



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

Pristine, 11 . October 2012
Ref.No.:RK311/12

RESOLUTION ON INADMISSIBILITY

in

Case no. KI76/11

Applicant

Avni Aliaj

**Constitutional review of the Judgment of the Supreme Court Pkl. no. 25/2011 of
22 March 2011 and Resolution of the Supreme Court Kp.no.255/2010 of 2
November 2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Ivan Čukalović, Judge

The Applicant

1. The Applicant is Avni Alijaj who is currently serving prison sentence in Dubrava prison, in Istog.

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment of the Supreme Court Pkl.no. 25/2011 of 22.03.2011 and the Resolution of the Supreme Court Kp.no.255/2010 of 2.11.2010.

Subject matter

3. The Applicant considers that the challenged Judgments have violated the provisions of Article 31 paragraphs 1 and 2 of the Constitution (Right to Fair and Impartial Trial), and Article 23 (Human Dignity) of the Constitution.
4. The Applicant requests from the Constitutional Court to ascertain that the challenged Judgments were issued in contradiction with the Constitution and for that reason to enable the repeating of the criminal proceeding before the regular courts.

Legal basis

5. The Referral is based on Article 113. 7 of the Constitution, Articles 46, 47, 48 and 49 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: Law) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

6. On 8 June 2011, the Applicant filed the Referral with the Constitutional Court of Kosovo (hereinafter: the Court).
7. On 17 August 2011, the President of the Court appointed Judge Ivan Čukalović as a Judge Rapporteur and a Review Panel composed of Judges: Robert Carolan (presiding), Almiro Rodrigues and Iliriana Islami. On 2 July 2012, the President appointed Judge Snezhana Botusharova, replacing Judge Iliriana Islami.
8. On the same date, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

9. By the Judgment of the District Court in Prizren P.no.17/2007 dated 9 July 2007 the Applicant was found guilty for two criminal offences, namely for grave cases of theft in the nature of robbery and robbery under Article 256.1 Provisional Criminal Code of Kosovo (PCCK). Consequently, an aggregate sentence of imprisonment in duration of twelve (12) years was imposed on the Applicant.
10. Unsatisfied with the outcome of the Judgment, the Applicant filed an appeal to the Supreme Court alleging that the challenged Judgment contained essential violations of the provisions of the criminal procedure under Article 403 paragraph 1 item 12 and 8 of the Provisional Criminal Procedural Code of Kosovo. He further argued that the Judgment was incomprehensible, inconsistent, and it did not contain reasons for the decisive facts and it was not based on admissible evidence.

11. On 27 February 2008, the Supreme Court of Kosovo issued Judgment no. Ap.no. 424/2007 rejecting Applicant's appeal as unfounded. In the reasoning, among other things, the Supreme Court stated that the enacting clause was clear, comprehensible and concrete. Finally, the Supreme Court stated that on the basis of the assessment and reasons given by the first instance court, it was evident that the factual situation was correctly and completely established and that the criminal code was correctly applied.
12. On 20 October 2010, the Applicant filed a request for repeating the criminal proceeding, alleging that the Judgment of the District Court in Prizren was based on a false statement of the witness and providing new evidence which was favorable to him.
13. On 2 November 2010, the District Court in Prizren by Resolution Kp.no. 255/2010 rejected as unfounded the request for repeating the proceeding. The Applicant appealed this Resolution on 11 November 2010, stating, among other things, that it was unfounded.
14. On 23 November 2010, the Supreme Court of Kosovo rejected Applicant's appeal as unfounded.
15. Subsequently, on 18 February 2011 the Applicant submitted to the Supreme Court of Kosovo a request for protection of legality.
16. On 22 February 2011, the Supreme Court of Kosovo issued Judgment Pkl. no. 25/2011 rejecting as unfounded the request for protection of legality against the final Judgment of the District Court in Prizren Kp no. 255/2010 of 2 November 2010. The Supreme Court asserts, *inter alia*, that the Applicant did not submit any new evidences. Indeed, according to the Supreme Court the same evidences were already subject of the judgments issued in the first and second instance criminal proceedings. Consequently, the Supreme Court concluded that evidences the Applicant submitted did not fall under the category of new evidence as prescribed by Article 442. 1 and 3 PCPCK and consequently requirements for revision of criminal proceedings were not met.

Assessment of the admissibility of Referral

17. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.
18. The Court notes that the Applicant exhausted all available remedies and submitted his referral in the time limit prescribed by Article 49 of the Law.
19. The Court further notes that the Applicant in the present case complains about violation before the Supreme Court of his to fair trial guaranteed by Article 31 paras 1 and 2 of the Constitution and the right to human dignity guaranteed by Article 23 of the Constitution.
20. Article 31 [Right to Fair and Impartial Trial] paragraphs 1 and 2 read as follows:
"1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law."

21. Article 23 [Human Dignity] of the Constitution reads as follows:
“Human dignity is inviolable and is the basis of all human rights and fundamental freedoms.”
22. The Applicant alleges that because the Supreme Court of Kosovo did not consider the evidences he presented as the new evidences, he was denied with the fair trial as guaranteed by the Constitution.
23. The Court reiterates that to establish a constitutional violation an Applicant must prove more than that a regular court may have made more than two or more inconsistent legal or factual conclusions.
24. As stated by the Constitutional Court in Case No. KI. 06/09, Applicant X vs. Supreme Court Judgment Nr. 215/2006, District Court Judgment Nr. 741/2005, Municipal Court Judgment Nr. 217/2004:

“. . . the Court would like to underline that it is not a court of appeal for other courts in Kosovo and it cannot intervene on the basis that such courts have issued a wrong decision or have erroneously assessed the facts. The role of the Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot therefore act as a "fourth instance" court (see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).”
25. As further stated by the Constitutional Court in Case No. KI06/09, Applicant X vs. Supreme Court Judgment Nr. 215/2006, District Court Judgment Nr. 741/2005, Municipal Court Judgment Nr. 217/2004:

“The mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Mezotur Tiszazugi Tarsulat v. Hungary, Judgment of 26 July 2005).”
26. Moreover, in relation to the Applicant’s complaints that the rights to fair trial and human dignity have been violated, the Applicant has been provided numerous opportunities to present his case and to challenge the interpretation of the law, which he considers as being incorrect, before the District Court in Prizren and the Supreme Court of Kosovo. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).
27. Consequently, in this Referral the admissibility requirements have not been met. The Applicant has failed to substantiate the allegation that the challenged decision has violated Applicant’s constitutional rights and freedoms.

FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution, Articles 48 and 56 of the Law and Rule 36 of the Rules of Procedure of the Constitutional Court the Constitutional Court, unanimously:

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. 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
- III. This Decision is effective immediately.

Judge Rapporteur

Prof. dr. Ivan Čukalović



President of the Constitutional Court

Prof. dr. Enver Hasanić

