceedings before the Court of Appeal have not been unfair or arbitrary (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).

30. For the aforementioned reasons, the Court finds that the facts presented by the Applicant do not in any way justify the allegation of a violation of the constitutional rights invoked by the Applicant.
31. Therefore, the Referral is manifestly ill-founded and should be declared inadmissible, in accordance with Rules 36 (1) (d) and 36 (2) (b) of the Rules of Procedure.

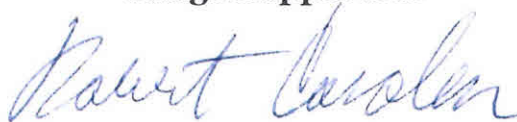
FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Rules 36 (1) (d) and 36 (2) (b) of the Rules of Procedure, in the session held on 28 May 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 on the Constitutional Court;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Robert Carolan

President of the Constitutional Court



Prof. Dr. Enver Hasani