



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

Prishtina, 5 May 2014
Ref.no.:RK 577/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI233/13

Applicant

Erton Beka

**Constitutional review of the Decision Pn. no. 745/2013 of the Court of
Appeal of Kosovo of 19 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Mr. Erton Beka from Vushtrri (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision Pn. no. 745/2013, of the Court of Appeal of Kosovo of 19 December 2013.

Subject matter

3. The subject matter is the constitutional review of the Judgment, which allegedly violates principles of the criminal procedure to the Applicant, and that is: police authorization, criminal report, prosecutor's decision, confirmation of indictment, evidentiary proceedings as well as substantial violations of the Criminal Procedure Law.
4. The Applicant does not refer to a violation of a particular constitutional provision.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the "Law") and Rule 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 30 December 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 15 January 2014, the President by Decision no. GJR. KI233/13 appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President by Decision no. KSH. KI233/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
8. On 27 January 2014, the Court notified the Applicant and the Court of Appeal on registration of the Referral.
9. On 13 March 2014, after having reviewed the report of Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 15 July 2010, the Municipal Court in Vushtrri rendered the Judgment [P. no. 19/2010], by which the Applicant was found guilty for criminal offence of Incitement under Article 24 of the Criminal Code of Kosovo (hereinafter: the CCK), to commit criminal offence under Article 161 paragraph 2 in conjunction with paragraph 4 of CCK, and sentenced him to imprisonment in duration of 3 (three) months.

11. The Applicant filed an appeal within legal time limit against the Judgment [P. no. 19/2010], of the Municipal Court in Vushtrri.
12. In the appeal, the Applicant requested that the Judgment is annulled and the matter is remanded for retrial, with a justification that, during the proceedings, the essential violation of the criminal procedure provisions and incomplete determination of factual situation was committed.
13. On 7 May 2013, the Court of Appeal in Prishtina by Judgment [PA1. no. 1543/12], rejected the Applicant's appeal as ungrounded and upheld in entirety the Judgment [P. no. 19/2010] of the Municipal Court in Vushtrri of 5 July 2010.
14. In its reasoning, the Court of Appeal stated:

„the appealed judgment does not contain substantial violations of the contested procedure provisions, or other procedural violations, which this court notices ex-officio. The enacting clause of the appealed judgment is clear, does not contain contradictions with itself or its reasoning. In the reasoning of the appealed judgment were given right factual and legal reasons, which are approved by this Court too. The first instance court assessed and analyzed all evidence, administered during the court hearing, by presenting its conclusions, which this Court approves as fair and lawful [...] therefore based on this, the Court of Appeal found that the appealed allegations are not grounded“.
15. On an unknown date, the Applicant submitted a request to the Basic Court in Mitrovica – branch in Vushtrri, whereby requesting that the final judgment, by which he was sentenced to 3 (three) months imprisonment is replaced with a *punishment of fine*, referring to Article 47 of the Criminal Code of Kosovo (CCK).
16. On 8 November 2013, the Basic Court in Mitrovica-branch in Vushtrri reviewed the Applicant's request and by Decision P. no. 19/2010, rejecting the Applicant's request with the reasoning:

„The Court of Appeal by Judgment no. 1543/12 upheld the Judgment of the Municipal Court in Vushtrri P. no. 19/2010. The provision of Article 47 of CCK, on which is referred the respondent, provides that if the court imposes a sentence of up to six months imprisonment, the court may at the same time decide to replace the punishment imprisonment with fine upon the consent of the convicted person, [...] and the abovementioned provision cannot be applied after the judgment becomes final [...]. “
17. On an unknown date, the Applicant filed an appeal to the Court of Appeal against the Ruling [P no. 19/2010] of the Basic Court in Mitrovica - the branch in Vushtrri.
18. On 19 December 2013, the Court of Appeal of Kosovo rendered the Ruling [Pn. no. 745/2013], by which the Applicant's appeal was rejected as ungrounded,

while it upheld the Ruling [P no. 19/2010], of the Basic Court in Mitrovica-branch in Vushtrri in entirety.

19. In the reasoning of its decision, the Court of Appeal stated:

„Article 46 of the CCK, which makes possible the replacement of imprisonment with punishment of fine, when the imposed imprisonment is up to 6 (six) months, can be applied only in cases when the punishment was imposed by first instance or second instance court, when it is decided or not regarding the appeal, therefore in this case, at the time of the execution of judgment, cannot be applied the principle of more favorable Article, as it is provided by Article 47 of CCK”.

Relevant law provisions

Criminal Code of Kosovo

Article 47

Replacement of imprisonment with punishment of fine of Criminal Code of Kosovo

“The court may, with the consent of the convicted person, replace the punishment of up to six (6) months imprisonment with the punishment of fine”.

Applicant’s allegations

20. The Applicant alleges that: *“The Constitutional Court should render final decision on whether there is sufficient evidence for my punishment, to analyze why other witnesses were not summoned to hearing”.*
21. The Applicant addresses the Court with the request: *“I want that the Constitutional Court replaces my punishment with the punishment of fine or a conditional release”.*
22. The Applicant does not refer to a violation of a particular constitutional provision.

Admissibility of the Referral

23. In order to be able to adjudicate the Applicant’s Referral, the Court first needs to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of the Procedure.
24. Regarding the Applicant’s Referral, the Court refers to the 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.”

25. The Court notes that the Applicant has not stated in his Referral what specific rights, guaranteed by the Constitution, have been violated by decisions of the regular courts although Article 48 of the Law provides:
„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”.
26. The Court also refers to the Rule 36 (1) c) of the Rules of Procedure provides:

"The Court may only deal with Referrals if:

“c) the Referral is not manifestly ill-founded”.
27. In the case at issue, the Applicant alleges that the Decision [Pn. no. 745/2013], of the Court of Appeal of Kosovo violates Criminal Procedure Code of Kosovo.
28. However, the Applicant does not indicate in what manner and how the Court of Appeal has violated his rights, which are regulated by the Criminal Procedure Code, nor has submitted evidence to substantiate the alleged violations of the rights guaranteed by the Constitution.
29. Moreover, the Court finds that the Judgment [Pn. no. 745/2013] of the Court of Appeal provided broad and comprehensive reasoning of the facts of the case and its legal findings are well-reasoned and clear, when it responded to the allegations presented by the Applicant. Thus, the Court finds that the proceedings before regular courts were fair and reasoned (See, *mutatis mutandis*, Shub v. Lithuania, no. 17064/06, ECtHR, decision of 30 June 2009).
30. In this respect, the Court reiterates that under the Constitution, it is not its duty to act as a court of fourth instance, when reviewing the decisions taken by regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, Garcia Ruiz v. Spain, no. 30544/96, ECtHR Judgment of 21 January 1999).
31. 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 and impartial trial (See among others authorities, Edwards v. United Kingdom, App. No 13071/87, Report of the Eur. Commission on Human Rights of 10 July 1991).
32. The fact that the Applicant is dissatisfied with the outcome of the case cannot raise an arguable claim of a breach of the constitutionally guaranteed rights (See case, Mezotur-Tiszazugi Tarsulat v. Hungary, No. 5503/02, ECtHR Judgment of 26 July 2005).

33. In the concrete case, the Court cannot find arguments and evidence that the challenged decision [Pn. No. 745/2013] of the Court of Appeal of Kosovo of 19 December 2013, was rendered in manifestly unfair and arbitrary manner.
34. Consequently, the Court declares the Referral inadmissible as manifestly ill-founded pursuant to Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to the Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1), c) of the Rules of Procedure, on 13 March 2014, unanimously:

DECIDES

- I. TO DECLARE 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;
- IV. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani