



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

Prishtina, 2 November 2015
Ref. No.:RK 851/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI79/15

Applicant

Loresa Fetahu

**Constitutional review of Judgment Pml. no. 83/2015 of the
Supreme Court, dated 30 April 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 Miss. Loresa Fetahu, from Lupq i Poshtëm, municipality of Prishtina (hereinafter, the Applicant).

Challenged decision

2. The Applicant challenges Decision (Pml. no. 83/2015) of the Supreme Court of 30 April 2015, by which the Applicant's request for protection of legality was rejected. The challenged Decision was served on Applicant on an unspecified date.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which, allegedly, violated the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter, the Constitution), namely Article 24, paragraph 1 and 2 [Equality Before the Law].
4. 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 her, who, by Judgment PKR. No. 247/14 of the Basic Court in Prishtina of 1 October 2014 was sentenced to imprisonment of 1 (one) year.
5. In addition, the Applicant requests the Court not to disclose her identity.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, Articles 27 and 47 of 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

7. On 17 June 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
8. On 29 June 2015, the President appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
9. On 10 July 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.
10. On 11 September 2015, Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

The facts of the case

11. On 1 October 2014, the Basic Court in Prishtina (Judgment PKR. No. 247/14) found that the Applicant and A.C were found guilty for the criminal offence of Robbery, under Article 329, paragraph 1, in conjunction with Article 31 of the

CCK and were sentenced to imprisonment for a period of one (1) year.

12. The Applicant appealed to the Court of Appeal against the Judgment of the Basic Court claiming that *“the Basic Court did not assess fairly all the circumstances which would impact the punishment to be adequate with the level of social danger of the offense and the level of criminal responsibility of the accused person”*.

13. On 26 February 2015, the Court of Appeals (Judgment PAKR.no. 18/2015) rejected as ungrounded the appeal of the Applicant and confirmed the Decision of the Basic Court holding that:

“[...] by reviewing the challenged judgment regarding the accused Loresa Fetahu, this Court assesses that the allegations of the defense counsel for a lenient punishment are not grounded. In fact, the mitigating circumstances to which the defense counsel of the accused person refers stand, but they are not of the nature which justifies a more lenient punishment of imprisonment than the one imposed by the first instance. So, this Court assesses that the punishment imposed to accused Loresa Fetahu by the first instance court is adequate with the gravity of the criminal offense and with the level of the criminal responsibility of the accused person and it may influence in preventing her from committing any criminal offense in the future and in her rehabilitation, namely the purpose of the punishment, foreseen by the provision of Article 41 of the CCRK, may be achieved”.

14. By the same decision, the Court of Appeals modified the Judgment of the Basic Court in relation to A. C holding that:

“The Court of Appeals assesses that the appeal of the defense counsel of accused A.C for a lenient punishment is grounded because: the accused person is young, of a weak economic condition, has had correct behaviors during the criminal proceeding, has pleaded guilty, has expressed a deep regret for the offense committed, which she stated also in the Panel’s session of this Court. Taking into account these circumstances and especially the fact that the accused person has been a victim of trafficking in human beings in a criminal case for which matter the investigations are underway, and her weak health condition, which is confirmed by the medical documents, but it was noticed also in the Panel’s session - speech impediment, sight and numbness of the face, this Court assesses that the purpose of the punishment will be achieved also by the threat of punishment, therefore, it conditioned the punishment of imprisonment imposed to the accused person for a duration of one year, with the conviction that this punishment is adequate with the gravity and the social danger and that it will impact to her in the future not to commit any criminal offense”.

15. The Applicant filed a request for protection of legality with the Supreme Court against the Decisions of the Court of Appeal and Basic Court alleging *“violations of the provisions of the Criminal Procedure Code and violation of the Criminal Code to the detriment of the convicted person to the detriment of the accused person. Since the provisions mentioned above in this request have*

been violated against her, facts which have impacted the Criminal Code to be erroneously applied to her”.

16. On 30 April 2015, the Supreme Court (Judgment Pml. no. 83/2015) rejected the Applicant’s request for protection of legality, holding that *“the challenged judgments are clear and the enacting clause of the judgment of the first instance court contains all the elements indicating the criminal nature of the act committed, for which the convicted person was found guilty.*

Applicant’s allegations

17. The Applicant alleges that the regular courts, by rejecting her request for protection of legality, have violated her rights guaranteed by the Constitution, namely rights pertaining to *“equality before the law”.*
18. The Applicant alleges that *“[...] the Supreme Court by rejecting the appeal of the Applicant, while it approved the appeal of the other accused person (co-perpetrator A.C) and modified the sentence of imprisonment to a conditional sentence has violated her rights guaranteed by the Constitution”.*
19. The Applicant concludes by requesting from the Court *“to ensure that all parties are treated equally and thus impose a conditional sentence also to the Applicant”.*

Admissibility of the Referral

20. The Court has first to examine whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.

21. In this respect, 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”.

22. The Court also refers to Rule 36 of the Rules of Procedure, 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, or

[...]

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

23. The Court recalls that the Applicant challenges the Decision (PnL. no. 83/2015) of the Supreme Court, alleging that her right to equality before the law has been violated.
24. The Court notes that the Supreme Court responded on this allegation by holding that “*that there are no violations of the criminal law to the detriment of the convicted person by the second instance court upon rendering the decision on punishment, regarding the convicted person A.C, to the detriment of the convicted Loresa Fetahu, since the responsibility is individual, therefore, the punishments are also individual and the aggravating or mitigating circumstances are assessed individually for each convicted person, as the second instance court has acted in this case when it decided regarding the appeal allegations for the convicted persons...*”.
25. Moreover, the Applicant has neither accurately clarified how and why the challenged decisions which rejected her request for protection of legality entailed a violation of her individual rights and freedoms guaranteed by the Constitution nor has she presented evidence justifying the allegation of such a violation.
26. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the public authorities, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
27. The Constitutional Court reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. It is the role of the regular courts or other public authorities, 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).
28. Therefore, the Court considers that the Applicant has not submitted any *prima facie* evidence indicating a violation of her rights under the Constitution. (See *Vanek v. Slovak Republic*, No. 53363/99, ECtHR, Decision of 31 May 2005) and did not specify how the referred articles of the Constitution support her claim, as required by Article 113 (7) of the Constitution and Article 48 of the Law.
29. Thus, the Court concludes that, in accordance with Rule 36 (2)(b) and (d) of the Rules of Procedure the Referral is inadmissible.

Request for Interim Measure

30. As stated above, the Applicant also requests the Court to render “*a decision on the imposition of an interim measure against the Judgment PKR. No. 247/14 of the Basic Court in Prishtina, whereby the commencement of execution of the sentence will be suspended [...]*”.
31. As emphasized above, the Applicant has not shown a prima facie case on the admissibility of the referral. Therefore, pursuant to Rule 55 of the Rules of Procedure, the request for interim measure should be rejected as ungrounded.

Request for non-disclosure of identity

32. As to the Applicant’s request for not having her identity disclosed, the Court rejects her request as ungrounded, because no supporting documentation and information was provided on the reasons for the Applicant not to have her identity disclosed. Furthermore, the Court notes that the Applicant’s identity has already been disclosed in the proceedings before the regular courts.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Articles 27 and 47 of Law, Rules 36 (2)(b) and (d), 55 (4) and (5) and 56 (2) of the Rules of Procedure, on 11 September 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 for non-disclosure of her 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;
- VI. TO DECLARE this Decision effective immediately

Judge Rapporteur


Bekim Sejdiu



President of the Constitutional Court


Arta Rama-Hajrizi