



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

Prishtina, 15 May 2014
Ref.no.:RK 622/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI07/14

Applicant

Lulzim Gosalci and Gjylmsere Ferataj

Request for the Constitutional Review of the Judgment of the Supreme Court of Kosovo, PML. No. 231/2013, of 24 December 2013

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicants are Mr. Lulzim Gosalci and Mrs. Gjylmsere Ferataj from Prishtina.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo, PML. No. 231/2013, of 24 December 2013, served on the Applicants on 10 January 2014.

Subject matter

3. The subject matter is constitutional review of the Judgment of the Supreme Court of Kosovo, PML. No. 231/2013, which rejected the Applicants' request for protection of legality, filed against the final decision of the Basic Court in Prishtina, Kp. No. 429/2013, of 20 September 2013. The Applicants requested that the Supreme Court approve their request and annul the impugned Judgment in order for them to be "*acquitted of the charges within the meaning of Article 364 of CPCK*".

Legal basis

4. Article 113.7, in conjunction with Article 21.4 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Proceedings before the Court

5. On 20 January 2014, the Applicant filed a referral with the Court.
6. On 31 January 2014, by Decision no. GJR. KI07/14, the President of the Court appointed Judge Arta Rama-Hajrizi as Judge Rapporteur, and the Review Panel composed of judges: Altay Suroy (Presiding) Snezhana Botusharova and Kadri Kryeziu.
7. On 10 February 2014, the Constitutional Court notified the applicant and the Supreme Court of the registration of the referral.
8. On 14 March 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. On 11 December 2009, the Municipal Court in Prishtina rendered the Judgment P. no. 562/2008, thereby finding the Applicants guilty and sentenced them as follows: the first applicant for the criminal offence of Violating Orders for Covert or Technical Measures of Surveillance or Investigation under Article 172 paragraph 2 of the Criminal Code of Kosovo (CCK), to imprisonment of 8 months, and the second applicant for commission of criminal offence of Disclosing Official Secrets under Article 347 paragraph 1 of CCK, to imprisonment of 6 months. The Applicants were not to serve the sentence, if

they did not commit any other criminal offence within a time limit of 1 (one) year of the day that Judgment became final.

10. Both the defense and the public prosecutor filed their appeals against this Judgment, for the reasons provided in their respective appeals.
11. On 15 November 2011, the District Court in Prishtina rendered the Ruling Ap. No. 87/2010, thereby rejecting the appeals of the applicants and the public prosecutor, as inadmissible, since according to the reasoning of the Ruling, in compliance with Article 400 paragraph 1 of the Provisional Criminal Procedure Code of Kosovo (PCPCK), persons entitled to appeal must announce an appeal, which according to the District Court, they have not done, and therefore, the appeals were both inadmissible.
12. On 12 April 2012, the Applicants filed a request for reopening of criminal proceedings before the Municipal Court in Prishtina, thereby requesting review of the Judgment of the Municipal Court in Prishtina, and the Ruling of the District Court in Prishtina, thereby alleging that such court decisions were tainted by “*violations of criminal law*” and that the “*criminal procedure provisions*” were violated.
13. On 20 September 2013, the Basic Court in Prishtina rendered Ruling Kp. No. 429/13, thereby rejecting as ungrounded the Applicants’ requests for reopening of the criminal proceedings that were concluded by the Judgment of the Municipal Court in Prishtina, P. no. 562/2008, of 11 December 2009.
14. The reasoning of this Ruling, amongst others, provides: “*From examination of the case file and from the investigation, namely the reference of the judge Vesel Ismajli for reviewing the facts presented in the request, it results that after the end of the main hearing, during a pause the prosecutor and the convicted persons were invited to the office where the judgment was announced and briefly were given the reasons, on which occasion the parties and their defence counsels stated that they are satisfied with the judgment. From the minutes of the main session dated 11.12.2009, it can be seen that there is no conclusion that the parties after the announcement of the judgment have announced appeal*”.
15. On 18 October 2013, the Applicants filed an appeal with the Court of Appeal, against the Ruling of the Basic Court by which the review of proceedings was rejected.
16. On 21 November 2013, the Court of Appeal rendered Ruling PN. No. 703/2013 thereby rejecting the appeal of the Applicants and upholding the Judgment of the Basic Court in Prishtina, Kp. No. 429/13, of 20 September 2013, by which the request for review of the criminal proceedings was rejected.
17. In the reasoning of this Ruling, the Court of Appeals underlined: “*Since neither the request for reopening of the criminal procedure, nor the appeal filed against ruling on rejection of convicted persons’ request contains any evidence under Article 423 para.1, sub-paragraphs 1.1 to 1.5 of Criminal Procedure Code of Kosovo (CPCCK), the panel of this court based on this factual situation,*

the proposal of Appeals Prosecution Office, evaluated that the first instance court has correctly acted when rejecting the request of the convicted persons, since there are no legal grounds to reopen the criminal procedure, a view which is endorsed by this court too...

18. Unsatisfied with this Ruling, the Applicants filed a request for protection of legality with the Supreme Court of Kosovo.
19. On 24 December 2013, deciding upon the request for protection of legality, the Supreme Court rendered the Judgment Pml. No. 231/2013, rejecting as ungrounded the requests for protection of legality filed against the Ruling of the Basic Court in Prishtina, Kp. no. 49/2013, of 20 September 2013.

Applicant's allegations

20. The Applicants have not specified a violation of any constitutional provision, but stated that *"after having exhausted all legal remedies provided by law, they addressed the Constitutional Court of the Republic of Kosovo, requesting the fundamental right protected by the Constitution of the Republic of Kosovo for equal protection of the rights before the courts"*. They have also stated that *"the sentencing ruling was not made known during the session, but it was sent in written, thus denying the right to use legal remedies."*

Admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court must first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
22. In this regard, the Court refers to Article 113.7 of the Constitution, which provides:

"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".
23. The Court considers that in the view of these provisions, the Applicants are authorized parties, and that they have exhausted all legal remedies provided by law, and have submitted their referral within the legally prescribed deadline.
24. Nevertheless, the Court must also take into account Article 48 of the Law, which provides that:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated (...)".
25. Apart from the above, the Court also refers to Rule 36, which provides that:

"(1) The Court may only deal with Referrals if:

[...]

(c) *the Referral is not manifestly ill-founded.*”

(2) *The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

[...],

(b) *when the presented facts do not in any way justify the allegation of a violation of the constitutional rights;*

[...], or

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

26. In fact, the Court notes that the Applicants have challenged the Ruling of the District Court in Prishtina, which rejected their appeal as inadmissible, due to erroneous and incomplete determination of the factual situation, erroneous application of substantive law, and decision on criminal sanction, and now, they challenge the Judgment of the Supreme Court, thereby alleging that it infringes upon their guaranteed right to “due process and judicial protection of rights”.
27. The Court wishes to remind that in compliance with the principle of subsidiarity, the Applicants must raise their alleged constitutional violations initially before the regular courts, thereby ensuring respect of basic rights as enshrined in the Constitution.
28. The Court notes that in this concrete case, apart from allegations of procedural violations, the Applicants do not complain of human rights violations, in any criminal procedure stage before the regular courts, and now, they request from the Constitutional Court to find the violations on the grounds of correct application of legality or determination of factual situation, which is not a duty of the Constitutional Court.
29. Furthermore, the Court also reminds that the District Court had rejected the applicants’ complaint as inadmissible, due to the fact that according to the PCPCK, “*persons entitled to appeal must announce an appeal*”, an obligation not fulfilled by the applicants, and the same legal stance was held in all subsequent court decisions up to the Supreme Court, when reviewing complaints of the applicants in this case. Nevertheless, the applicants have failed to clarify specifically how and why such a decision infringed their rights to fair and impartial trial and judicial protection of rights.
30. In addition, the Court considers that both the Ruling of the District Court and the Judgment of the Supreme Court provide extensive and complete reasoning on the facts of the case, and especially in relation to the main allegation of the failure to announce the sentencing decision, when finding that “*after the conclusion of the main hearing, a break was taken, and afterwards, the parties, the prosecutor and the convicted persons were invited to the office, when the judgment was announced, and the reasoning was presented in short, on which occasion the parties and their defense stated their satisfaction with the judgment.*”

31. The Court further notes that the legal conclusions are well-reasoned and clear in response to the allegation raised by the applicants. Therefore, the Court finds that the regular court proceedings were entirely fair (see, *mutatis mutandis*, Shub v. Lithuania, No. 17064/06, ECtHR, Decision of 30 June 2009).
32. In this regard, the Court reiterates that it is not its duty, according to the Constitution, to act as a fourth-instance court in relation to the decisions taken by regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and material law (see, *mutatis mutandis*, Garcia Ruiz v. Spain, No. 30544/96, ECtHR, judgment of 21 January 1999, para. 28; see also case no. KI70/11, applicants Faik Hima, Magbule Hima and Besart Hima, Inadmissibility Resolution of 16 December 2011).
33. The Constitutional Court may only review whether the evidence was presented in such a manner that the proceedings in general, viewed in their entirety, were conducted in such a manner that this applicant had a fair trial (see, amongst others, Edwards v. United Kingdom, No. 13071/87, European Commission Report on Human Rights, of 10 July 1991).
34. In sum, the Court cannot find any argument or proof that the challenged Judgment, PML. No. 231/2013, of 24 December 2013, of the Supreme Court of Kosovo, was rendered in a manifestly unfair and arbitrary manner.
35. Therefore, the Court concludes that the applicants have not substantiated their allegation, and have not presented any *prima facie* evidence to support their allegation of a violation of their rights as guaranteed by the Constitution, the ECHR and its protocols, or the Universal Declaration of Human Rights.
36. In such circumstances, the Referral, pursuant to Rule 36 (1) b) and d), is manifestly ill-founded, and therefore inadmissible.


FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law on Constitutional Court and Rule 56 of the Rules of Procedure, on 14 March 2014, unanimously

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. 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 on the Constitutional Court;
- III. This Decision is effective immediately.

Judge Rapporteur


Arta Rama-Hajrizi

President of the Constitutional Court


Prof. Dr. Enver Hasani

