



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

Prishtina, on 27 december 2016
Ref. No.:RK1025/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI96/15

Applicant

Mirsad Gashi

**Constitutional review of Decision Pzd. no. 59/2015 of the Supreme Court
of Kosovo of 20 May 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
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Mirsad Gashi from Prizren (hereinafter: the Applicant), who is represented by Natal Bullakaj, lawyer from Suhareka.

Challenged decision

2. The Applicant requests the constitutional review of Decision Pzd. no. 59/2015 of the Supreme Court of Kosovo of 20 May 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 13 July 2015, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 August 2015, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 23 September 2015, the Applicant submitted additional documents to the Court.
8. On 19 December 2015, the Court notified the Applicant about the registration of the Referral.
9. On 3 August 2016, the Court notified the Supreme Court about the registration of the Referral.
10. On 20 October 2016, the Review Panel considered the report of Judge Rapporteur and made recommendations to the full Court on the inadmissibility of the Referral.

Summary of facts

11. In 2014, the Applicant was one of the protagonists of a traffic accident with fatal consequences.
12. On 7 August 2014, the Basic Court in Prizren [Judgment P. no. 901/2014] found the Applicant guilty of causing a traffic accident and punished him by imprisonment sentence.

13. The Applicant filed an appeal with the Court of Appeal against the Judgment of the Basic Court in Prizren [P. no. 901/2014].
14. On 9 December 2014, the Court of Appeal [Judgment PA1. no. 1350/2014] rejected the Applicant's appeal and upheld the decision of the Basic Court in Prizren.
15. The Applicant filed a request for extraordinary mitigation of sentence with the Supreme Court against the Judgment of the Court of Appeal.
16. On 20 May 2015, the Supreme Court [Decision Pzd. no. 59/2015] rejected the Applicant's request for extraordinary mitigation of the punishment imposed by the Judgment of the Municipal Court in Prizren. The Supreme Court in the reasoning *inter alia* states that:

“The Supreme Court of Kosovo in accordance with this provision assesses whether the circumstances referred to in the request have legal weight and are of such a nature that could lead to a more lenient punishment.

[...]

the diagnosis of a disease of the convict cannot be understood from a medical certificate attached to the request for extraordinary mitigation of punishment, besides that it is emphasized that there are certain mental and physical illnesses that require treatment, while a further explanation and treatment are planned with the specialist doctors, whose finding is incomprehensible to the court. However, the court considers that this circumstance, although it is considered new, is not of such a nature as to justify the extraordinary mitigation of punishment within the meaning of the abovementioned provision of the law, taking into account the gravity of the offense, and in particular the degree of criminal liability of the convict, the circumstances of the commission of the criminal offence and the caused consequence, when three people lost their lives...”

Applicant's allegations

17. The Applicant alleges that the Judgments of the Basic Court, the Court of Appeal and the Supreme Court violated the rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution.
18. The Applicant requests the Court to:

“...asses the constitutionality of the judgments and decision of the first instance court – the Basic Court in Prizren with its Judgment P. no. 901/14 of 07.08.2014, the Court of Appeal with Judgment PA1. no. 1350/14, the Supreme Court deciding on the request for extraordinary mitigation, have violated Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo because they did not take into account the provided claims, and we propose that: The Constitutional Court to oblige the Court of Appeal to MODIFY the first instance Judgment or to remand the matter for retrial, or that the Supreme Court of Kosovo approves the request for extraordinary mitigation of the punishment.”

Admissibility of Referral

19. In order to be able to adjudicate the Applicant's complaint, the Court must first examine whether the complaint has fulfilled the admissibility requirements laid down in Constitution and as further specified in the Law and the Rules of Procedure.
20. In this respect, Article 113 paragraph 7 of the Constitution establishes:

“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.”
21. Article 49 of the Law, also provides:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”
22. In this case, the Court refers to Rule 36 (1) (c) (d) and (2) (b) of the Rules of Procedure, which foresees:

*“(1) The Court may consider a referral if:
[...]
(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant.
(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.”*
23. In the present case, having examined the case file, the Court found that the Applicant had two proceedings before the regular courts on which the decisions were rendered on different issues.
24. The first proceeding against the Applicant was initiated by the Basic Public Prosecutor's Office on 3 June 2014. That proceeding was completed on 9 December 2014 by Judgment [PA1. no. 1350/14] of the Court of Appeal, by which the Judgment [P. no. 901/2014] of the Basic Court, which found the him guilty, became final.
25. The Court notes that in the abovementioned proceedings it was decided on the grounds of the merits of allegations of the Prosecution that the Applicant had committed the criminal offence of endangering public traffic under Article 378

paragraph 9 in conjunction with paragraph 1 of the CCK, for which he was sentenced by the final decision.

26. The determination of existence of the criminal offence committed by the Applicant was completed by a final decision on 9 December 2014, whereas the Applicant's Referral was submitted on 13 July 2015, which is more than four months after the final decision.
27. Therefore, under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedures, the Referral in relation to the first set of proceedings must be rejected as out of time.
28. The Court reiterates that the objective of the four months legal deadline is of the preclusive nature and is established to promote legal certainty by ensuring that cases raising issues under the Constitution are dealt within a reasonable time and that past decisions are not continually open to constitutional review (See case *O'LOUGHLIN and Others v. United Kingdom*, No. 23274/04, ECHR, Decision of 25 August 2005).
29. As regards the second proceeding, the Court notes that it concerns a request submitted by the Applicant for extraordinary mitigation of punishment. The Applicant initiated this proceeding on 21 March 2015.
30. That procedure was completed on 20 May 2015, when the Supreme Court rendered decision [Pzd. no. 59/2015], which rejected as ungrounded the request for extraordinary mitigation of punishment, pursuant to Article 429 of the CPCK, which defines the standards that must be met as a basis for extraordinary mitigation of punishment.
31. In this regard, the Court notes that in this proceeding the Supreme Court decided solely on the fulfillment of the procedural requirements for mitigation the imposed sentence, and not on the merits of the case, which was completed by a final judgment of the Court of Appeal, of 9 December 2014.
32. In fact, the Court notes that the Supreme Court provided a clear reasoning and precise conclusions based on the factual situation as determined in the court proceedings. On the other hand, the Applicant did not explain how and why his rights were violated by the Decision of the Supreme Court, which concluded that his request is ungrounded.
33. The Court considers that the Applicant has not substantiated his allegations nor he has submitted any *prima facie* evidence indicating a violation of his rights guaranteed by the Constitution (See, case No. KI19/14 and KI21 14 Applicants *Tafil Qorri and Mehdi Syla*, Constitutional Court of the Republic of Kosovo, Constitutional Review of Decision CA. no. 2129/2013, of the Court of Appeal of Kosovo, of 5 December 2013, and Decision CA. no. 1947/2013, of the Court of Appeal of Kosovo, of 5 December 2013).
34. Moreover, the Court considers that in the conducted proceedings nothing indicates that the proceedings before the regular courts were unfair or arbitrary, or that human rights or freedoms guaranteed by the Constitution

have been violated to the Applicant. Therefore, the Court finds ungrounded the reference to the violation of the Constitution.

35. For the reasons set out above in paragraphs 26 and 31, the Referral is to be declared inadmissible, in accordance with Article 49 of the Law and Rule 36 (1) (c) (d) and (2) (b) of the Rules of Procedure.

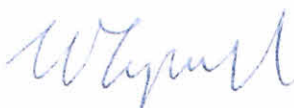
FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113. 1 and 7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c), (d) and (2) (b) of the Rules of Procedure, in its session held on 20 October 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;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Ivan Čukalović



President of the Constitutional Court



Artta Rama-Hajrizi