



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

Prishtina, on 5 November 2015
Ref. no.:RK 855/15

RESOLUTION ON INADMISSIBILITY

in

Case no. KI53/15

Applicant

Heset Neziri

**Constitutional review of Judgment Pml. no. 223/2014 of the Supreme
Court of 26 November 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, and
Bekim Sejdiu, Judge

Applicant

1. The Applicant is Mr. Heset Neziri from village Burnik, Municipality of Ferizaj, represented by Mr. Bahtir Troshupa, a lawyer from Prishtina.

Challenged Decision

2. The challenged decision is Judgment Pml. no. 223/2014, of the Supreme Court, of 26 November 2014, which rejected the Applicant's request for protection of legality against Judgment of the Court of Appeal (PAKR. No. 63/2014, of 19 March 2014), and Judgment of the Basic Court (PKR 6/2013 of 3 October 2013), as ungrounded.
3. The Applicant was served with the challenged Judgment on 24 December 2014.

Subject Matter

4. The subject matter is the constitutional review of the aforementioned Judgment of the Supreme Court, which according to the Applicant's allegation, violates his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic Kosovo (hereinafter: the Constitution), Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR), and Article 10 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

Legal Basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the 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

6. On 24 April 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 2 June 2015, the President of the Court, by Decision GJR. KI53/15 appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President by Decision KSH. KI53/15, appointed the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Bekim Sejdiu.
8. On 10 June 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 10 June 2015, the Court sent a request to the Basic Court in Ferizaj to submit a copy of the receipt, indicating the date when the Applicant was served with Judgment Pml. no. 223/2014, of the Supreme Court, of 26 November 2014.
10. On 1 July 2015, the President of the Court, by Decision GJR. KI53/15 on replacement of the Judge Rapporteur, appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date the President of the Court, by Decision KSH.

KI53/15 on the replacement of a member of the Review Panel, appointed Judge Altay Suroy as a member to the Review Panel.

11. On 9 July 2015, the Basic Court in Ferizaj submitted to the Court a copy of the receipt, which shows that the Applicant was served with Judgment Pml. no. 223/2014, of the Supreme Court, on 24 December 2014.
12. On 11 September 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

13. On 10 October 2011, the District Prosecutor's Office in Prishtina filed Indictment (PP. No. 111-7/2010) against the Applicant for committing the criminal offense of aggravated murder provided by Article 147, paragraph 1, sub-paragraph 9, and the criminal offense of unauthorized ownership, control, possession or use of weapons as provided by Article 328, paragraph 2 of the Provisional Criminal Code of Kosovo (hereinafter: PCCK).
14. On 19 October 2011, the District Court in Prishtina (Decision KA. No. 687/2011) upheld the indictment against the Applicant and the court proceedings began. As a result of the reorganization of the courts, the case was sent for further review to the Basic Court in Ferizaj, the Department for Serious Crimes.
15. On 3 October 2013, the Basic Court in Ferizaj, the Department for Serious Crimes, after the court hearing, rendered Judgment, PKR. no. 6/13, which found the Applicant guilty of the criminal offence of participating in a brawl stipulated in Article 155, paragraph 1 of the PCCK, and sentenced him to imprisonment in duration of 1 (one) year.
16. The Basic Court related to its decision on finding the Applicant guilty of the criminal offence of participating in a brawl under Article 155, paragraph 1 of CCK, found:

[...]

[The Court] also analyzed the testimonies of witnesses [...] in entirety and in relation to these accused, assessed the defence of the accused, the material evidence, and by assessing this evidence in connection to each other came to the concrete conclusion as mentioned in the enacting clause of the indictment that have to do with the accused Heset Neziri [...].

17. The Applicant against Judgment PKR. No. 6/13 of the Basic Court in Ferizaj, filed appeal with the Court of Appeal, with an allegation of essential violation of the criminal procedure provisions, violation of the criminal law and erroneous determination of factual situation.
18. Regarding the allegation of incomplete determination of factual situation, the Applicant in his appeal stated, among other, that the Basic Court rejected his request to hear his witness, namely his spouse, in order that she corroborates his alibi on the date of the event, and he also stated that he was denied the right

to continue with questioning the key witness of the case, at the same time the injured party, during the judicial proceedings.

19. Against the abovementioned Judgment of the Basic Court in Ferizaj, the Basic Prosecutor in Ferizaj filed an appeal with an allegation of erroneous determination of factual situation. The Basic Prosecutor in Ferizaj in his appeal requested the Court of Appeal to modify the Judgment and to find the Applicant guilty of committing the criminal offense of aggravated murder provided by Article 147, paragraph 1, sub-paragraph 9, and the criminal offense of unauthorized ownership, control, possession or use of weapons as provided for in Article 328, paragraph 2 of the PCCK.
20. On 19 March 2014, the Court of Appeal (Judgment PAKR. No. 63/2014) rejected the appeals of the Applicant and of the Basic Prosecutor in Ferizaj as ungrounded and upheld Judgment PKR. no. 6/13, of the Basic Court in Ferizaj, of 3 October 2013. The Court of Appeal found that the Judgment of the Basic Court in Ferizaj does not contain essential violation of the criminal procedure provisions.
21. As to the Applicant's allegations that the Basic Court in Ferizaj rejected his request to hear his witness, the Court of Appeal held that *"[...] the testimonies of the injured parties dismiss these allegations [...], who stated among the other and described their actions and the reasoning given in this respect by the first instance court is accepted by this court too"*.
22. As to the complaints of the Applicant and of the Basic Prosecutor in Ferizaj regarding the length of sentence, the Court of Appeal found that their appealed allegations were ungrounded. In this regard, the Court of Appeal held that: *"[...] the imposed sentence on the accused [...] by the first instance court is in accordance with the intensity of social danger of the criminal offense and the degree of criminal liability of the accused as perpetrators, and that this sentence will achieve the purpose of punishment as provided for in Article 34 of the CCK"*.
23. On 8 July 2014, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo against Judgment (PKR 6/2013, of 3 October 2013) of the Basic Court in Ferizaj and Judgment (PAKR. No. 63/2014 of 19 March 2014), of the Court of Appeal, alleging essential violation of the criminal procedure provisions and the criminal law. In his request for protection of legality, the Applicant, among others, claimed that the court arbitrarily rejected his proposal for hearing his wife in order to corroborate his alibi for non-presence at the scene of event and it had denied him the right to continue to question the key witnesses, at the same time the injured parties in the proceedings.
24. On 17 November 2014, the State Prosecutor (Submission KMLP II, No. 164/2014) proposed that the Applicant's request for protection of legality be rejected.

25. On 26 November 2014, the Supreme Court of Kosovo (Judgment, Pml. No. 223/2014) rejected as ungrounded the Applicant's request for protection of legality.

26. Regarding the aforementioned Applicant's allegation for rejection of his request to hear his wife in the capacity of a witness, the Supreme Court found that:

"[...] regarding the rejection of the proposal for hearing the wife of the convict in capacity of witness were given reasons also in the challenged judgments, since in the administered evidence was determined the commission of the criminal offence by the convict, who for a period of time has been on the run.

[...]

[...] the reasons mentioned have been assessed also by the second instance court which found that the administered evidence by the first instance court reflect a fair assessment of the evidence and as such the Supreme Court approves them as fair and legitimate, due to which it rejects the request for protection of legality as ungrounded".

27. In sum, the Court found that the Applicant's allegations assessed by the Court of Appeal and the evidence administered by the first instance court, reflect fair assessment of the evidence, and also found that the Applicant's claims *"[...] regarding violation of the Criminal Law are unclear, due to the fact that violations of the Criminal Law, for which can be filed a request for protection of legality are described in the provision of Article 385 which legal provision explicitly provides for cases when a court decision is considered to contain such violations"*.

Applicant's allegations

28. As mentioned above, the Applicant in his Referral alleges violation of Article 31 [Right to Fair and Impartial Trial], of the Constitution, Article 6 [Right to a fair trial] of the ECHR, and of Article 10 of the UDHR.

29. In the present case, the Applicant alleges that the Court rejected his proposals to hear his wife as a witness and he has been denied the right to question the key witness.

30. Finally, the Applicant requests the Court to:

*"Declare the Referral of the Applicant Hestet Neziri admissible,
Declare invalid Judgment Pml. No. 223/2014, of the Supreme Court, of 26
November 2014,
Remand for consideration Judgment Pml. No. 223/2014, of the Supreme
Court, of 26 November 2014".*

Admissibility of the Referral

31. 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.

32. 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“.

33. The Court also mentions Rule 36 of the Rules of Procedure, which states:

“(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, or

[...]

d) the Applicant does not sufficiently substantiate his claim”.

34. As mentioned above, the Applicant in his Referral alleges violation of his right to a fair and impartial trial because the court has rejected his proposal to hear his wife as a witness, and that he was denied the right to continue examination of the key witness.

35. In this regard, the Court notes that the Court of Appeal assessed that the testimonies of the injured parties dismiss the abovementioned Applicant’s allegations, and as a result, it upheld the reasoning given by the Basic Court in Ferizaj.

36. In addition, the Court notes that the Supreme Court in its judgment held that based on the administration of evidence by the first instance court and the reasoning given in the challenged judgments, it has been determined the commission of the criminal offence by the Applicant. As to the Applicant’s allegations regarding the questioning of the key witness, the Supreme Court found that based on the minutes of the court hearing, it follows that the court proceedings was conducted in accordance with legal provisions.

37. The Court notes that the Applicant does not agree with the assessment of facts and the application of procedural and legal provisions by the regular courts. The assessment of facts and the applicable law are the matters which fall within the scope of legality.

38. In this respect, the Court reiterates that it is not the duty of the Constitutional Court to deal with errors of facts or law (legality), allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms guaranteed by the Constitution (constitutionality).
39. Therefore, the Court does not 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).
40. The Court notes that the Applicant does not provide sustainable arguments in his Referral, namely he does not substantiate how his right to fair and impartial trial, guaranteed by the Constitution and the ECHR, has been violated.
41. In this respect, the court notes that a mere fact that the Applicant is dissatisfied with the outcome of the proceedings completed before the regular courts does not suffice for the Applicant to raise an allegation of constitutional violation. (See, *mutatis mutandis*, case *Mezőtúr-Tiszazugi Vízgazdálkodási Társulat against Hungary*, nr. 5503/02, ECHR, Judgment of 26 July 2005, paragraph 21). When alleging such constitutional violations, the Applicant must present a reasoned allegation and convincing argument (See case No. KI198/13, Applicant: *Privatization Agency of Kosovo*, Constitutional Court, Resolution on Inadmissibility of 13 March 2014).
42. In addition, as mentioned above, the Court notes that the reasoning given in the Judgment of the Supreme Court is clear, and after having considered all the proceedings, the Court found that the proceedings before the Basic Court in Ferizaj and before the Court of Appeal have not been unfair or arbitrary (See case *Shub v. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
43. Finally, the Court reiterates that the Applicant has not presented any convincing argument to establish that the alleged violations mentioned in the Referral, represent violations of his rights guaranteed by the Constitution (see case, *Vanek v. Republic of Slovakia*, no. 53363/99, ECHR, Decision of 31 May 2005).
44. For the foregoing reasons, the Court concludes that the facts presented by the Applicant do not in any way justify the allegation of a violation of the right to fair and impartial trial and that the Applicant has not sufficiently substantiated his claim.
45. Therefore, the Referral is manifestly ill-founded and, accordingly, inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 48 of the Law, and in accordance with Rule 36 (1) (d) and 2 (b) and (d) of the Rules of Procedure, on 5 November 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; and
- IV. This Decision is effective immediately.

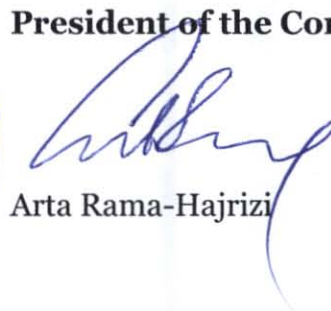
Judge Rapporteur



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi