



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

Prishtina, 28 June 2013
Ref. no.:RK431/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI122/12

Applicant

Edison Rinxhi

**Constitutional Review of the Resolution of Municipal Court for Minor Offences,
Reg. No. 46854/2012 of 19 October 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Edison Rexha, born in the Republic of Albania, with temporary residence in Slivova, Municipality of Pristina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Resolution of the Municipal Court for Minor Offences Reg.No.46854/2012 of 19 October 2012.

Subject matter

3. The subject matter is the constitutional review of Resolution of the Municipal Court for Minor Offences in Pristina Reg.No.46854/2012, annulment of sentence, as well as remanding of the case to the first instance court for retrial.

Legal basis

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution; Articles 20, 22.7 and 22.8 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56 (2) of the Rules of Procedure.

Proceedings before the Court

5. On 04 December 2012, the Applicant filed a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. By the Decision of the President (no. GJR.122/12, of 10 January 2013), Judge Arta Rama-Hajrizi is appointed as Judge Rapporteur. On the same date, by the Decision no.KSH.KI 122/12, the President appointed the Review Panel composed of Judges: Almiro Rodrigues (presiding), Ivan Čukalović and Prof. Dr. Enver Hasani.
7. On 1 March 2013, the Court notified the Applicant and the Basic Court on the registration of the Referral under nr. KI122/12.
8. On 29 April 2013, by the decision of the President (Nr.Gj.R.KI 122/12), as Judge Rapporteur was appointed Judge Kadri Kryeziu replacing the judge Arta Rama Harjizi.
9. On 13 May 2013, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

10. On 8 August 2012, the Department of Border Police of the Republic of Kosovo delivered a request to the Applicant Edison Rinxhi, a citizen of the Republic of Albania (Applicant of the Referral), to leave the territory of the Republic of Kosovo.
11. On 15 October 2012, at 22:30 hrs, the Department of Foreigners and Illegal Migration of the Ministry of Internal Affairs, during the inspection of the facility

at D.P.H. "Nazi" on the road Pristina-Gjilan, found that the Applicant had not complied according to the request that was served on him on 8 August 2012, but he was working as a musician in the said facility.

12. On 19 October 2012, the Department of Foreigners and Illegal Migration, against the Applicant filed a request on initiation of the minor offence proceedings [no. 2012-YR-486] to the Municipal Court of Minor Offences in Pristina regarding violation of Article 33 and in conjunction with Article 32 paragraph 1.1.6 within the meaning of Article 88.1.1 and 2 of the Law for Foreigners no. 04/L-069, (see paragraph 14 a and b)
13. On 19 October 2012, the Municipal Court of Minor Offences in Pristina issued resolution [No. 46854/12], by which imposes a fine on the defendant (the Applicant of the Referral) in the amount of 50 euros according to the Article in accordance to the Article 88.1.1 of the Law on Foreigners No. 04/L-069, (see paragraph 14 c).
14. The Court by the same resolution imposed to the Applicant also a protection measure of immediate deportation with no right of entry into the territory of the Republic of Kosovo in a time period of 2 years, in accordance to the Article 88.2 of the Law on Foreigners No. 04/L-069 (see paragraph 14 d).
15. The Applicant filed an appeal (the date is not available in the case file) against the resolution of the Municipal Court of Minor Offences [no. 46854/4] of 19 October 2012.
16. On 5 November 2012, the High Court of Minor Offences in Prishtina partially approves the Applicant's appeal and issues a resolution [GJ.No.1234/2012], by which confirms a monetary fine to the Applicant, while the measure to prohibit entry into the territory of the Republic of Kosovo in a time period of 2 (two) years, amended to 1 (one) year ban.

Relevant Law

17. The Law on Foreigners No. 04/L-069;

- a) Article 33 Time limit for stay without visa;

"The foreigner, to whom is not requested visa for entry into the Republic of Kosovo, may stay in Kosovo not longer than ninety (90) days, in the time period of six (60) months by counting from the first day of entry, unless by provisions of this law or international agreement is provided otherwise."

- b) Article 31 Illegal border crossing;

1.6. 1. "Illegal crossing of state border shall be considered when the foreigner "(...) enters in the Republic of Kosovo while the order for removal with ban for re-entry is not force."

- c) Article 88.1.1 *"With the fine of fifty (50) up to one thousand five hundred (1.500) € shall be sentenced for misdemeanor the foreigner if illegally passes the state border, according to the Article 31 of this Law."*

"[...]"

- d) Article 88.2 *"Unless above-mentioned cases to the foreigner shall also impose the deportation measure."*

Applicant's allegations

18. The Applicant alleges that the proceedings before Minor Offence Courts resulted in violation of the provisions of the minor offence procedure, erroneous and incomplete determination of the factual situation and violation of Law.
19. The Applicant addresses the Constitutional Court with the following request:
- "Requesting from the Court, to release the defendant Edison Rinxhi, (the Applicant of the Referral) from the liability and sentence imposed, because of the erroneous determination of the factual situation, and requesting from the Court to annul the challenged resolution and remand the case to the first instance court for retrial".*

Assessment of admissibility of the Referral

20. In order to be able to adjudicate the Applicant's Referral, the Court needs to first examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution as further specified in the Law on the Constitutional Court and the Rules of Procedure.
21. In this respect, the Court refers to Article 113.7 of the Constitution which provides the following:
- "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."*
22. The Court notes that in the case file there is as well the resolution of the High Court of Minor Offences [GJ.br.1234/2012] of 5 November 2012, but it is not a subject of this referral, because the referral of the Applicant is based on the constitutional review of the resolution of Municipal Court for Minor Offences reg.no.46854/2012 of 19 October 2012.
23. The Court notes that the Applicant has not specified what constitutional rights he claims to have been violated by the resolution of the Municipal Court of Minor Offence [No.reg. 46854-12] of 19 October 2012, even though the Article 48 of the Law on Constitutional Court of the Republic of Kosovo provides that:
- "In his/her Referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."*

24. The Court notes that it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], No.30544/96, paragraph 28 of the European Court for Human Rights [ECHR] 1999-I).
25. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general viewed, in their entirety, have been conducted in such a way that the Applicant had a fair trial (see, Report of the European Commission on Human Rights, in the case Edwards v. United Kingdom, Application No.13071/87 adopted on 10 July 1991).
26. The Applicant has not substantiated his allegations nor he did provided any evidence on violation of his rights and freedoms by the regular courts (see, *mutatis mutandis*, Shub v. Lithuania, ECHR, Decision on Admissibility of Referral No. 17064/06, of 30 June 2009).
27. Rule 36 (2) b) of the Rules of Procedures stipulates that “The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: (...) the presented facts do not in any way justify the allegation of a violation of the constitutional rights.”

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and rules 36.2 and 56 of the Rules of Procedure, on 28 June 2013, unanimously,

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this Decision to the Parties and
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur

Dr. Sc. Kadri Kryeziu

President of the Constitutional Court

Prof. Dr. Enver Hasani