



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Pristine, 26 August 2014
Ref. No.: RK702/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI31/14

Applicant

Luan Ramadani

**Constitutional Review of the Judgment Pml. No. 222/2013 of the
Supreme Court, dated 24 December 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Mr. Luan Ramadani residing in Lipjan.

Challenged decision

2. The Applicant challenges the Judgment Pml. No 222/2013 of the Supreme Court, dated of 24 December 2013, which was served on the Applicant on 8 January 2014.

Subject matter

3. The Applicant alleges that the challenged judgment violated his right to a fair trial guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and by Article 6 [Right to a Fair Trial] of the European Convention on Human Rights (hereinafter, the Convention).

Legal basis

4. The referral is based on Article 113.7 of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

5. On 13 February 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 6 March 2014, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel consisting of Judges Altay Suroy (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 13 March 2014, the Court notified the Applicant of the registration of the Referral and requested him to submit a copy of the Judgment PA1 No. 712/2012 of the Court of Appeal in Pristine, of 19 April 2013. However, the Applicant has not complied with the request.
8. Also on 13 March 2014, the Court sent a copy of the Referral to the Supreme Court.
9. On 26 June 2014, Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.
10. On 3 July 2014, the President of the Court replaced Judge Kadri Kryeziu with Judge Ivan Cukalovic as a member of the Review Panel.
11. On 3 July 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 facts

12. On 11 March 2011, the Municipal Court in Lipjan (Judgment P. no. 102/2010) found the Applicant guilty of having committed the criminal offence of endangering workplace safety, foreseen by Article 186 para.2 in conjunction with para 3 and 4 of the Provisional Criminal Code of Kosovo (hereinafter, PCCK), and sentenced him with one (1) year of imprisonment.
13. On an unspecified date, the Applicant appealed the aforementioned judgment
14. On 19 April 2013, the Court of Appeal of Kosovo (Judgment PA1 No. 712/2012) rejected the Applicant's appeal and confirmed the judgment of the Municipal Court.
15. The Applicant filed a request for protection of legality against the first and second instance judgments, due to a violation of criminal law. The Applicant claimed, *inter alia* that a "*violation of criminal law is also committed by applying Article 186 of the previous Criminal Code, by applying it at time when this action does not constitute a criminal offence.*"
16. On 24 December 2013, the Supreme Court (challenged judgment Pml no 222/2013) rejected as ungrounded the Applicant's request for protection of legality.
17. In the reasoning of that judgment, it was mentioned, *inter alia*, that "... *allegations of defense counsel that according to provisions of the new criminal code, the criminal offence does not exist, do not stand due to the fact that this criminal offence is not decriminalized due to the fact that according to old provisions was included in Chapter XVII whereby are included criminal offences against the rights in employment relationship, whereas in the new criminal code, this offence is placed to chapter XXIX whereby are included criminal offences against general safety of people and property and is incriminated pursuant to Article 367 of PCCK.*"
18. The Supreme Court further stated that "*The Criminal Code, which was applicable at the time of commission of criminal offence, respectively para.4 of Article 186 of PCCK, provides that 'if the criminal offense pursuant to paras 1 and 2 of this article caused serious injuries of one or more persons for offence pursuant to paras. 1 and 2 the perpetrator is punished with imprisonment up to five years whereas for criminal offence pursuant to para.3 is punished with imprisonment up to three years.'* Whereas, para 5 of Article 367 of the new criminal code, provides that '*if the criminal offence pursuant to para.3 of this Article results with serious injury of one or more persons or with property substantial damage, the preparatory is punished with imprisonment up to 5 years*'".
19. Consequently, the Supreme Court found that in the Applicant's criminal case "*there is no doubt that in the present case the first and the second instance court have correctly applied the applicable law, and which is more favorable for the adjudicated, because as it was stated above the new law for this offence provides more severe punishment...*".

Applicant's allegations

20. The Applicant claims that his right to a fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the Convention has been violated. He alleges that there was unequal treatment of parties in judicial procedure since the evidence proposed by him was not taken into account. He further argues that there has been a violation of his human rights since the more favourable law was not applied in his case in contradiction with Article 3 of the Criminal Code.
21. In support of his allegation, the Applicant submitted an extract of the judgment of the Supreme Court (Pkl. nr. 11/2004) of 10 December 2004, whereby the Supreme Court approved a request for protection of legality, confirming that in the event of change of the law applicable to a given case, the law most favourable to the perpetrator shall apply. Consequently in that particular case the Supreme Court changed the legal qualification.

Admissibility of the Referral

22. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.
23. In this respect the Court refers to Article 48 of the Law which 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."
24. The Court also refers to Rule 36 1. c) of the Rules of Procedure:
"The Court may only deal with Referrals if:
...
(c) the Referral is not manifestly ill-founded."
25. The Court notes that the Applicant merely disputes whether the regular courts correctly applied the more favourable applicable criminal law in his case, which is a matter of legality.
26. The Court emphasizes that it is not the task of the Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).
27. The Court considers that the Applicant has not accurately explained and showed how and why his rights guaranteed by the Constitution were violated.
28. In this connection, the Court reiterates that it is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also

Resolution on Inadmissibility in case no 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).

29. The Constitutional Court notes that the Applicant has used all the legal remedies prescribed by the Criminal Procedure Law, by submitting the appeal against first instance judgment and request for protection of legality against the second instance judgment.
30. Furthermore, the Court considers that the Supreme Court took the Applicant's arguments into due account and indeed clearly answered his appeals on the contested points of law.
31. Therefore, the Court considers that there is nothing in the Referral which indicates that the case lacked impartiality or that the proceedings were otherwise unfair (see, *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
32. Accordingly, pursuant to Rule 36 (1) c) of the Rules of Procedure, the Court finds that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 1. c) of the Rules of the Procedure, in its session held on 3 July 2014, 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. TO DECLARE this Decision immediately effective.

Judge Rapporteur

Almiro Rodrigues



President of the Constitutional Court

Prof. Dr. Enver Hasani

