



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 15 August 2014
Ref. No.: RK699/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI40/14

Applicant

Valon Haskaj

**Constitutional Review of the Judgment, KZZ. No. 187/2013 of the
Supreme Court of Kosovo dated 8 November 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 and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Mr. Valon Haskaj (hereinafter: the Applicant), who is serving a sentence in Dubrava prison near Istog. The Applicant is represented by Mr. Živojin Jokanović, a practicing lawyer from Prishtina.

Challenged decisions

2. The Applicant challenges the Judgment of the Supreme Court, KZZ. No. 187/2013 of 8 November 2013. The Applicant did not declare when the last Judgment of the Supreme Court (KZZ. No. 187/2013 of 8 November 2013) was served on him.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Judgment of the Supreme Court, KZZ. No. 187/2013 dated 8 November 2013. By Judgment, Kz. No. 328/2012 dated 17 October 2012, the Supreme Court decided to amend the Judgment of the District Court in Prishtina and impose a more severe imprisonment sentence for the Applicant, whereas by Judgment, KZZ. No. 187/2013 dated 8 November 2013, the Supreme Court rejected the Applicant's request for protection of legality as ungrounded.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court (hereinafter: the Law), and Rule 56 of the Rules of Procedure (hereinafter: the Rules).

Proceedings before the Constitutional Court

5. On 4 March 2014 the Applicant filed the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 1 April 2014 by Decision GJR. KI40/14, the President appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision KSH. KI40/14, the President appointed the Review Panel composed of Judges, Altay Suroy (presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 25 April 2014 the Court informed the Applicant of the registration of the Referral.
8. On 14 May 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 certain allegations raised against him.
10. On 26 June 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Case

11. Pursuant to Indictment filed by the District Prosecution in Prishtina (Kt. No. 154-1/2011 of 7 June 2011), the Applicant was charged for having committed the following criminal offences: kidnapping, extortion and unauthorized ownership, control or possession of weapons.
12. On 24 February 2012, the District Court in Prishtina (Judgment, K. no. 313/2011) found the Applicant guilty and sentenced him to a total of 7 (seven) years imprisonment.
13. Against the Judgment of the District Court, the District Public Prosecutor and the Applicant filed an appeal with the Supreme Court. The District Public Prosecutor proposed to the Supreme Court to amend the Judgment of the District Court and impose a more severe imprisonment sentence for the Applicant. Whereas, the Applicant in his appeal, alleged essential violations of the provisions of the Criminal Procedure Code of Kosovo (hereinafter: CPCK) and erroneous and incomplete determination of the factual situation.
14. On 17 October 2012 the Supreme Court (Judgment, Kz. No. 328/2012) approved the appeal of the District Public Prosecutor and rejected the Applicant's appeal as ungrounded.
15. The Supreme Court with its aforementioned Judgment further decided to amend the Judgment of the District Court in Prishtina and sentenced the Applicant to a total of 10 (years) imprisonment.
16. The Supreme Court, reasoned its Decision to approve the District Prosecutor's appeal as following:

"[...] this court finds that the appeal claims of the DPP in Prishtina are grounded and that the punishments imposed against the accused are too lenient. By individualizing the punishment against a specific perpetrator of the offense, through the process of assessing the punishment, the severity of the criminal offense is toned down thus in this case it must be considered that the harshness of the punishment achieves the purpose of the punishment, which pursuant to the legal intentions must express a balance between the demand to enable the re-socializing of the accused through correction and the demand of the public that such a punishment with its weight has a general character of refraining from perpetrating criminal offenses.

17. The Applicant submitted to the Supreme Court a request for protection of legality, alleging violation of the provisions of the Criminal Code of Kosovo (hereinafter: CCK) and essential violation of the provision of the criminal procedure. In his request, the Applicant proposed the Supreme Court to amend the Judgment of the second instance court and impose a more lenient punishment.

18. On 29 October 2013 the State Prosecutor, pursuant to Submission KMPL. II No. 134/2013 proposed that the request for protection of legality had to be rejected as ungrounded.
19. On 8 November 2013, the Supreme Court, upon review of the Applicant's allegations and response of the State Prosecutor, with its Judgment KZZ. No. 187/2013 decided to reject the request for protection of legality as unfounded.

Applicant's allegations

20. The Applicant alleges that the Judgments of the Supreme Court violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 33 [The Principle of Legality and Proportionality in Criminal Cases], Article 54 [Judicial Protection of Rights] of the Constitution and Article 8 [Right to Effective Remedy] and Article 10 [Right to a Fair and Public Hearing] of the Universal Declaration of Human Rights (hereinafter: the UDHR), and Article 6 [Right to a fair Trial] of the European Convention on Human Rights (hereinafter: the ECHR). The Applicant does not explain how and why the aforementioned articles were violated by the Judgments of the Supreme Court. He further alleges violation of the provisions of the criminal law.
21. The Applicant addresses the Court as following:

"The essence of the Referral is to review the constitutionality and legality of the specified Judgments, and in particular the Judgment of the Supreme Court of Kosovo, which also changed the first instance's Judgment in the part pertaining to the punishment by rendering a harsher punishment. Through this Referral it is sought the confirmation by the Court that in this specific case the constitutional rights, the international agreements, whose direct applicability is recognized by the Constitution, and CCK applicable at the time the offense was perpetrated have been seriously violated against the convict.

Thus we seek that the Court rescinds the challenged Judgments and orders a retrial, and also suspends the execution of the same until a new decision is rendered by the regular courts.

This Referral does not cover the criminal offense of unauthorized ownership, control or possession of weapons pursuant to Article 328, since that offense has been pardoned."

Assessment of the admissibility of the Referral

22. First of all, in order to be able to adjudicate the Applicant's Referral, the Court has to examine whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
23. In this respect, the Court refers to Article 113, paragraph 7 of the Constitution, which establishes that:

“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.”

24. In addition, Article 49 of the Law provides that *“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.”*
25. In the present case, the Court notes that the Applicant has made use of all legal remedies available under the law. The Court also notes that the challenged Decision was rendered on 8 November 2013, and the Applicant filed his Referral with the Court on 4 March 2014.
26. However, the Court refers to Rule 36 of the Rules of Procedure, which provides:
 - (1) *“The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.”*
 - (2) *“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*
[...], or
(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights.
[...], or
(d) when the Applicant does not sufficiently substantiate his claim”.
27. The Applicant, as said above, challenged the Judgments of the first and second instance courts, before the Supreme Court for violation of the criminal law and essential violation of the provisions of the criminal procedure.
28. Whereas in his Referral before the Court, the Applicant also alleges that the Judgments of the Supreme Court violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 33 [The Principle of Legality and Proportionality in Criminal Cases], Article 54 [Judicial Protection of Rights] of the Constitution and Article 8 [Right to Effective Remedy] and Article 10 [Right to a Fair and Public Hearing] of the UDHR, and Article 6 [Right to A fair Trial] of the ECHR and as well the provisions of the CCK and CPCK.
29. However, the Applicant does not explain how and why the aforementioned rights guaranteed by the Constitution and international instruments were violated by the Judgments of the Supreme Court.
30. In fact, the Applicant challenges the Judgments of the Supreme Court by referring to the provisions of the Criminal Code of Kosovo and concluding as following:

“[...] in no way does not try to challenge the authorization of the Supreme Court of Kosovo to provide their comprehension, legal interpretations and similar in all cases of the application of the law, but really in this case, the court probably lead by the importance of the of the protected value in any

case with too harsh Judgment and qualification deviated from the strict application of the law.”

31. Thus, the Court finds that what the Applicant raises is a question of legality and not of constitutionality.
32. In this relation, the Court emphasizes that it is not the task of the Constitutional 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).
33. The Constitutional Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See Case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 of the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, Resolution on Inadmissibility of 16 December 2011). The mere fact that the Applicant is not satisfied with the outcome of the proceedings in his case do not give rise to an arguable claim of a violation of his rights as protected by the Constitution. The Court notes that the Applicant had ample opportunity to present his case before the regular courts.
34. Furthermore, as mentioned above, the Court notes that the reasoning in the challenged Judgment of the Supreme Court is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the District Court in Prishtina and the Supreme Court have not been unfair or arbitrary (See Case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
35. Moreover, the Court notes that the justification provided by the Judgment of the Supreme Court in answering all of the allegations made by the Applicant is clear and well reasoned. Furthermore, the given justification covers the allegations made by the Applicant on the basis of the Criminal and Criminal Procedure Codes.
36. For the foregoing reasons, the Court considers that the facts presented by the Applicant do not in any way justify the alleged violation of the constitutional rights invoked by the Applicant and he has not sufficiently substantiated his allegation.
37. Hence, the Court concludes that the Referral is manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Rules 36 (2), b) and d) and 56 (2) of the Rules of Procedure, on 26 June 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. TO DECLARE this Decision effective immediately

Judge Rapporteur


Ivan Čukalović



President of the Constitutional Court


Prof. Dr. Enver Hasani