



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

Prishtina, 22 April 2014
Ref.no.:RK563/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI43/13

Applicants

Selam Shoshaj and Bashkim Krasniqi

**Constitutional Review of the Judgment of the Supreme Court of Kosovo
Pml. no. 31/2013 dated 13 March 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 Applicants are Mr. Selam Shoshaj and Mr. Bashkim Krasniqi from Prizren, who before the Constitutional Court are represented by the lawyer Mr. Bashkim Nevzati from Prizren.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Pml. No. 31/2013, dated 13 March 2013, by which is rejected as ungrounded the Applicants' request for protection of legality, submitted against the Judgment of the Basic Court in Prizren Kpn. nr. 254/2012, dated 15 February 2013 and the ruling of the Appellate Court, KP. Nr. 122/2013, dated 25 February 2013.

Subject matter

3. The subject matter is the criminal proceedings, in which the Applicants were being held in detention after indictment but before trial for the criminal offence of kidnapping, pursuant to Article 159, paragraph 2, in conjunction with paragraph 1 and Article 23 of the Criminal Code of Kosovo (hereinafter, CCK).

Legal basis

4. Referral is based on Article 113.7 and 21.4 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121, dated 15 January 2009 (hereinafter, the Law) and Rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules).

Proceedings before Court

5. On 25 March 2013, the Applicants submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. By Decision of the President, no. GJR. KI43/13 dated 28 March 2013, Judge Robert Carolan was appointed as Judge Rapporteur. On the same day, by Decision of the President, no. KSH. KI43/13, the Review Panel was appointed composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 17 October 2013, 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

8. On 8 May 2009, the District Public Prosecutor in Prizren, by indictment PP.no.250/2012, accused the Applicants of committing the criminal offence of co-perpetration in kidnapping under Article 159, paragraph 2, in conjunction with paragraph 1 of Article 23 of the Criminal Code of Kosovo.
9. The Applicants and four other defendants were charged with organized kidnapping of G. S. in Prizren on or about 14 September 2011 and holding the victim until his family members produced a ransom of 100,000 Euros. Before the ransom was paid, several telephone calls were made to the victim's family and threats were made to all of them. After the ransom was paid on the morning of 19 September 2011, the victim was released.

10. Three of the defendants, B. P., B. D., and F. R. were charged with aiding the Applicants in completing the organized kidnapping serving as a lookout while the kidnapping took place, hiding evidence and giving moral support to the Applicants.
11. Two of the defendants, B. P. and E. X., were also charged with the crime of unauthorized possession of weapons.
12. By Ruling of the Basic Court in Prizren, P. no. 124/2012, dated 15 February 2013, the Applicants were held in detention on remand for two months. The Basic Court found that there was grounded suspicion that the Applicants kidnapped the victim and held him until the ransom for his release was paid several days later. The Court concluded that this was a serious crime and that the Applicants could be imprisoned if they would later be found guilty. The Basic Court also found that the perpetrators of this crime threatened the safety of the victim and his family as well as other citizens. Because of the bold manner in which this crime was committed the Basic Court concluded that there was a grave chance that the Applicants might commit this crime again if they were not in detention. It also found that because of the possibility of a long prison sentence being imposed if the Applicants were convicted of this offense, that there was a grave risk that the Applicants would hide or flee if they were released from detention.
13. The Appellate Court of Kosovo, in a ruling dated 25 February 2013, Kp. Nr. 122/2013, rejected the Applicants' appeal and found that there was grounded suspicion that the Applicants committed the offense and that the Basic Court gave sufficient reasons to hold the Applicants in detention and that there was a valid fear that the Applicants might flee because of the long sentence that might be imposed.
14. The Supreme Court of Kosovo, in a judgment issued on 13 March 2013, PML. Nr. 31/2013, denied the Applicants' application for protection of legality against the ruling of the Basic Court of Prizren, P. nr. 124/2012, dated 15 February 2013, and the ruling of the Appellate Court of Kosovo, KP. Nr. 122/2013, dated 25 February 2013. The Supreme Court specifically found that those courts did not violate the presumption of innocence that the Applicants have as defendants in those proceedings. The Supreme Court also found that those courts merely found that on the basis of the court proceedings and the preliminary evidence presented that there was "grounded suspicion" not "proof beyond all reasonable doubt," that the Applicants were involved in the criminal offense for which they were currently on trial. The Supreme Court specifically found that it remained to be determined at the end of the trial whether there was proof beyond a reasonable doubt that the Applicants were guilty of the crime as charged. The Supreme Court also found that Article 189 of the Criminal Procedure Code required the lower courts to decide on the request for detention on remand within 48 hours of the filing of the appeal. The Court found that there was no evidence that the lower courts acted without reviewing all of the evidence on the issue of whether the Applicants should be held in detention pending the trial proceedings.

Applicants' allegations

15. The Applicants allege that the regular courts violated Articles 5 [Right to liberty and security] and 6 [Right to a fair trial] of the European Convention on Human Rights and Articles 31 [Right to Fair and Impartial Trial] and 29 [Right to Liberty and Security] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) by failing to presume that they are innocent of the charges filed against them at this stage of the criminal proceedings while making decisions on their pre-trial detention and for failing to make detailed deliberations in their decisions.
16. The Applicants accuse the regular courts of simply engaging in the practice of "copy and paste" with respect to how they reached their decisions on their detention and alleged failure to explain why their situation with respect to pre-trial detention is different than the other co-defendants in this case.

Admissibility of the Referral

17. In order to be able to adjudicate the Applicants' Referral, the Court has to assess beforehand whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and the Rules.
18. In this respect, the Court refers to Article 113.7 of the Constitution which establishes:

"[...] 7. 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. [...]"

19. The Court also refers to Articles 47 and 48 of the Law.

Article 47(2) of the Law provides that:

"The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."

20. Article 48 of the Law also 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."

21. In addition, Rule 36 (1)(a), (b) and (c), and (2)(a) and (d) of the Rules provides that:

*"(1). The Court may only deal with Referrals if:
a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted, or*

b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or

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:

*(a) the Referral is not prima facie justified, or
[...]*

(d) when the Applicant does not sufficiently substantiate his claim."

22. The Court considers that the Applicants have not fulfilled the admissibility requirements for the following reasons.

23. According to the Constitution, the Constitutional Court is not a court of appeal, 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, García Ruiz v. Spain*, [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

24. Furthermore, Article 29 of the Constitution provides in its relevant part:

"1. Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court as follows:

[...]

*(2) for reasonable suspicion of having committed a criminal act, only when deprivation of liberty is reasonably considered necessary to prevent commission of another criminal act, and only for a limited time before trial as provided by law;
[...]."*

25. Also Article 5 of the European Convention on Human Rights (hereinafter, ECHR) provides in its relevant part:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

[...]

the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

26. In light of these provisions, the Court observes that, in this case, three regular courts of Kosovo found that there was reasonable suspicion that the Applicants

may have been involved in the criminal charges that were filed against them and found that under the circumstances and evidence before them that deprivation of their liberty was necessary to prevent the commission of another criminal act. These same courts did not find that other co-defendants of the Applicants required pre-trial detention because their circumstances and suspected participation in the suspected crime were less serious than those of the Applicants and less likely to cause them to commit another crime and/or flee.

27. Moreover, Article 31 of the Constitution provides in its relevant part:

“Everyone charged with a criminal offense is presumed innocent until proven guilty according to law [...],”

while Article 6 ECHR provides in its relevant part in similar words:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

28. In the case under consideration, three regular courts of Kosovo, including the Supreme Court of Kosovo, simply followed the rules of criminal procedure and made their decision with respect to their continued pre-trial detention on the basis of reasonable suspicion that the Applicants may have committed the crime as charged against them. These courts never presumed that the Applicants were guilty. Indeed, the Supreme Court clearly stated that the Applicants were presumed innocent and that the final verdict in their case might be “not guilty.”
29. Moreover, the Applicants have not submitted any prima facie evidence, which would indicate a violation of their constitutional rights (See, Vanek against Republic of Slovakia, Decision of ECHR on the admissibility of request, no. 53363/99 dated 31 May 2005).
30. Indeed, the regular courts made specific findings that:
- a. there was grounded suspicion that the Applicants may have committed the offense with which they have been charged;
 - b. there was reasonable suspicion that, if not detained, the Applicants would flee or commit another crime; and
 - c. these findings were made knowing that the Applicants were still presumed innocent of the charges filed against them.
31. Acting in this manner, the regular courts, therefore, fully complied with the Applicants’ rights under the Constitution and the European Convention on Human Rights.
32. In these circumstances, the Court concludes that the Referral does not meet the admissibility criteria, since it failed to provide and substantiate by evidence that the challenged judgment, allegedly, violated their rights and freedoms.

33. It follows that, the Referral is manifestly ill-founded pursuant to Rule 36(2) b) which provides 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, Articles 47 and 48 of the Law and Rule 36 (1) c) and Rule 56 (2) of the Rules, on 17 October 2013, unanimously,

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY the Party of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20(4) of the Law;
- IV. This Decision is immediately effective.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani