



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

Pristine, 18 January 2013
Ref. No.: RK362/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI 101/12

Applicant

Arianit Dyla

**Constitutional Review of the Decision of the Supreme Court, Pzd. no. 42/2012,
dated 18 June 2012.**

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 Referral was filed by Mr. Arianit Dyla from Gjakova (Applicant).

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court, Pzd. no. 42/2012, of 18 June 2012, which was received by the Applicant on an unspecified date.

Subject matter

3. The Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter, the "Court") to assess the constitutionality of the Decision of the Supreme Court, whereby his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to fair trial] of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the "ECHR") have allegedly been violated.
4. Furthermore, the Applicant request the Court to impose interim measures "[...] postponing the serving of sentence with imprisonment until the Constitutional Court of the Republic of Kosovo decides in relation to this Referral." The Applicant does not provide any further argument on why the Court should impose interim measures.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 27 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (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 Court

6. On 18 October 2012, the Applicant submitted the Referral to the Court.
7. On 31 October 2012, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Ivan Čukalovič and Arta Rama-Hajrizi.
8. On 13 November 2012, the Court informed the Supreme Court of the Republic of Kosovo of the filing of the Referral.
9. On 11 December 2012, the Court communicated the Referral to the State Public Prosecutor.
10. On 18 January 2013, 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 facts

11. On 18 May 2010, the Municipal Court of Gjakova found the Applicant guilty of having committed the criminal act of Article 253 (1.1) in conjunction with Article 23 of the Provisional Criminal Code of Kosovo (hereinafter, "PCCK"), and sentenced him to six (6) months of imprisonment (Judgment P. no. 566/2005). The Municipal Court held that *"The second defendant Arianit Dyla during court hearing and in his final word states that, willingly knowing in advance the consequences, he admits the guilt for criminal offence for which he is charged for and requests from the court to give a mitigated sentence."* It further held that *"In this factual situation the Court confirmed the criminal act based on the voluntarily admittance of guilt by the defendants B.S. and Arianit Dyla, and other evidence filed in this case. The court particularly evaluated the defence of the second defendant Arianit Dyla, who admits the criminal offence by which he is accused of, but by admitting the criminal offence it does not mean that the same is acquitted from guilt."*
12. On 31 October 2011, the District Court in Peja (Judgment Ap. no. 87/2010) rejected as unfounded the Applicant's appeal and upheld the Judgment of the Municipal Court in Gjakova.
13. The Applicant filed a request with the Municipal Court in Gjakova to postpone the execution of the sentence.
14. On 12 December 2011, the Municipal Court in Gjakova (Decision Esp. no. 405/2011) ordered the Applicant to submit evidence due to the serious acute disease and to submit report on his health condition, issued by the Medical Institution where he is being treated, within the time-limit of 8 days.
15. On 27 December 2011, the Municipal Court in Gjakova (Decision Esp. no. 405/2011) rejected the request to postpone the execution of the sentence.
16. On 24 January 2012, the District Court in Peja (Decision Pn. No. 09/12) rejected as unfounded the Applicant's complaint and upheld the decision of 27 December 2012 of the Municipal Court. The District Court held that the Applicant has not submitted sufficient evidence that would prove his claim of suffering from a disease.
17. On 30 January 2012, the Supreme Court (Judgment Pkl. no. 134/2011) rejected as unfounded the Applicant's request for protection of legality against the Judgment of the Municipal Court in Gjakova of 18 May 2010. The Supreme Court held *"From the Minutes of the Court hearing and from the judgment of first instance it is seen that the matter was adjudicated by the court panel composed of judges (H.H.) and two lay judges which is in full compliance with the provision of Article 22 paragraph 1 of Provisional Criminal Procedure Code of Kosovo, also the allegation for holding the Court hearing without his presence and his defence counsel does not stand, because (always referring to the case files, respectively Minutes of the court hearing) from which it is seen that Arianit Dyla has stated that, voluntarily knowing the consequences of such action, he*

admits the guilt, and the court has found that all legal terms have been met pursuant to Article 315 paragraph 1 of PCCK for admitting the guilt by the accused, thus the court hearing is in compliance with Article 359, paragraph 5 of PCCK.”

18. On 18 June 2012, the Supreme Court (Decision Pzd. no. 42/2012) rejected as unfounded the Applicant’s request for mitigation of sentence. The Supreme Court held that *“The circumstance, which the Applicant has now presented in this request for extraordinary mitigation of sentence, serious health condition, and that he is under continuous therapy is a new circumstance that occurred after rendering the judgment but not of such nature as to justify the extraordinary mitigation of sentence.”*

Allegations of Applicant

19. The Applicant alleges what follows.

- a. *“The judgments contain substantial violations, which are relevant for this stage of procedure, respectively violations of criminal law Article 451 paragraph (1) item 1) of PCCK, substantial violations of the law of criminal procedure, envisaged by Article 403, paragraph 1 of provisions of criminal procedure whereby such violations have impacted on legality of court decision, in compliance with Article 451 paragraph (1) item 3) of CCK.”*
- b. *“Above all, the matter was adjudicated by one individual judge at first instance.”*
- c. *“In other words, the panel session was held without my presence and my defence counsel. It is important that it was held without my presence and based on that was violated my right to defence.”*
- d. *“The Court did not present any evidence.”*
- e. *“The court was obligated to determine and individualize actions of each accused, separately.”*
- f. *“The amount of goods allegedly stolen, described in the enacting clause of judgment is not confirmed.”*
- g. *“The Supreme Court of Kosovo in Judgment Pzd. no. 42/2012 dated 18.06.2012 has rejected his request without giving proper reasons in order for that judgment to be considered as fair and just.”*

Admissibility of the Referral

20. The Court can only decide on the admissibility of a Referral, if the Applicant shows that he/she have fulfilled the admissibility requirements laid down in the Constitution and that are further specified in the Law and Rules of Procedure.

21. As seen above, on 30 January 2012 the Supreme Court ruled that *“From the Minutes of the Court hearing and from the judgment of first instance it is seen that the matter was adjudicated by the court panel composed of judges (H.H.) and two lay judges which is in full compliance with the provision of Article 22 paragraph 1 of Provisional Criminal Procedure Code of Kosovo, and also the allegation for holding the Court hearing without his presence and his defence counsel does not stand, because (always referring to the case files, respectively Minutes of the court hearing) from which it is seen that Arianit Dyla has stated that, voluntarily knowing the consequences of such action, he admits the guilt, and the court has found that all legal terms have been met pursuant to Article 315 paragraph 1 of PCCK for admitting the guilt by the accused, thus the court hearing is in compliance with Article 359, paragraph 5 of PCCK.”*
22. On 18 June 2012, the Supreme Court also ruled that *“The circumstance, which the Applicant has now presented in this request for extraordinary mitigation of sentence, serious health condition, and that he is under continuous therapy is a new circumstance that occurred after rendering the judgment but not of such nature as to justify the extraordinary mitigation of sentence.”*
23. In this respect, the Constitutional Court of Kosovo does not have an appellate jurisdiction and can not intervene on theory that regular courts have made a wrong decision or erroneously assessed the facts. The role of the Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and can, therefore, not act as a court of fourth instance (*see* Case No. KI 07/09, Demë Kurbogaj and Besnik Kurbogaj against Supreme Court Judgment Pkl.nr. 61/07 of 24 November 2008 and Supreme Court Judgment Ap. no. 510/2007 of 26 March 2008, Resolution on Inadmissibility of 19 May 2010).
24. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (*see, mutatis mutandis, Garcia v. Spain [GC], no. 30544/96, para. 28, European Court of Human Rights [ECHR] 1999-I*).
25. The Court can only consider whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicants has had a fair trial (*see among other authorities, Report of the Eur. Commission of Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87, adopted on 10 July 1991*).
26. In the present case, the Applicant merely disagrees with the courts' findings with respect to the case and indicates some legal provisions of the Constitution and the PCCK as having been violated by the challenged decision (Judgment Pzd. 42/2012) of the Supreme Court.
27. Namely, the Applicant does not explain how and why the Supreme Court violated his rights and violated the provisions of the PCCK.

28. In sum, the Applicant does not show that the proceedings before the Supreme Court were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).

29. Rule 36 (2) d) of the Rules foresees that “the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that (...) the Applicant does not sufficiently substantiate his claim”.

30. Therefore, taking into account the above considerations, it follows that the Referral on the alleged violations must be rejected as manifestly ill-founded.

Request for Interim Measures

31. Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, provide that “when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures.

32. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures


FOR THESE REASONS

The Constitutional Court, pursuant to Article 27 of the Law, Rule 36 (2.d), Rule 54 (1) and Rule 56 (2) of the Rules of Procedure, on 18 January 2013, unanimously,

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO REJECT the request for Interim Measures;
- III. 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;
- IV. This Decision is effective immediately.

Judge Rapporteur


Almiro Rodrigues



President of the Constitutional Court


Prof. Dr. Enver Hasani