



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

Prishtina, 5 July 2013
Ref. No.: RK437/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI-56/13

Applicant

Jashar Avdullahi

Constitutional Review of the Judgment of the Supreme Court of Kosovo
Pkl.no. 5/2013 dated 04 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 Applicant is Jashar Avdullahi from Gjilan, who before the Constitutional Court is represented by the lawyer Halim Sylejmani from Prishtina.

Challenged decision

2. The challenged decision is the Judgment of the Supreme Court of Kosovo Pkl.no. 5/2013 dated 04 March 2013, by which is rejected as ungrounded the Applicant's request for protection of legality, submitted against the Judgment of the District Court in Gjilan P.no. 138/2011, dated 24 April 2012 and the Judgment of the Supreme Court of Kosovo, Ap.no. 197/2012, dated 07 November 2012.

Subject matter

3. The subject matter is the criminal proceedings, in which the Applicant was found guilty for the criminal offence of endangering public traffic, pursuant to Article 297, paragraph 5, in conjunction with paragraph 3 of the Criminal Code of Kosovo (hereinafter: CCK), and sentenced to 3 (three) years and 6(six) months, which according to Applicant's allegation, *"put him in an unequal position only because he passed without consequences in the traffic accident of the matter whereas the other participant himself and his companions experienced fatal consequences."*

Legal basis

4. Referral is based on Article 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121, dated 15 January 2009 (hereinafter: the Law) and the Rule 56, para.2 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 17 April 2013, the Applicant submitted Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: „the Court“), requesting at the same time the imposition of the interim measure with a justification:

"Taking into consideration that the Applicant is sentenced to 3 years and 6 months imprisonment and at any time he might be called to serve his sentence, he considers that until the decision on the subject matter, the proposed interim measures can be imposed to delay the serving of the sentence in order that the irreparable damage to be avoided in case the basic request is successful."

6. On 20 May 2013, the Constitutional Court notified the Applicant and the Supreme Court of Kosovo that the proceedings of the constitutional review of the decision on the case no. KI-56-13 was initiated.
7. On 20 June 2013, after the review of the report of the Judge Rapporteur Robert Carolan, the Review Panel composed of judges: Altay Suroy (Presiding),

Snezhana Botusharova and Kadri Kryeziu, recommended to the full Court the inadmissibility of the Referral.

Summary of facts

8. On 08 May 2009, the District Public Prosecution in Gjilan, by indictment PP.no. 49/2009 accused the Applicant Jashar Abdullahi from Gjilan of committing criminal offence of endangering public traffic, under Article 297, paragraph 5 in conjunction with paragraph 3 and 1 of CCK.
9. By Judgment of District Court in Gjilan, P.no. 102/2009, dated 20 January 2010, he was found guilty of committing criminal offence of endangering public traffic, under Article 297, paragraph 5 in conjunction with paragraph 3 and 1 of CCK and was sentenced to imprisonment of 4 (four) years.
10. The Applicant filed appeal against the Judgment of District Court in Gjilan, P.no. 102/2009, dated 20 January 2010, which was partly approved by the Supreme Court of Kosovo, by Resolution Ap.no. 148/2010 dated 05 May 2011, by which the abovementioned judgment was partly annulled and the matter was returned to the District Court for retrial.
11. In the repeated procedure, fully considering the Supreme Court recommendations specified in the Resolution Ap.no. 148/2010, dated 05 May 2011, as well as the detailed reasoning of all challenged matters, the District Court in Gjilan P.no. 138/2011, dated 24 February 2012, found guilty the Applicant Jashar Avdullahi and sentenced him to three (3) years and 6 (six) months of imprisonment.
12. The Applicant and District Public Prosecutor in Gjilan lodged the appeals against the Judgment of the District Court in Gjilan P.no. 138/2011, dated 24 February 2012, which were rejected by the Judgment of the Supreme Court of Kosovo Ap.no. 197/2012, of 07 November 2012 as ungrounded, and the Judgment of the District Court in Gjilan P.no. 138/2011, of 24 February 2012, was upheld.
13. The Applicant filed request for protection of legality against the Judgment of the Supreme Court of Kosovo, Ap. no. 197/2012, dated 07 November 2012.
14. Deciding on the request for protection of legality, the Supreme Court by Judgment Pkl. no. 5/2013, dated 04 May 2013, rejected the request for protection of legality as ungrounded, with justification:

“Although the defense counsel challenges the Judgment for violation of the Criminal Code and the Criminal Procedure Code to the detriment of the convicted, in fact he challenges the determined factual situation by claiming that the convicted did not commit the criminal offence for which he was convicted. The defense counsel claims that the Judgment did not consider the actions of the now deceased J. S., who according to allegations of the defense counsel was the one that caused the accident by driving his vehicle at over 104 km per hour whereas the convicted drove his vehicle at 75 km per hour, therefore the only responsible for the

accident, according to the opinion of the defense counsel, was the now deceased. Furthermore, according to allegations of the defense counsel the respective provisions of the Criminal Procedure Code were violated, since the contradictory evidence have not been evaluated, the opinion of the expert M. H. has not been evaluated at all, thus Article 185 of the Provisional Criminal Procedure Code of Kosovo (PCPCK) has been violated.”

“The allegations of the defense counsel of the convicted Jashar Avdullahi are related to the factual situation that cannot be the subject matter with the request for protection of legality as extraordinary legal remedy because in relation to the factual situation there is no doubt on any circumstance. The convicted Jashar Avdullahi engaged in overtaking another vehicle in violation to the respective provisions of the Law on the Safety of the Road Traffic thus causing the forbidden consequence, which ended the life of J. S. and T. S. whereas B. S. and M. T. suffered heavy bodily injuries. The enacting clause of the Judgment contains the factual description of the incriminating actions of the convicted Jashar Avdullahi which he undertook by violating the legal provisions. The reasoning of the challenged judgments contains the necessary factual and legal key facts as well as the necessary and legal evaluation of the evidences. The court reviewed the expertise of expert I. B. and of the group of experts of Technical Faculty who were authorized by the court to carry out the expertise whereas the expertise of M. H. was carried out based on the engagement of the defense counsel of the convicted and as such was not a subject of evaluation.”

“In regard to violation of the Criminal Code, the defense counsel of the convicted claims that it has not been confirmed that the convicted has undertaken the incriminating actions, therefore there was no ground to find him guilty but in spite of this with their Judgments the courts without any ground found him guilty and convicted him. According to the correctly and completely determined factual situation this Court finds that the Criminal Code was correctly applied when the accused was found guilty by the first instance court for the criminal offence of endangering the public traffic pursuant to Article 297, paragraph 5 in conjunction with paragraphs 3 and 1 of the Criminal Code of Kosovo (CCK) and this was confirmed by the Supreme Court of Kosovo, thus the Judgments of both courts are challenged without any ground by the request for protection of legality.”

Applicant's allegations

15. The Applicant considers that *“by Judgment of the Supreme Court of Kosovo, in the procedure of the protection of legality as well as by the abovementioned Judgments in the legal proceedings the rights to a fair, impartial and equal trial with other participant in the traffic accident of the matter were violated.”*
16. According to Applicant's allegations, *“intentionally or accidentally, the Applicant was put in an unequal position only because he passed without*

consequences from the traffic accident of the matter whereas the other party himself and his companions experienced fatal consequences.”

17. The Applicant considers that *“were violated the provisions of the Constitution of the Republic of Kosovo for guaranteeing equality and impartiality of the participants in the implemented legal proceedings, as well as legal provisions in appointment and selections of judges.”*

Assessment of admissibility of the Referral

18. The Applicant alleges that *“the violated provisions of the Constitution of the Republic of Kosovo for guaranteeing equality and impartiality of the participants in the implemented legal proceedings, as well as legal provisions of appointment and selections of judges”* are the ground for his Referral.
19. In order to be able to adjudicate the Applicant’s Referral, the Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
20. Article 48 of the Law on Constitutional Court of the Republic of Kosovo 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. According to 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).
22. The Applicant has not submitted any prima facie evidence, which indicates on the violation of his constitutional rights (See, Vanek against Republic of Slovakia, Decision of ECHR on the admissibility of request, no. 53363/99 dated 31 May 2005). The Applicant does not indicate which Articles of the Constitution support his request, as it is provided by Article 113.7 of the Constitution and Article 48 of the Law.
23. The Applicant alleges that *“by Judgment of the Supreme Court of Kosovo, in the procedure for protection of legality, as well as by abovementioned judgments in the court proceedings, the rights on fair, impartial and equal trial were violated ...”*
24. From the case file is clearly seen that the District Court in Gjilan by Judgment P.no. 138/2011, dated 24 February 2012, explained in details why it accepted some evidence and rejected some others, as well as on the basis of which factual situation it came to conclusion that the Applicant committed criminal offence,

by taking into consideration both, aggravating and mitigating circumstances when pronouncing the sentence.

25. The Judgment of District Court in Gjilani P.no. 138/2011, dated 24 February 2012, was definitely upheld by the Judgment of the Supreme Court of Kosovo Ap.no. 197/2012, dated 07 November 2012 as well as by Judgment of the Supreme Court of Kosovo Pkl.no. 5/2013, dated 04 May 2013, with detailed reasoning to all appealed allegations of the Applicant.
26. In the present case, the Applicant was afforded many opportunities to present his case before the District Court in Gjilan and the Supreme Court of Kosovo and to challenge the interpretation of the law which he considered incorrect,. Having examined the proceedings as a whole, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v. Lithuania, ECHR Decision on Admissibility of Application No. 17064/06 of 30 June 2009).
27. In conclusion, the Referral does not meet the admissibility criteria. It failed to provide and substantiate by evidence that the challenged judgment, allegedly, violated his rights and freedoms.
28. It follows that, the Referral is manifestly ill-founded pursuant to Rule 36 (2b) of the Rules of Procedure which provides that: "*The Court shall reject a Referral as being manifestly ill founded when it is satisfied that b) when 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 paragraphs 7 of the Constitution, Article 48 of the Law and Rule 36 (2.b) of the Rules of Procedure, on 5 July 2013, unanimously

DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO REJECT the request for imposition of interim measures
- III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur


Robert Carolan

President of the Constitutional Court


Prof. Dr. Enver Hasani

