



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 6 August 2015
Ref. No.: RK 815/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI57/15

Applicant

Rasim Rama

**Constitutional review
of Judgment, Pml. No. 61/2015
of the Supreme Court of the Republic of Kosovo of 26 March 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. Rasim Rama (hereinafter: the Applicant), with residence in Mushnikova Village, Municipality of Prizren. The Applicant is represented by Mr. Rexhep Hasani, practicing lawyer from Prizren.

Challenged Decision

2. The challenged decision is Judgment, Pml. No. 61/15 of the Supreme Court of Kosovo of 26 March 2015, whereby the Applicant's request for protection of legality against Judgment, P. No. 341/2013 of the Basic Court in Prizren of 6 June 2014 and Judgment, PAKR. No. 430/2014 of the Court of Appeal of 8 January 2015 was rejected as ungrounded.
3. The Applicant declares that he had been served with the challenged decision on 20 April 2015.

Subject Matter

4. The subject matter is the constitutional review of the abovementioned Judgment of the Supreme Court of Kosovo whereby, according to the Applicant's allegations, his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.
5. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, namely, to prevent the execution of the sentence against him, who, by Judgment P. No. 341/2013 of the Basic Court in Prizren of 6 June 2014, was sentenced to six (6) months of imprisonment.
6. In addition, the Applicant requests the Court not to disclose his identity.

Legal basis

7. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 27 and 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rules 54, 55, and 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

8. On 7 May 2015 the Applicant submitted the Referral to the Court.
9. On 13 May 2015 the President, by Decision GJR. KI57/15, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President, by Decision KSH. KI57/15, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Enver Hasani and Arta Rama-Hajrizi.
10. On 26 May 2015 the Court notified the Applicant of the registration of the Referral and sent a copy of it to the Supreme Court.
11. On 17 June 2015 the Applicant submitted a document requesting urgent processing of his case.

12. On 1 July 2015 the President, by Decision KSH. KI57/15 appointed Judge Ivan Cukalovic, as a member to the Review Panel replacing Judge Enver Hasani whose mandate as Constitutional Judge ended on 26 June 2015.
13. On 6 July 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible.

Summary of facts

14. The Applicant is a teacher of Bosnian language at "Gjon Buzuku" Gymnasium in Prizren.
15. On 6 June 2014 the Basic Court in Prizren (Judgment, P. No. 341/13) deciding on the Indictment, PP. No. 173/13 of the State Prosecutor in Prizren of 30 September 2013 found the Applicant guilty of the criminal offence of accepting bribes as foreseen in Article 428, paragraph 1, of the Criminal Code of Kosovo (hereinafter: the CCK).
16. On an unspecified date, the Basic Prosecution in Prizren, Department for Serious Crimes, filed an appeal with the Court of Appeal in relation to the decision on the sentence. In addition, the Applicant had filed an appeal against the abovementioned Judgment of the Basic Court in Prizren alleging erroneous and incomplete determination of the factual situation. In his appeal, the Applicant had also requested that some other witnesses be summoned who he considered to be relevant to the case.
17. On 8 January 2015 the Court of Appeal by Judgment, PAKR. No. 430/14 rejected as ungrounded both the appeal of the Basic Prosecution in Prizren and the Applicant's appeal and upheld Judgment, P. No. 341/13 of the Basic Court in Prizren, of 6 June 2014.
18. As regards the Applicant's request that other witnesses be summoned, the Court of Appeal, in its Judgment, considered that the first instance court had reasoned its decision for not granting the Applicant's proposal to obtain the statements of other witnesses with the reasoning that their statements were irrelevant to the present case.
19. Furthermore, the Court of Appeal held that: *"the enacting clause of the Judgment is clear and intelligible; the enacting clause is contradictory neither to itself nor to the factual description of the enacting clause of the Judgment [...]"*. Regarding the Prosecutor's appeal, the Court of Appeal confirmed the mitigating and aggravating circumstances, which the Basic Court in Prizren had considered as basis, when deciding on the punishment.
20. On an unspecified date, the Applicant had filed a request with the Basic Court in Prizren to postpone the execution of the sentence, reasoning that he was a teacher and the serving of the sentence had to be postponed until the end of the school year.

21. On 16 March 2015, the Basic Court in Prizren by Decision, PED. No. 168/15 partially granted the Applicant's request, postponing the serving of the sentence for another three (3) months, namely, until 31 June 2015.
22. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo.
23. On 26 March 2015 the Supreme Court of Kosovo rendered Judgment, Pml. No. 61/2015 rejecting the Applicant's request for protection of legality, filed against Judgment, P. No. 431/2013 of the Basic Court in Prizren, of 6 June 2014, and Judgment PAKR. No. 430/2014 of the Court of Appeal of 8 January 2015.
24. In this regard, the Supreme Court confirmed that the lower instance courts had based their decisions on the evidence administered by the courts.

Applicant's allegations

25. In his Referral the Applicant alleges that by Judgment, Pml. No. 61/2015 of the Supreme Court of 26 March 2015 his rights guaranteed by the Constitution, namely, Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], and Article 54 [Judicial Protection of Rights] were violated.
26. The Applicant concludes by requesting that:

"The Constitutional Court of the Republic of Kosovo ANNUL all Judgments attached to this Referral with the sole purpose of granting him the constitutional right provided by Article 31, paragraph 4 of the Constitution of the Republic of Kosovo and Article 384, paragraph 2.2.2 of the CPC on the right of ATTENDANCE OF WITNESSES, which he considers mandatory and which can explain the decisive facts [...]"

Admissibility of the Referral

27. The Court notes that, in order to be able to adjudicate the Applicant's referral, it needs to first 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.
28. In this regard, the Court refers to Article 113, paragraph 7 of the Constitution, which provides that:

"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. In the present case the Court notes that the Applicant has exhausted all legal remedies available. The Court also notes that the challenged decision was rendered on 26 March 2015 and that the Applicant filed his request with the Court on 7 May 2015.
30. However, the Court also refers to Article 48 of the Law, which foresees:

“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”.

31. The Court also refers to Rule 36 of the Rules of Procedure, which foresees:

“(1) The Court may only deal with Referrals if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:

[...], or

b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights.

[...]

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

32. In his Referral, the Applicant alleges that Judgment, Pml. No. 61/2015 of the Supreme Court of Kosovo of 26 March 2015, Judgment PAKR. No. 430/14 of the Court of Appeal, and Judgment P. No. 341/ 14 of the Basic Court in Prizren of 6 June 2014 were rendered by violating Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 54 [Judicial Protection of Rights], and Article 113 [Jurisdiction and Authorized Parties] of the Constitution.
33. The Court notes that the regular courts have reasoned their decisions by referring to the provisions of the applicable law. In this regard, the Court finds that the issues that the Applicant raises are a matter of legality and not constitutionality.
34. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of law (legality) allegedly committed by the Supreme Court, unless and in so far as they might have infringed rights and freedoms protected by the Constitution (constitutionality).
35. The Constitutional Court cannot replace the role of the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of the procedural and substantive law (See case *Garcia Ruiz v. Spain*, No. 30544/96, ECHR, Decision of 21 January 1999; see also case no. KI70/11, 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 case does not mean that he can file an admissible referral alleging a violation of the rights guaranteed by the Constitution. The Court notes that the Applicant was given many opportunities to present his case in the regular courts.

36. Furthermore, as mentioned above, the Court notes that the reasoning given in Judgment, Pml. No. 61/2015 of the Supreme Court of 26 March 2015 is clear and, upon reviewing all the procedures, the Court finds that the procedures conducted before the regular courts were not unfair or arbitrary (see case *Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).
37. Hence, as to the Applicant's claim that the regular courts by rejecting his request to summon witnesses he considered as relevant to his case had allegedly violated his constitutional rights, the Court notes that this issue was addressed and reasoned in substance by the Judgment of the Court of Appeal.
38. 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.
39. Thus, the Court concludes that the Referral is manifestly ill-founded.

Review of the Request for Interim Measure

40. As stated above, the Applicant also requests the Court to render "*a decision on the imposition of an interim measure against the Basic Court in Prizren, whereby the commencement of execution of the sentence against the Convicted Rasim Rama will be suspended [...]*".
41. In order for the Court to decide on an interim measure, pursuant to Rule 55 (4) and (5) of the Rules of Procedure, it is necessary that:
- "(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
- (b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*
- (...) If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application."*
42. As concluded above, the Applicant's Referral is inadmissible and, due to this reason, there is no *prima facie* case for imposing an interim measure. Therefore, the request for interim measure is to be rejected as ungrounded.

Request for non-disclosure of identity

43. As to the Applicant's request for not having his identity disclosed, the Court rejects his request as ungrounded, because no supporting documentation and information was provided on the reasons for the Applicant not to have his identity disclosed.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 27 and 48 of the Law and Rules 36 (2), b) and d), 55 (4) and (5) and 56 (2) of the Rules of Procedure, on 6 August 2015, unanimously:

DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO REJECT the Request for Interim Measure;
- III. TO REJECT the Applicant's Request to not disclose his identity;
- IV. TO NOTIFY this Decision to the Parties;
- V. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- VI. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Snezhana Botusharova

President of the Constitutional Court

Arta Rama-Hajrizi

