



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

Pristina, on 29 December 2016
Ref. No.:RK1026/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI66/15

Applicant

Bekim Baliu

**Constitutional review of Judgment Pml. no. 13/2015 of the Supreme
Court of the Republic of Kosovo of 23 February 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge,
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge, and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral is submitted by Bekim Baliu from Skenderaj (hereinafter: the Applicant), who is represented by Flutra Hoxha, a lawyer practicing in Pristina.

Challenged decision

2. The Applicant challenges Judgment Pml. no. 13/2015 of the Supreme Court, dated 23 February 2015, by which his request for protection of legality related to Decision P. no. 42/2013 of the Basic Court in Mitrovica of 26 August 2014 and Decision PAKR. No. 463/2014 of the Court of Appeals in Pristina of 6 November 2014, was rejected. Judgment Pml. No. 13/2015 of the Supreme Court was served on the Applicant on 23 February 2015.

Subject matter

3. The subject matter concerns the constitutional review of Judgment Pml. no. 13/2015 of the Supreme Court, dated 23 February 2015, which, as alleged by the Applicant, violated his rights guaranteed by Articles 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 [Right to a fair trial], paragraph 3(d), of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, in conjunction with Article 47 of 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

5. On 28 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 appointed Judge Ivan Cukalovic as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
7. On 12 August 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 14 September 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court to declare the Referral inadmissible, as manifestly ill-founded.

Summary of facts

9. On 26 August 2014, the Basic Court in Mitrovica, by Judgment P. No. 42/13, found the Applicant guilty of having committed the criminal offense of "Accepting bribes" under Article 343(1) of the Kosovo Criminal Code

(hereinafter, PCCK) and sentenced him to 6 months imprisonment, which sentence was later replaced by a fine.

10. The Basic Court held that, instead of imposing a minor offence fine upon a traffic offender, the Applicant - a police officer at the time of the events - had requested and received a certain sum of money.
11. Against this judgment the Applicant filed an appeal with the Court of Appeals in Pristina, complaining of “*essential violations of provisions of criminal law and criminal procedure as well as the erroneous and incomplete ascertainment of the factual situation by the Basic Court.*”
12. On 6 November 2014, the Court of Appeals decided, by Judgment PAKR. No. 463/14, to reject the appeal of the Applicant as ungrounded. The Court of Appeals reasoned, *inter alia*, that “*the judgment of the first instance court contains neither essential violations of the criminal procedure provisions, as alleged in the appeal, nor other violations of which the Court takes care ex officio and which would condition its annulment.*”
13. The Court of Appeals further found that “*the actions constitute the existence of a criminal offence for which the Defendant [the Applicant] is found guilty and which is in harmony with the content of the evidence in the files of the case. The first instance court has provided clear reasons related to the existence of the criminal offence and criminal liability of the Defendant.*”
14. On 8 May 2014, the Applicant submitted a request for protection of legality to the Supreme Court, arguing, *inter alia*, that, due to the essential violations of the provisions of criminal procedure and criminal law, “*the challenged judgments should be annulled and that the case should be remanded to the first instance court for retrial, or that the judgments should be modified, so that the indictment against him would be rejected.*”
15. By Submission KMLP. II. No. 10/2015 of 19 February 2015, the State Prosecutor proposed that the request for protection of legality be rejected as ungrounded.
16. On 23 February 2015, the Supreme Court rejected the Applicant’s request for protection of legality, reasoning, *inter alia*, that the Applicant’s allegation that “*[...] both judgments, contrary to Article 123 (3) CPCCK, were based on inadmissible evidence, namely, the statements of witnesses [...] who were not interrogated by the Prosecutor[...]*”, was ungrounded.
17. The Supreme Court considered that the first instance court “*[...] based its decision, among other things, on the testimonies of the witnesses who, during the court hearing, by their consequent statements during all stages of the proceedings, described in detail the incriminating actions of the convicted [the Applicant] and that his identity was undoubtedly confirmed by witness P.M., based on the Official [Police] ID number which the convicted [the Applicant] was bearing [...], meanwhile the fact that the convicted was with witness S.S. [Policeman] on the critical date at the checkpoint in Polac Village, where the injured person was stopped due to the commission of a minor*

traffic offence, was undoubtedly confirmed by the Report of the Police Station in Skenderaj of 2 March 2009.”

18. In the Supreme Court’s view, “[...] based on all administered pieces of evidence, it resulted that [...] the conclusions of the courts were fair and lawful [...] and that [...] there is no doubt that the statements of the witnesses are admissible evidence, since the defense was given the opportunity to oppose them [...]” and that “[...] these allegations are related and intertwined with the factual situation, [...] because of which no request of protection of legality may be filed [...].”
19. Finally, the Supreme Court held that, as regards the allegations in the Applicant’s request that the criminal law had been violated to the detriment of the convicted [the Applicant], “[...] the violations about which they [the Applicant and his lawyer] talk are not mentioned in the request [for protection of legality].”

Applicant’s allegations

20. The Applicant claims, inter alia, that “[...] the Basic Court in Mitrovica, the Court of Appeals and the Supreme Court, by inaction or unfair review of the legal case, in conformity with the positive laws and by not acting in compliance with its constitutional and legal obligations in dealing with the legal provisions, have in their judgments violated the [his] individual rights [...] guaranteed by Articles 24, 31, 32, and 54 of the Constitution of the Republic of Kosovo and Article 6, paragraph 3 (d) of the European Convention on Human Rights and Fundamental Freedoms and its protocols.”
21. The Applicant further argues that the Public Prosecutor did not conduct any investigation in relation to the matter, but based himself on the police reports of the witness and the injured person [the person who had given the money]. Moreover, according to the Applicant, he was not interrogated by the Prosecutor and he and his defense counsel had not been informed that possible investigation statements of the witnesses existed.
22. As to his conviction by the Basic Court in Mitrovica of 26 August 2014, the Applicant alleges that he was adjudicated for a criminal offence which did not contain the elements of a criminal offence, since the essential condition of asking and accepting the bribe on the basis of an agreement had not been fulfilled.
23. The Applicant further states that, on 6 November 2014, the Court of Appeals should not have rejected his Appeal as ungrounded and should not have upheld the Basic Court’s judgment by concluding that the first instance court had provided clear reasons for the existence of the criminal offense and the Applicant’s criminal liability. He also argues that the Court of Appeals did not review his allegation that he was not the person who had received the money, since both witnesses were unable to identify him in the main hearing.
24. As to the Supreme Court’s judgment of 23 February 2015, by which his Request for Protection of Legality was dismissed as ungrounded, the Applicant claims

that the Supreme Court wrongly assessed that the evidentiary procedure had been conducted fairly and that the identity of the accused [the Applicant] was confirmed by the witness, based on the identification number of the Applicant as a police officer.

25. In addition, the Applicant argues that the Supreme Court violated his individual rights by unfairly reviewing the legal matter and the submissions in his Request for Protection of Legality and by not acting in compliance with its constitutional and legal obligations.
26. In the Applicant's view, the Supreme Court should have decided whether the statements of the witness and the injured person [the person who had given the money] were admitted in a correct manner and should have confirmed whether the entire trial, including the manner in which the evidence had been administered, was fair and in conformity with the legal provisions.

Assessment of the admissibility of the Referral

27. The Court must first examine whether the Applicant has met the requirements of admissibility which are foreseen by the Constitution and as further specified by the Law and Rules of Procedure.
28. In this regard, the Court refers to Article 113.7 of the Constitution which stipulates:

“7. 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. 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 a public authority is subject to challenge”.
30. The Court also takes into account Rule 36 (1) (d) and (2) (b) of the Rules of Procedure which foresees:

“(1) The Court may review referrals only 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: [...] (b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights.”
31. As to the present Referral, the Applicant argues that “[...] according to the already consolidated constitutional case law, obtaining evidence in a lawful manner constitutes an important aspect of the right to a fair trial, foreseen by the Constitution and Article 6 of the ECHR.

32. Referring to Strasbourg case-law, the Applicant also states that “[...] *he is aware that the assessment of pieces of evidence remains an issue which is to be treated by the regular courts themselves and does not constitute a review matter for the Constitutional Court.*”
33. The Court notes that, in the Applicant’s view, the challenged Decision of the Supreme Court of 23 February 2015 violated his right to a fair and impartial trial as guaranteed by Articles 24, 31, 32 and 54 of the Constitution and Article 6(3) ECHR.
34. With respect to the Applicant’s allegations, the Court emphasizes that it is not its task to deal with errors of fact or law (legality) allegedly committed by the regular courts or other public authorities, unless and in so far they may have infringed rights and freedoms protected by the Constitution (constitutionality).
35. Therefore, the Court cannot act as a court of fourth instance in respect of decisions taken by the regular courts or other public authorities, since it is their role, when applicable, to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28. See also Constitutional Court case No. KI70/11, *Applicants Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
36. The Court can only consider whether the proceedings in general and viewed in their entirety have been conducted in such a way that the Applicant has had a fair trial. (See, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).
37. In this respect, the Court notes that the Applicant was assisted by his Defense Counsel in the proceedings and that the regular courts carefully looked at all the evidence and thoroughly reasoned their decisions.
38. Moreover, the Supreme Court, in its judgment, not only considered that the Applicant’s claim that the judgments of the lower courts were based on inadmissible evidence was not grounded, but also held that there was no doubt that the statements of the witnesses were admissible, since the Defense was given the opportunity to oppose these statements.
39. The Supreme Court further ruled that, the Applicant’s request for protection of legality had to be rejected as ungrounded, the more so since “[...] *these allegations are related and intertwined with the factual situation, [...], because of which no request of protection of legality may be filed [...],* pursuant to Article 432 of the Kosovo Code on Criminal Procedure.
40. In these circumstances, the Court finds that the proceedings before the District Court, the Court of Appeals and the Supreme Court were fair and well-conducted (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR, Decision of 30 June 2009) and that the Applicant and his Defense Counsel had ample opportunity to contest the testimonies of the witness and the injured party.

41. Furthermore, the Court considers that the Applicant has not specified how the articles of the Constitution referred to by him, were violated, as required by Article 113.7 of the Constitution and Article 48 of the Law.
42. Therefore, the Applicant's claims of a violation of his rights and freedoms under the Constitution and the ECHR are unsubstantiated and not proven and, thus, are manifestly ill-founded on a constitutional basis.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 14 September 2016, 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



Ivan Čukalović



President of the Constitutional Court



Artta Rama-Hajrizi