



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

Prishtina, on 13 June 2016
Ref. No.:RK951/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI23/15

Applicant

Miladin Anđelković

**Constitutional review of Decision PN no. 550/2014, of the Court of
Appeal of Kosovo, of 31 October 2014**

THE CONSTITUTIONAL COURT OF 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 Referral was submitted by Mr. Miladin Anđelković (hereinafter, the Applicant), from Kragujevac, Republic of Serbia.

Challenged decision

2. The Applicant challenges Decision PN no. 550/2014, of the Court of Appeal of Kosovo, of 31 October 2014, in conjunction with Decision K. no. 29/14, of the Basic Court in Mitrovica, of 10 September 2014.
3. The Decision of the Court of Appeal was served on the Applicant on 14 November 2014.

Subject matter

4. The subject matter is the constitutional review of the challenged decisions, which allegedly violate Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo (hereinafter, the Constitution), in conjunction with Article 6 (Right to a fair trial), Article 13 (Right to an effective remedy) and Article 14 (Prohibition of discrimination) of the European Convention on Human Rights (hereinafter, the Convention).

Legal basis

5. 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

6. On 27 February 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 12 March 2015, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan, Ivan Čukalović and Enver Hasani
8. On 27 March 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Basic Court in Mitrovica.
9. On 26 June 2015, the mandate of Judge Enver Hasani ended. On 1 July 2015, Judge Arta Rama-Hajrizi was appointed as a member of the Review Panel, replacing Judge Enver Hasani.
10. On 18 January 2016, a copy of the Referral was sent to the Court of Appeal of Kosovo.
11. On 13 April 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. Based on the documents included in the Referral, it appears that the Applicant's father was murdered by a third party, A. D., regarding a property dispute.
13. On 26 February 2014, the Public Prosecutor in Mitrovica filed an indictment against the defendant A. D. for the criminal offense of aggravated murder sanctioned by the Criminal Code of the Republic of Kosovo. The Public Prosecutor gave a detailed description of the criminal offense of the defendant A. D. thus, concluded that the indictment is justified and based on the law, because there are all essential elements of the criminal offense.
14. On 10 September 2014, the Basic Court in Mitrovica (Decision K. no. 29/14) decided that:

“I. The defendant A. D., is incapable of standing trial.

II. The criminal procedure against the defendant A. D., for the criminal offense of Aggravated Murder, pursuant to Article 179, paragraph 1, item 1.3 of the CCRK is terminated due to his inability to stand trial during the procedure due to his permanent psychological illness.

III. Once the Decision becomes final, the case file shall be submitted to the Basic Court in Mitrovica – General Department – Litigations Division, with the aim of putting the defendant in a caretaking institution, pursuant to the applicable Law on Out Contentious Procedure.”
15. The Basic Court reasoned that after reviewing the report of the medical experts, the statements of the prosecution and the defense, all legal requirements that the defendant A.D. is unable to stand trial have been met, and that the criminal proceedings for that case is terminated.
16. On an unspecified date, the Applicant filed with the Court of Appeal of Kosovo an appeal, alleging essential violation of the provisions of procedural law and erroneous and incomplete determination of factual situation. The Applicant mainly questioned the professionalism and authenticity of the expertise regarding the health condition of the defendant A.D.
17. On 31 October 2014, the Court of Appeal (Decision PN no. 550/2014) rejected as ungrounded the appeal of the Applicant. The Court of Appeal upheld the Decision of the Basic Court, explaining that there was sufficient evidence to prove that the defendant A.D. was unable to deal with the trial- which resulted in the termination of the criminal proceedings - and that the Applicant's allegations were of a general nature and did not contain anything specific.
18. The Court of Appeal concluded that the claims were ungrounded *“because the first instance court acted correctly when it terminated the criminal procedure against the defendant A.D., (... due to his inability to stand trial during the procedure and the permanent psychological illness”*.

19. The Court of Appeal found that *“the first instance court provided sufficient reasons pertaining to the evidence for the termination of the procedure, based on the evidence found in the case file as such as: report of expert doctors, statements of the prosecutor and the defense counsel that all the legal conditions have been met and it was confirmed that the defendant A. D. was not able to withstand trial, thus the procedure in this criminal matter was terminated”*.

Applicant’s allegations

20. The Applicant claims that the challenged decisions violated his constitutional rights to equality before the law, to fair and impartial trial and to judicial protection of rights.
21. The Applicant alleges that *“the Basic Court rendered the decision on the termination of the procedure without confirming at all whether the defendant had committed the criminal offense or whether he took over someone else’s responsibility”*.
22. The Applicant further alleges that *“the defendant’s son attended the expert’s procedure, which is against the law (Article 508) and therefore creates the suspicion of partiality”*.
23. The Applicant also alleges that *“it has not been proven who is responsible for the death of my father.”*

Assessment of the admissibility of the Referral

24. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
25. In this respect, Article 113.7 of the Constitution establishes:
- “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”*.
26. The Court also 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”*.
27. The Court further takes into account Rule 36 (1) (d) and (2) (c) of the Rules of Procedure, which specifies :
- (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:*

[...]

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution”.

28. The Court considers that the Applicant does not agree with decisions of the regular courts on termination of the criminal proceedings against A.D., and based on his allegations - in substance – is noticed his will to go to the end of the criminal proceedings against A. D., and he also added that “*it was not proven who is responsible for his father's murder.*”
29. In addition, the Applicant questions the professional opinions of experts regarding the health condition of the defendant A. D. to follow the judicial process.
30. In this regard, the Court is obliged to first determine whether the Applicant's request for the continuation of the criminal proceedings against the third party and the discovery of the murderer of his father is a right guaranteed by the Constitution.
31. The Court observes that the Applicant has not laid blame on the public authorities of Kosovo for the death of his father; nor it has been suggested that the authorities knew or ought to have known that the life of the Applicant's father was at risk by the third parties and failed to take the appropriate measures to safeguard the Applicant's father from that risk. (See ECHR, Decision as to the Admissibility of Application no. 47916/99, *Menson and Others v. the United Kingdom*, 6 May 2003). The Applicant's case is therefore to be distinguished from cases involving the alleged use of lethal force either by agents of the State or by natural persons with their collusion (see, for example, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324; *Hugh Jordan v. the United Kingdom* no. 24746/94, judgment of 4 May 2001, ECHR 2001-III (extracts); *Shanaghan v. the United Kingdom*, no. 37715/97, Judgment of 4 May 2001, ECHR 2001-III (extracts).
32. As to the Applicant's allegation of continuation of the criminal proceedings against A. D., the Court notes that the Constitution does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence. To fall within the scope of the Constitution, such right cannot be independently initiated, it must be indissociable from the victim's exercise of a right to bring civil proceedings, even if only to secure symbolic reparation or to protect a civil right such as the right to a “good reputation” (See, for example, case *Gorou v. Greece* (no. 2), application no. 12686/03,[GC], Judgment of 20 March 2009, paragraph 24, see also, *mutatis mutandis*, case *Perez v. France*, application no. 47287/99, [GC], Judgment of 12 February 2004, paragraphs 70, 71).
33. Regarding the Applicant's allegation to determine the person responsible for the murder of his father, the Court notes that the public authorities acted within their legal and constitutional powers, and did not stay passive because they sued A.D. for committing a criminal offense of aggravated murder; but

during the course of the criminal proceedings have concluded - after receiving the opinion of experts - that A. D. is unable to face trial.

34. The Court also refers to the general principles applied by the European Court of Human Rights in relation to investigations, which expound, first of all, that the lack of conclusions of any given investigation does not, by itself, mean that it was ineffective: an obligation to investigate "*is not an obligation of result, but of means*" (See, for example Case no. KI98/12, Resolution on Inadmissibility of 2 July 2013, and, *mutatis mutandis*, see *Paul and Audrey Edwards V. the United Kingdom*, no. 46477/99, § 71, ECHR 2002 - II).
35. The Court considers that Article 113.7 of the Constitution provides guarantees for the protection of individual rights and fundamental freedoms when they are violated by public authorities; while in the present case the criminal offense cannot be attributed to public authorities, i.e. they are not responsible because the Applicant's father was allegedly murdered by a third party.
36. In this respect, the Court reiterates that the development of the criminal proceedings, including its conduct or dismissal, the way the perpetrators of the criminal offences are punished and discovered is a discretion and prerogative of the regular courts and of the prosecution, even though not unlimited, afforded to them by the law and the Constitution. Therefore any interference by the Court in the discretion might constitute an infringement to their autonomy (See Case no. KI98/12).
37. Therefore, the Referral is to be declared inadmissible, as manifestly ill-founded, in accordance with the Rule 36 (1) (d) and (2) (c) of the Rules of Procedure, because the Applicant is not a victim of violation of the rights guaranteed by the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (c) of the Rules of Procedure, on 13 April 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi