



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

Prishtina, 26 October 2015
Ref. No.: RK 847/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI29/15

Applicant

Bardhyl Kameri

Constitutional review of Judgment Pml. no. 9/2015, of the Supreme Court, of 12 February 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 and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Bardhyl Kameri (hereinafter: the Applicant) from the village Koretin, Municipality of Kamenica, who is represented by Mr. Halit Azemi.

Challenged Decision

2. The challenged decision is Judgment Pml. no. 9/2015 of the Supreme Court dated 12 February 2015. The challenged Judgment of the Supreme Court was served on the Applicant on 3 March 2015.

Subject Matter

3. The subject matter is the request for constitutional review of the aforementioned Judgment of the Supreme Court. The Applicant considers that the regular courts in their decisions when imposing an imprisonment sentence on him violated Article 3 and 24 [Equality Before the Law], Article 21 [General Principles], Article 30 [Rights of the Accused] Article 31 [Right to Fair and Impartial Trial] and Article 33 [The Principle of Legality and Proportionality in Criminal Cases] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

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 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 10 March 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 21 April 2015, the President of the Court by Decision GJR. KI29/15 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision KSH. KI29/15 appointed the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Enver Hasani.
7. On 29 April 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 1 July 2015, the President by Decision GJR. KI29/15 appointed Judge Robert Carolan as Judge Rapporteur, replacing Judge Arta Rama-Hajrizi.
9. On 1 July 2015, the President, by Decision KSH. KI29/15 appointed Judge Arta Rama-Hajrizi as a member of the Review Panel, replacing Judge Enver Hasani, whose mandate with the Constitutional Court ended on 26 June 2015.
10. On 10 September 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral inadmissible.

Summary of facts

11. On 19 June 2014, the Basic Court in Gjilan, Branch in Kamenica, by Judgment P. no. 193/2011, found the Applicant guilty of committing the criminal offense of aggravated theft under Article 253 par. 1 of the Criminal Code of Kosovo, and imposed on him a suspended sentence for a period of 6 (six) months .
12. On 18 August 2014, the Court of Appeal of Kosovo, acting upon the appeal of the Public Prosecutor in Gjilan, by Judgment PAI. no. 997/2014, approved the request of the Public Prosecutor relating to the decision on punishment, by imposing the measure of effective imprisonment to 6 (six) months. That Judgment further emphasized *“The Court of Appeal considers that the appealed allegations of the Prosecutor are grounded because in the present case, the mitigating circumstances have been overestimated while the aggravating circumstances were not considered at all, because the first instance court has incorrectly assessed the social danger and the consequences of the offence committed.”*
13. On 6 November 2014 the Basic Court in Gjilan, acting upon the request of the Applicant for replacement of the imprisonment sentence with an order for community service work, rendered Decision P. no. 193/11, and rejected as inadmissible the Applicant’s appeal.
14. On 16 December 2014, the Court of Appeal of Kosovo, by Decision PN. no. 645/2014 rejected as ungrounded the Applicant's appeal against Decision, P. no. 193/11, of the Basic Court in Gjilan.
15. On 12 February 2015, the Supreme Court, acting upon the submitted request for protection of legality, filed by the Applicant against Decision P. no. 193/11, of the Basic Court in Gjilan, of 11 June 2014, and Decision PN. no. 645/2014, of the Court of Appeal of Kosovo, of 16 December 2014, rendered Judgment, Pml. no. 9/2015. In its Judgment the Supreme Court rejected as ungrounded the request of the Applicant. The Supreme Court held that the second instance court had sentenced him in accordance with the provisions of the law in force at the time of the Applicant’s sentencing.

Applicant’s allegations

16. The Applicant alleges that the sentencing court’s imprisonment sentence violated Article 3 and 24 [Equality Before the Law], Article 21 [General Principles], Article 30 [Rights of the Accused] , Article 31 [Right to Fair and Impartial Trial] and Article 33 [The Principle of Legality and Proportionality in Criminal Cases] of the Constitution.
17. The Applicant requests the Court to quash the decisions of the regular courts and to remand the case for re-trial.

Admissibility of the Referral

18. The Court shall examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
19. The Court refers to Article 113.7 of the Constitution, which 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.”
20. The Court also mentions 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. The Court also refers to Rule 36 of the Rules of Procedure, which foresees:

„(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. When reviewing the Applicant’s allegations regarding the erroneous application of the procedural and substantive law by the regular courts, the Court 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: No. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility, of 16 December 2011).
23. Although the Applicant alleges that his rights were violated by erroneous determination of facts, and erroneous application of the law by regular courts, he did not indicate how these decisions have violated his constitutional rights. The Applicant has not provided any *prima facie* evidence which would point out to a violation of his constitutional rights (See: *Vanek vs. Slovak Republic*, No. 53363/99 ECHR, Decision, of 31 May 2005).
24. The Court further reiterates that the mere fact that the Applicant is dissatisfied with the outcome of the proceedings in his case, cannot of itself, raise an arguable claim for a breach of the Constitution (see case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, Judgment of 26 July 2005).
25. The Applicant was afforded numerous opportunities to present his case before the Basic Court in Gjilan, the Court of Appeal of Kosovo in Prishtina and before the Supreme Court of Kosovo.

26. As mentioned above, the Court finds that the reasoning given in the Decision P. no. 193/11, of the Basic Court in Gjilan, of 11 June 2014, Decision PN. no. 645/2014, of the Court of Appeal of Kosovo, of 16 December 2014 and Judgment, Pml. no. 9/2015, the Supreme Court of 12 February 2015 are complete and clear. The proceedings before the regular courts were not unfair or arbitrary (see case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
27. In sum, the Applicant failed to show or substantiate by evidence that his constitutional rights and freedoms have been violated by the challenged decision.
28. Based on the foregoing, the Court considers that the facts represented by the Applicant do not in any way justify the alleged violation of the constitutional rights invoked by the Applicant and he has not sufficiently substantiated his claim.
29. Thus, the Court concludes that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 48 of the Law and Rules 36 (2) (b) of the Rules of Procedure, in the session held on 10 September 2015, unanimously:

DECIDES

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

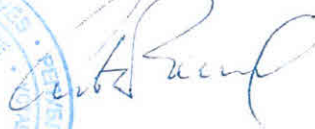
Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Arta Rama-Hajrizi