



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Pristina, 18 March 2013

Ref. No.: RK394/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI111/12

Applicant

Mit'hat Lozhani

**Constitutional Review of the Decision of the Conditional Release Panel MD/PLK
No02/12 dated 29 May 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 Applicant is Mit'hat Lozhani, currently serving his prison sentence in the Prison of Gjilan.

Challenged decision

2. The challenged decision is the Decision of the Ministry of Justice Conditional Release Panel MD/PLK No02/12 dated 29 May 2012.
3. In addition, on 26 July 2012, the Applicant was informed by the Supreme Court of Kosovo that *"the Court does not have a competence to review his request, since Conditional Release Panel is independent body and its ruling are final."*

Subject matter

4. The subject matter of the Referral is the assessment by the Constitutional Court of the constitutionality of the Decision of the Conditional Release Panel MD/PLK No02/12 dated 29 May 2012 by which the Applicant's request for conditional release has been rejected.
5. In his Referral the Applicant proposed to the Constitutional Court to amend the ruling of the Conditional Release Panel MD/PLK No02/12 of 29 May 2012 and grant his request for conditional release.

Legal Basis

6. The Referral is based on Art. 113.7 of the Constitution; Articles 46, 47, 48 and 49 of the Law, and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Proceedings before the Court

7. On 5 November 2012, the Applicant submitted a referral with the Constitutional Court.
8. On 6 December 2012, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.
9. On 10 December 2012, the Court notified the Applicant and the Conditional Release Panel of the registration of the Referral.
10. On 24 December 2012, the Conditional Release Panel sent their reply to the Applicant's referral together with the additional documents related to the Applicant's case.
11. On 13 March 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

12. From the Parties submissions and attached documents the following facts can be summarized.

13. On 26 January 2004, by the judgment of the District Court in Peja, the Applicant was found guilty for the criminal offence of murder as provided by Article 30 para.1 of the Provisional Criminal Code of Kosovo (PCCK) and was sentenced to 11 years of imprisonment, counting the time spent in detention on remand.
14. The execution of serving the prison sentence by the Applicant has started on 26 July 2003.
15. Following execution of the half of his sentence, recalling Article 80. 2 of PCCK, the Applicant submitted his first request for conditional release.
16. The Applicant's request was reviewed on 17 April 2009, by a Conditional Release Panel of three judges who found that the conditions specified in Article 80 of the PCCK were not met due to the Applicant's behavior. The review of the Applicant's case was scheduled for one year.
17. On 30 April 2010, the Panel reviewed the new request of the Applicant and rejected it, with justification that although the Applicant started to refrain from negative behavior, from the data of the professional team of the correctional center, it was concluded that he has not managed to understand the consequences of the criminal offence.
18. The Conditional Release Panel further rejected the Applicant's request for conditional release on 7 June 2011.
19. On 7 October 2011, the Conditional Release Panel once more reviewed the Applicant's request also acting ex officio and rejected it. In that Decision the Panel admitted that they made technical mistake in the earlier decision of 7 June 2011, arguing that the Applicant managed to escape from the prison. The Panel scheduled new review for three months.
20. The Applicant's request for conditional release was considered again on 21 February 2012 and was consequently rejected. The Panel suggested to the Applicant to make efforts for reconciliation and to improve relationships with the victim's family.
21. On 29 May 2012, the Conditional Release Panel again considered the Applicant request and found that the conditions for his release still were not met based on the Applicant's behavior, since he threatened a correctional officer.

Applicant's Allegations

22. The Applicant's main argument in support of his referral is that Decision of 29 May 2012 issued by the Conditional Release Panel is based on wrong facts and thus unlawful. He argues that the conditions for release, prescribed by Article 80 of the PCCK as well as by relevant provisions of the Law no. 03/02 -191 on Execution of Criminal Sanctions, have been met and therefore the Constitutional Court should amend the challenged Decision of 29 May 2012.

Response from the Interested Party

23. In their reply to the Referral the Conditional Release Panel gave detailed account of every decisions and documents based on which these decisions were adopted.
24. Finally, it was suggested by the Panel to reject the Applicant's request as ungrounded.

Applicable Law

25. Article 80 of the PCCK (published under UNMIK/REG/2003/25 on 6 July 2003) reads as follows:

“Conditional Release

Article 80

- (1) The convicted person may be granted conditional release if there are reasonable grounds to expect that he or she will not commit a new criminal offence. The conduct of the convicted person while serving his or her punishment shall be taken into consideration when deciding whether or not conditional release may be granted.*
- (2) A convicted person who has served one-half of a sentence of imprisonment may be granted conditional release and released from prison on the condition that he or she does not commit another criminal offence before the expiry of the sentence.*
- (3) A convicted person who has served one-third of a sentence of imprisonment may be granted conditional release on an exceptional basis provided that special circumstances relating to the convicted person indicate that he or she will not commit a new criminal offence.*
- (4) A convicted person who has served three-quarters of a sentence of long-term imprisonment may be granted conditional release.*
- (5) Conditional release shall be decided by a panel established by the competent public entity in the field of judicial affairs in accordance with the law.*

26. Law on Execution of Penal Sanctions (2010/03-L-191) of 22 July 2010 to the extent relevant provide in Articles 128 and 129 as follows:

“Article 128

Conditional Release

- 1. A convicted person is eligible for conditional release in accordance with the Criminal Code of Kosovo.*
- 2. A convicted person has the right to submit a request for conditional release through the correctional facility in which he or she is serving his or her sentence to the panel for conditional release established pursuant to the Criminal Code of Kosovo.*
- 3. After submission of appeal for conditional release, the Director of correctional facility shall request from Probation Service to conduct the visit of convicted person and to sign agreement on its supervision after conditional release.*
- 4. The director of the correctional facility may submit a motion for conditional release.*
- 5. Upon the submission of a request or a motion for conditional release, the director of the correctional facility shall immediately submit to the conditional release panel a copy of the personal file of the convicted person and a report on the convicted person by a professional team in the correctional facility through annexed letter signed by General Director of Correctional institution.*
- 6. If the conditional release panel doesn't have enough information, may request from correctional facility additional information.*

7. *The report under paragraph 5 of the present article shall set forth:*
- 7.1. *the nature of the criminal offence committed by the convicted person;*
 - 7.2. *the attitude of the convicted person to the criminal offence and the victim and the victim's family;*
 - 7.3. *any previous criminal offences committed by him or her;*
 - 7.4. *his or her family circumstances and social background;*
 - 7.5. *his or her physical or psychological state, including evaluation of hazardous state whenever is necessary from a Psychiatrist or Psychologist;*
 - 7.6. *his or her behavior in the correctional facility and the progress achieved in removing the factors that caused the criminal offence;*
 - 7.7. *his or her post-release plans;*
 - 7.8. *the support that would be available to him or her on release; and*
 - 7.9. *any circumstances indicating that he or she will not commit a new criminal offence.*

Article 129

- 1. *The conditional release panel, established by the competent public entity in the field of judicial affairs, shall consist of one judge and two lay judges who shall have knowledge and experience in psychology, criminology, psychiatry, pedagogy, sociology and other social sciences relating to conditional release.*
- 2. *The free on parole panel shall decide on all requests and motions for conditional release."*

Assessment of the Admissibility of the Referral

- 27. At the outset, the Court notes that the Applicant makes no claim of a violation of the Constitution, only an alleged violation of a correct application of national law.
- 28. The Applicant is only asking the Court to determine the legality of the discretionary denial of his request for conditional release from the balance of his sentence, even though the Conditional Review Panel made extensive findings why it was denying the Applicant's request.
- 29. In that respect, the Constitutional Court would like to recall that, under the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by Conditional Release Panel, unless and in so far as they may have infringed rights and freedoms protected by the Convention (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken public authorities.
- 30. In conclusion, the Applicant has neither built a case on a violation of any of her rights guaranteed by the Constitution nor has she submitted any *prima facie* evidence on such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
- 31. This Court cannot serve as interpreted of the correct application of the national law.
- 32. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 1. (c) of the Rules of Procedure which provides that "The Court may only deal with Referrals f: c) the Referral is not manifestly ill-founded."

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution and Rule 36 of the Rules of the Procedure unanimously:

DECIDES


- I. TO REJECT the Referral as 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur


Robert Carolan



President of the Constitutional Court


Prof. Dr. Enver Hasani