



REPUBLIKA E KOSOVËS – РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 23 March 2011
Ref. Nr.:RK93/11:

RESOLUTION ON INADMISSILITY

in

Case No. KI 84/10

Applicant

Agim Stublla

CONSTITUTIONAL REVIEW

of

**Judgment of the Supreme Court of the Republic of Kosovo, PKL.no.69/2010
dated 6 August 2010,**

**Judgment of the Municipal Court of Lipjan, P.no.129/2009,
dated 23 February 2010,**

and

Decision of Kosovo Police P.no.122/VDP/2010, dated 19 November 2010

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharove, Judge
Ivan Čukalovič, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Agim Stublla residing in Podujevo.

Challenged court decision

2. The decision challenged by the Applicant is the Judgment of the Supreme Court of the Republic of Kosovo (Judgment PKL.No.69/2010, dated 6 August 2010), (hereinafter: "Supreme Court"), which rejected as ungrounded the Applicant's request for protection of legality, filed against the Judgment of the Municipal Court of Lipjan (Judgment P.no.129/2009, dated 23 February 2010) and Decision of Kosovo Police (Decision P.no.122/VDP/2010, dated 19 November 2010).

Subject matter

3. The Applicant alleges a violation of Article 49 [Right to Work and Exercise of Profession] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

4. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the court

5. On 13 September 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 9 of November 2010, the registration of the Referral was communicated to the Applicant, who, in accordance with Article 48 of the Law, was asked to clarify the alleged violation of his constitutional rights and freedoms. Although the time limit for doing so expired on 23 November 2010, the Applicant has not submitted any comments to address this issue.
7. The Applicant has requested not to disclose his identity, but did not substantiate this request.
8. On the same date of 9 November 2010, the Referral was communicated to the Supreme Court.
9. On 23 February 2011, the Review Panel consisting of Judges Robert Carolan (Presiding), Snezhana Botusharova and Gjyljeta Mushkolaj considered the report of Judge Rapporteur Almiro Rodrigues and made a recommendation to the Court on inadmissibility.

Summary of the facts

10. On 7 March 2009, the Applicant, working as a police officer at the airport of Prishtina, found a cellular phone on the table where he was drinking coffee.
11. The Applicant claims that he handed in the phone at the lost and found section. The Applicant also claims that he had requested for a receipt that he handed in the phone at the lost and found section, but he was not delivered such a receipt.
12. Some time later, the Applicant was arrested and detained for 15 days.
13. On 9 March 2009, the Municipal Public Prosecutor at the Municipal Court in Lipjan accused the Applicant of having committed theft under Article 252 (1) of the Provisional Criminal Code of Kosovo. Whoever takes the movable property of another person with the intent to unlawfully appropriate it for himself, herself or for another person shall be punished by a fine or by imprisonment of up to three years.
14. On 4 February 2010, the Applicant's lawyer requested the Municipal Court in Lipjan to postpone the hearing of 3 February 2010, because the Applicant was mentally not stable enough to participate in the session.
15. On 23 February 2010, the Municipal Court found that the Applicant was guilty, because he had deliberately tried by illegal means to appropriate the abovementioned cellular phone in order to enrich himself.
16. The Applicant was sentenced to three (3) months of imprisonment which he did not need to serve, if, in the time-frame of one (1) year, he would not commit another criminal act.
17. The Applicant alleges that his lawyer failed to file an appeal with the District Court against the Judgment of the Municipal Court.
18. Meanwhile, the Applicant filed a request with the Supreme Court which he called "a request for exceptional legal protection". Even though such a remedy does not exist as such, the Supreme Court considered it to be a "request for protection of legality".
19. The Supreme Court (Judgment PKL.No.69/2010, dated 6 August 2010) rejected the request as ungrounded, because the request did not contain any allegation on a breach of the law and did not state the legal provisions, which had allegedly been violated.
20. The General Police Directorate issued a decision (Decision P.no.122/VDP/2010, dated 19 November 2010), whereby it terminated the Applicant's labour relationship with the Kosovo Police for disciplinary reasons, one of them being the theft of a cellular phone at the Prishtina Airport on 7 March 2009.
21. On 10 December 2010, the Medical Service of the Kosovo Police issued a notification on the mental state of the Applicant, stating that the Applicant had a low threshold of tolerance.
22. The Applicant submitted a complaint to the Ministry of Internal Affairs, opposing the the General Police Directorate decision.

Applicant's allegations

23. The Applicant claims that, while in detention, he was beaten by the police and prisoners.

24. He further complains that the Judgment of the Municipal Court in Lipjan is politically motivated and not based on evidence, but, instead, founded on lies and orchestrated by the current government.
25. Furthermore, he claims that he was also threatened by the said Court.
26. The Applicant further alleges that he has not used any regular legal remedy against the judgment of first instance, dated 23 February 2010, because his lawyer deliberately failed to file an appeal with the second instance court, even though he was authorized by the Applicant to do so.

Assessment of the admissibility of the Referral

27. As to the Applicant's allegation that his right guaranteed by Article 49 [Right to Work and Exercise Profession] of the Constitution has been violated, the Court observes that, in order to be able to adjudicate the Applicants' complaint, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
28. Regarding the complaint against the decision of the General Police Directorate (Decision P.no.122/VDP/2010, dated 19 November 2010), by which the Applicant's labour relationship with the Kosovo Police was terminated, the Applicant submitted a complaint to the Ministry of Internal Affairs, opposing the said decision. However, no other legal remedies provided by law were used by the Applicant.
29. Thus, as to this complaint, the Applicant has not exhausted all legal remedies available to him under applicable law.
30. In the complaint against the Supreme Court judgment, the Applicant did not specify what rights guaranteed by the Constitution have been violated, how and why they were violated, nor he presented any pertinent and relevant evidence.
31. Some documents were submitted by the Applicant. However, they do not show that "*his individual rights and freedoms, guaranteed by the Constitution, have been violated by public authorities*".
32. In addition, the Applicant has not made use of any regular legal remedy against the judgment of the Municipal Court in Lipjan, dated 23 February 2010. Thus, he waived the right to further complaint.
33. Furthermore, the Referral should have been filed with the Constitutional Court within a period of four (4) months, starting from 23 February 2010, the date of the judgment of the Municipal Court. However, the Applicant filed the Referral with the Constitutional Court on 13 September 2010, meaning almost seven (7) months later.
34. Therefore, the Referral is ill-grounded and must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, by MAJORITY VOTE, on 23 February 2011,

DECIDES

I. TO REJECT the Referral as Inadmissible.

This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law.

This Decision is effective immediately.

Judge Rapporteur



Almiro Rodrigues

President of the Constitutional Court



Prof. Dr. Enver Hasani