



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

Prishtina, on 1 March 2016
Ref. No.:RK899/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI60/15

Applicant

Avni Grajqevci

**Constitutional review of Judgment Pml. no. 54/2015, of the Supreme
Court of Kosovo, of 16 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
Selvete Gërxhaliu, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mr. Avni Grajqevci (hereinafter: the Applicant) from Obiliq.

Challenged decision

2. The Applicant challenges Judgment Pml. No. 54/2015, of the Supreme Court of Kosovo, of 16 March 2015, which was served on him on 27 March 2015.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment which, allegedly, violated the Applicant's rights and freedoms guaranteed by Article 23 [Human Dignity], Article 24 [Equality Before the Law], Article 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution of Kosovo (hereinafter: the Constitution), as well as Articles 3, 5, 6, 10, 13 and 14 of the European Convention on Human Rights (hereinafter: the ECHR).

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 14 May 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 29 June 2015, the President of the Court by Decision No. GJR. KI60/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI60/15, appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 27 October 2015, the Court informed the Applicant and the Supreme Court about the registration of the Referral.
8. On 9 February 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 7 May 2010, the Kosovo traffic police patrol stopped the vehicle driven by the Applicant for a routine control.
10. Following a check of the Applicant's documents, a verbal conflict ensued between the Applicant and the traffic police patrol. This verbal conflict escalated into a physical altercation that resulted in injuries on both sides.

11. On 12 May 2010, the Police Inspectorate of Kosovo (hereinafter: PIK), due to allegation of excessive use of force by a member of the traffic police, initiated an internal investigation.
12. After completing the investigation, PIK recommended to the General Director of Police to impose specific measures against one of the police officers, in accordance with the Administrative Instruction No. 15/2008 on the types of major and minor disciplinary violations in the Kosovo Police.
13. On 11 May 2011, the General Director of Police rendered Decision [P. no. 222/VDP/2011], which approved the PIK proposal. The Decision states that *"due to the offence of excessive use of force, the police officer is punished by salary reduce for a certain period of time."*
14. On 14 October 2011, the Municipal Public Prosecution Office in Prishtina (hereinafter: MPPO) filed an indictment against the Applicant for the criminal offence of attacking official persons performing official duties, provided by Article 317, paragraph 2 in conjunction with paragraph 1 of the Criminal Code of Kosovo (hereinafter: the CCK).
15. On 12 December 2012, the Municipal Court in Prishtina rendered Decision [KA. no. 352/11], which rejected the indictment of MPPO with reasoning *"that the indictment does not contain sufficient evidence that support the grounded suspicion that the Applicant has committed the criminal offence which he is charged with"*.
16. The MPPO filed an appeal within the legal deadline against the Decision of the Municipal Court, of 14 October 2011.
17. On 7 May 2013, the Court of Appeal of Kosovo rendered Decision [Pn. No. 184/2013] by which approved the indictment of MPPO and remanded the case to the Basic Court for retrial, with the reasoning: *"Based on the assessment of this Court, the pieces of evidence based on which the Indictment was filed in relation to this criminal offence, support the grounded suspicion that the defendant has committed the criminal offence"*.
18. On 24 February 2014, the Basic Court in Prishtina rendered Judgment [P. No. 2252/2013], by which the Applicant was found guilty of committing a criminal offense which he was accused of and punished him with suspended sentence of 6 (six) months of imprisonment. In the enacting clause is stated: *"[...] after the defendant rejected to plead guilty, the court presented the evidence, witnesses, experts' forensic reports, and in addition the court assessed the statement of the defendant when determined the punishment"*.
19. On 13 March 2014, the Applicant filed an appeal with the Court of Appeal of Kosovo, against the Judgment of the Basic Court, of 24 February 2014 due to substantial violations of the criminal procedure provisions.
20. On 11 September 2014, the Court of Appeal of Kosovo rendered Judgment [Pa1. No. 427/2014] by which rejected the Applicant's appeal as ungrounded, because *"with completely and correctly determined factual situation, the first instance*

court has correctly applied the criminal law when it found the Applicant guilty of the commission of the criminal offence which he is accused of. The factual situation was also determined correctly and completely and no fact remained suspicious and unclear in this procedure...”

21. On 20 January 2015, the Applicant filed a request for protection of legality with the Supreme Court for violation of the criminal code.
22. On 16 March 2015, the Supreme Court rendered Judgment [Pml. No. 54/2015] by which the Applicant's request was rejected as ungrounded, with the statement that *„On the basis of these pieces of evidence, the first instance court has undoubtedly determined that the elements of the criminal offence for which he was found guilty exist in the actions of the convict, and this stance was also approved by the second instance court with the right reasoning, which is approved by the Supreme Court as well”*.

Applicant's allegations

23. The Applicant alleges *“The principle known as Ne bis in idem, because if someone was found guilty and punished for one offence, another person cannot be found guilty for the same offence (in this case the Applicant), the factual situation was also erroneously and incompletely determined, and, therefore, all regular courts and ultimately the Supreme Court violated the rights guaranteed by the Constitution (Article 34) and the ECHR.”*
24. The Applicant addresses the Court with the request: *„I request that my case be reviewed, the extraordinary remedies for protection of legality be applied, the new proceedings be initiated or to take what is in your jurisdiction, in order to correct irregularities and injustice in my case”*.

Assessment of admissibility of the Referral

25. In order to be able to adjudicate the Applicant's Referral, the Court needs to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
26. In this respect, Article 113, paragraph 7 of the Constitution stipulates:

“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.”
27. Article 48 of the Law, also 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.”
28. In this case, the Court refers to Rule 36 (1) (d) and (2) (b) of the Rules of the Procedures, which provides:

- (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“.
29. Having examined the case file, the Court found that the Applicant built his constitutional complaint on the principle of the doctrine of *Ne bis in idem*, and on the argument that the regular courts had erroneously determined the factual situation. The Applicant claimed that precisely because of non-compliance with that principle and the omissions of the regular courts, his constitutional rights and the rights and freedoms guaranteed by the ECHR were violated.
30. However, the Court finds the Applicant's argument that this is a case of *Ne bis in idem*, which is provided by Article 4 of the Criminal Procedure Code (Code no. 04/L-123), as well as by Article 34 of the Constitution, as ungrounded because the offense for which a police officer was fined by Decision [P. no. 222/VDP/2011], is not the same as the criminal offense for which the Applicant is accused of and later convicted by final Judgment of the Supreme Court, which can be seen and concluded based on the case file and on the basis of the arguments put forward by the Applicant in the Referral.
31. When it comes to the allegations of the constitutional complaint that indicate an erroneous determination of factual situation, the Court points out that it cannot replace the assessment of the regular courts with its own assessment, because it is the role of the regular courts to assess the evidence presented before them and based on which they determine facts relevant for the application of the substantive law.
32. The Court also found as ungrounded the reference of the Applicant to the violation of the rights guaranteed by Articles 23 and 27 of the Constitution. This is not only because the constitutional complaint in this regard by itself does not contain detailed reasons, but because the Applicant has not referred to the alleged violations at any stage of the proceedings before the regular courts, and as such, the courts have not reviewed them.
33. As to the Applicant's allegation of violation of Article 24 of the Constitution, the Court also finds it ungrounded, because in order to establish discrimination, it is not sufficient that the Applicant generally refers that he is unequally treated, and by doing so he does not indicate the basis for this inequality.
34. In this respect, the Court further refers to the case law of the European Court of Human Rights which provides that “*discrimination is treating differently, without an objective and reasonable justification, persons in relevantly similar situations*” (Judgment: *Willis v. the United Kingdom*, no. 36042/97, paragraph

48, ECHR 2002-IV; Judgment *Bekos and Koutropoulos v. Greece*, paragraph 63, *D.H. and others v. Czech Republic*, paragraph 44).”

35. The Applicant also alleges that the Judgment of the Supreme Court violates his rights under Article 49 of the Constitution.
36. The Court finds that the decision of the Supreme Court which is challenged by the Applicant does not in any way prevent him from working and exercising profession, or in any other way, directly or indirectly restricts his rights under Article 49 of the Constitution. Therefore the Court is of the opinion that the Applicant's allegations of the alleged violation are also ungrounded (see, *mutatis mutandis*, Resolution on Inadmissibility No. RK734/14 in the case KI09/14 of 24 November 2014, paragraph 29).
37. As to the allegation filed by the Applicant of violation of Article 6 of the ECHR, the Court reiterates that the right to a fair trial is assessed on the basis of the proceedings as a whole (The European Court of Human Rights, *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, number 146, paragraph 68).
38. The right to a fair trial also obliges the courts to present the reasons for the decision, which allow the parties to use effective available legal remedies, which the Applicant did in all stages of the criminal proceedings. The absence in one stage of the proceedings may be challenged and corrected in the second, the next stage.
39. The Applicant's allegations of violations of Article 54 of the Constitution, in the Court's opinion do not stand, because he never filed a claim of a violation of his constitutional rights before the regular courts.
40. The Court notes that the Applicant's dissatisfaction with the outcome of the case cannot in itself constitute an arguable claim of a violation of the Constitution and the ECHR (see case *Mezotur-Tiszazugi Tarsulat against Hungary*, no. 5503/02, ECtHR, Judgment of 26 July 2005).
41. The Court further reiterates that it is not its duty under the Constitution to act as a court of fourth instance in respect of decisions taken by the regular courts. The role of the regular courts is to interpret and apply the relevant rules of both, the procedural and substantive law (see case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case: KI70/11 of the Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, the Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
42. In sum, the Court finds that the Applicant's Referral does not meet the admissibility requirements, given that in the Referral was not proven that the challenged decision violates his rights guaranteed by the Constitution or the ECHR.
43. Accordingly, the Referral is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

FOR THESE REASONS

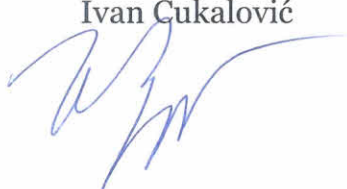
The Constitutional Court, pursuant to Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 9 February 2016, unanimously

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 paragraph 4 of the Law; and
- IV. This Decision effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

