



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

Prishtina, 28 September 2015
Ref. No.: RK 844/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI185/14

Applicant

Zoran Kolić

**Constitutional review of Judgment of the Supreme Court of the Republic
of Kosovo, PML 125/14, dated 8 July 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
Bekim Sejdiu, Judge

Applicant

1. The Referral is submitted by Mr. Zoran Kolić from Lipjan (hereinafter, the Applicant), who is represented by Mr. Miodrag Brkljać, a lawyer practising in Mitrovica.

Challenged decisions

2. The Applicant challenges Judgment of the Supreme Court, PML 125/14, of 8 July 2014, which rejected his requests for protection of legality. The Judgment was served on the Applicant on 20 August 2014.

Subject matter

3. The subject matter concerns the constitutional review of the challenged decision, which allegedly violated his right to a fair trial guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) as well as Articles 6 [Right to a fair trial](1) of the European Convention on Human Rights (hereinafter, the ECHR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
4. The Applicant also requests that the Court, *“pursuant to Article 39 of the Rules of Procedure of the Constitutional Court holds a public hearing because I consider that this is necessary due to the clarification of evidences”*.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 22 [Processing referrals] of Law No. 03/L-121 on the 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

6. On 22 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 13 January 2015, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 30 January 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 29 June 2015, the President of the Court, by Decision no. KSH. KI185/14, appointed Deputy-President Ivan Čukalović as member of the Review Panel instead of Judge Kadri Kryeziu, whose mandate at the Constitutional Court ended on 26 June 2015.
10. On 8 July 2015, the Review Panel considered the Report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 11 May 2012, the District Court in Prishtina found the Applicant guilty of having committed criminal offenses and sentenced him to a punishment of imprisonment and a fine.
12. On 25 September 2013, the Court of Appeals (Decision PAKR 1121/12) partially approved the appeals submitted by the Applicant, amending the Judgment of the District Court by joining two criminal offences in one.
13. Thereupon, on 8 May 2014, the defense counsels of the Applicant submitted requests for protection of legality to the Supreme Court. The Applicant also submitted a request of his own.
14. The two defense counsels and the Applicant argued *“a number of reasons have been presented by the defense counsels and the accused (...), which pertain only to the factual assessment of the case”*.
15. In fact, the defense grounded the appeal on that *“the evidences are not qualified as war crimes; there were no evidences of co-perpetration: the Judgment is grounded on unacceptable evidences and the first instance court exceeded the indictment”*.
16. On 24 June 2014, the State Prosecutor considered that the submissions of the defense were not grounded and that the requests for protection of legality should be rejected.
17. On 8 July 2014, the Supreme Court (Decision PML 125/2014) rejected the requests for the protection of legality of the Applicant and his defense counsels as not grounded and confirmed the judgments of the lower courts.
18. The Supreme Court reminded the defense counsels and the accused that the request for the protection of the legality, pursuant to paragraph 2 of Article 432 of the CPCK, is not available *“when grounded on the ‘erroneous or incomplete finding of the factual situation’”* and that *“it must not be used as an indirect method of further appealing”*.
19. The Supreme Court considered that *“every submission by the defense counsels or the accused that are related only to the finding of the factual situation is not taken into consideration”*. In addition, the Supreme Court *“did not find any violation of the criminal or procedural law”* in relation to the other reasons submitted by the defense.
20. Finally, the Supreme Court concluded that *“the Judgment of the Court of Appeals pertaining to this is well reasoned, detailed and achieves a just result”*; that there was no *“reason to repeat the findings of the Court of Appeals”* and *“it fully agrees with the reasoning rendered by the appellate panel”*.

Applicant's allegations

21. The Applicant claims that the challenged decisions allegedly violated his right to a fair trial, as guaranteed by Article 6 [Right to a fair trial] of the ECHR and by Article 31 [Right to Fair and Impartial Trial] of the Constitution.
22. The Applicant alleges that his right to a fair trial has been violated, *"because of the manner how these trials were conducted"*.
23. In fact, the Applicant further alleges that *"completely untrustworthy, unreliable and inconsistent evidences of no relevance or importance were assessed as sufficient to render a decision pertaining to the guilt of a completely innocent person"*.
24. The Applicant further argues that the principle of presumption of innocence has been drastically violated and that the Constitutional Court must confirm that principle.
25. The Applicant also complains that, during his detention, he was marked in such a way that anyone knew that he was a war criminal. As a result, he suffered from serious psychological traumas which hindered him to concentrate on his defense for the upcoming trials. He considers that the described action is contrary to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
26. The Applicant finally requests the Court *"to confirm that the convicted was subjected to the violation of the fair trial as well as other human rights provided pursuant to the Constitution"*.

Admissibility of the Referral

27. The Court first has to examine whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and as further specified by the Law and Rules of Procedure.
28. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which stipulates:

"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".
29. The Court notes that the Applicant has sought to protect his rights before the District Court and the Court of Appeals and filed a request for protection of legality with the Supreme Court. He, thus, must be considered having exhausted all available legal remedies provided by Kosovo law.

30. In addition, Article 49 [Deadlines] of the Law 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”.

31. In this respect, the Court notes that the last day of his four-month period fell on Saturday, 20 December. However, Rule 27 (f) of the Rules of Procedure foresees that *“when a time period would otherwise end on a Saturday, Sunday or official holiday, the period shall be extended until the end of the first following working day”*. Therefore, the Applicant could validly submit his Referral on Monday, 22 December.

32. Consequently, the Court considers that the Applicant is an authorized party, has exhausted all legal remedies afforded to him by applicable law and that he timely submitted the Referral to the Court.

33. However, the Court also must take into account Article 48 [Accuracy of the Referral] of the Law and Rule 36 [Admissibility Criteria] of the Rules of Procedure.

34. Article 48 of the Law provides as follows:

“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”.

35. Rule 36 of the Rules of Procedure foresees as follows:

“(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: [...] d) the Applicant does not sufficiently substantiate his claim”.

36. The Applicant alleges that the challenged Decision, which is in relation with Decision P 408/11 of the District Court in Prishtina of 11 May 2012 and Decision PAKR 1121/12 of the Court of Appeals of 25 September 2013, has violated his right to a fair and impartial trial as guaranteed by the Constitution and the ECHR.

37. The Applicant states that the District Court and the Court of Appeals had wrongly considered that the completely untrustworthy and unreliable evidence was sufficient to find him guilty.

38. In that respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular courts or other public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).

39. Therefore, the Court cannot act as a court of fourth instance in respect of decisions taken by the regular courts or other public authorities, since it is their role, when applicable, to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28. See also Constitutional Court case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
40. The Constitutional Court can only consider whether the proceedings in general and viewed in their entirety have been conducted in such a way that the Applicant has had a fair trial. (See, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).
41. In this respect, the Court notes that the Applicant was assisted by his defense counsels in the proceedings and that the courts carefully looked at all the evidence and thoroughly reasoned their decisions.
42. Furthermore, the Supreme Court considered that it could not take into account the requests for protection of legality relating to the factual situation and it could not find a violation of the criminal or procedural law with respect to other reasons submitted by the defense.
43. Moreover, the Supreme Court concluded that the judgment of the Court of Appeals was well-reasoned, detailed and achieved a just result and fully agreed with the reasoning rendered by that court.
44. In these circumstances, the Constitutional Court considers that the proceedings before the District Court, the Court of Appeals and the Supreme Court have been fair and well-conducted (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009) and that the Applicant has not specified how the articles of the Constitution referred to by him, were violated as required by Article 113.7 of the Constitution and Article 48 of the Law.
45. Moreover, the Court notes that the Supreme Court rejected the Applicant's request for the protection of legality, because, pursuant to paragraph 2 of Article 432 of the CPCK, such a request is not permissible "*when grounded on the 'erroneous or incomplete finding of the factual situation'*".
46. The Court considers that the Applicant has not accurately clarified how and why such a decision of the Supreme Court violates his rights and freedoms he claims to have allegedly been breached.
47. In addition, the Applicant has not built and proved a case in relation to "*any violation of the criminal or procedural law*" submitted by him or his defense counsels to the Supreme Court.
48. Furthermore, the Court recalls that the Applicant claims that he was marked as a war criminal during his detention which hindered him to concentrate on the preparation of his defense.

49. However, the Court notes that the Applicant did not show that he has raised that allegation before the regular courts or that these circumstances prevented him to prepare his defence in the criminal proceedings.
50. Therefore, the Court considers that the Applicant has not substantiated the allegation on the ill treatment he allegedly has endured while in detention and has not submitted any evidence which could prove his claim.
51. In sum, the Applicant's claims of a violation of his rights and freedoms under the Constitution and the ECHR are unsubstantiated and not proven and, thus, are manifestly ill-founded.
52. In addition, the Applicant also requested that, pursuant to Rule 39 [Right to Hearing and Waiver] of the Rules of Procedure, the Court should hold a public hearing in order to clarify the evidence.
53. In that respect, the Court considers that the request of the Applicant to hold a public hearing does not meet any of the conditions foreseen by Rule 39 [Right to Hearing and Waiver] of the Rules of Procedure.
54. Moreover, holding a public hearing in order to clarify the evidence of the case would fall under the jurisdiction of a "fourth instance court." As said above, the Constitutional Court is not a "fourth instance court."
55. Finally, the Court has just concluded that the Referral is inadmissible as manifestly ill-founded. Thus, the Court takes into account that Rule 39 of the Rules of Procedure foresees that "*only referrals determined to be admissible may be granted a hearing before the Court.*" Therefore, the Applicant's request to hold a public hearing is rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 29 of the Law and Rule 36 (1) (d) and (2) and Rule 56 of the Rules of Procedure, on 8 July 2015, unanimously,

DECIDES

- I. TO DECLARE the Referral 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;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues

President of the Constitutional Court



Arta Rama-Hajrizi

