



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

Prishtina, 2 May 2014
Ref.no.:RK 575/14

RESOLUTION ON INADMISSIBILITY

in

Case No.

Case No. KI78/13

Applicant

Roland Bartetzko

**Constitutional Review of the Decision of the Panel for Conditional
Release MD/CRP-NO. 474/12 dated 29 December 2012 and
Administrative Instruction 2009/1 of the Ministry of Justice**

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Roland Bartetzko, a German national (hereinafter: the “Applicant”). He is serving a sentence in Dubrava Prison near Istog, Kosovo.

Challenged decision

2. The Applicant challenges the Decision, MD/CRP-NO. 474/12, of the Conditional Release Panel of the Ministry of Justice of the Republic of Kosovo (hereinafter, Conditional Release Panel), dated of 29 December 2012, which was served on him on 4 March 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision which allegedly is unconstitutional because it has been submitted without the Applicant's consent.
4. In addition, the Applicant requests Constitutional Review of Administrative Instruction 2009/1 of the Ministry of Justice.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47.2 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 3 July 2013, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 20 July 2013, the President of the Constitutional Court, with Decision No.GJR.KI-78/13, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, with Decision No.KSH.KI-78/13, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama - Hajrizi.
8. On 11 September 2013, the Conditional Release Panel was notified of the Referral.
9. On 20 January 2014, after having considered the report of the Judge Rapporteur, the Review Panel of this Court made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 12 November 2002, the Supreme Court of Kosovo (S.C. Ap.Nr. 181-2002). Found that the Applicant was guilty of a criminal act of terrorism under Article 125 in relation to Article 139 paragraph 2 of the Criminal Code of Yugoslavia. The Supreme Court also amended his sentence to 20 years imprisonment, including time spent in detention from 20 April 2001.

11. On 25 November 2011, the Applicant was notified that as of 20 April 2011 he is eligible for review for possible "conditional release" from prison.
12. On 25 November 2011, the Applicant submitted his request for "conditional release".
13. On 28 December 2011, the Conditional Release Panel (Decision PLK.no.224/11) rejected the request for conditional release submitted by the Applicant. Furthermore the decision stated, "*The new request will be reviewed in one (1) year's time*".
14. The applicant did not submit a new request for "conditional release".
15. On 29 December 2012, the Conditional Release Panel (Decision MD/PLK.NO. 474/12) ex-officio rejected the request for conditional release. Furthermore the decision stated, "*the new request will be reviewed in nine (9) month's time*".
16. On 8 March 2013, the Applicant requested an explanation from the Conditional Release Panel regarding the procedure of review for conditional release in his case.
17. On 15 March 2013, the Conditional Release Panel (ref.no 34) replied to the Applicant stating the following: "*pursuant to the law in power the panel has complete authority to set the review dates for requests. In the Panel's Ruling dated 28 December 2011, the reviewing of the new request, for the same had been set to take place one (1) year after the rendering of the Ruling (enclosed the Ruling). Pursuant to this Ruling, the correctional institution had been instructed to submit the personal file of Mr. Bartetzko and a renewed report pursuant to the procedural rules (Orders: PLK 2009/1 that govern the panel's work for conditional release Articles 15 and 32, paragraphs 1,3 and 4)*".
18. Furthermore the conditional release Panel in its reply stated "*the conditional release procedure and the request are always grounded on the correctional reports and under this definition the convict's previous statement (dated 25.11.2011), thus it is not mandatory that in every period of reviewing new requests with same claims are compiled, because pursuant to the law the reviewing is performed is automatically performed and certainly you are aware that in this case we have a reviewing and not reapplication*".

Applicant's allegations

19. The Applicant claims that the request for "conditional release" is unconstitutional and must be annulled as it was submitted without his consent. The applicant states that sometime in October 2012 while he was undergoing treatment at the University Clinic Center of Kosovo, a social officer from Dubrava asked the Applicant to sign a document which stated "*we notify that you are now eligible to be review for conditional release*" and that the social officer stated that if and when the Applicant wishes he can submit his request with the respective officer in Dubrava Prison.

20. The applicant argues that he did not want to submit his request at that time and it was only on 4 March 2013 that a correctional officer served the Applicant with the decision MD/PLK.NO.474/12 dated 29 December 2012 which was faxed to Dubrava Prison on 9 February 2013.
21. Furthermore, the Applicant requests that “*due to the importance and public interest the Constitutional Court ex-officio review the constitutionality of Articles 16 and 34 of the Administrative Instruction 2009/1 of the Ministry of Justice.*”

Admissibility of the Referral

22. The Court observes that, in order to be able to adjudicate the Applicant’s complaint, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
23. In this respect, the Court refers to Rule 36(1), c) of the Rules of Procedure which foresees that “*The Court may only deal with Referrals if (...) the Referral is not manifestly ill-founded.*”
24. In that respect, the Constitutional Court would like to recall that, under the Constitution, it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Conditional Release Panel, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). Thus, the Court is not to act as a court of fourth instance, when considering the decisions taken by the public authorities.
25. In this respect, the Court notes that the Applicant did not substantiate a claim on constitutional grounds and did not provide evidence that his fundamental rights and freedoms have been violated by the Conditional Release Panel. The Court notes that Decision PLK.no.224/11 dated 28 December 2011 of the Conditional Release Panel explicitly mentioned that the Applicant’s case will be reviewed in one-years time as it was done on 29 December 2012 . Therefore, the Court cannot conclude 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*).
26. In the present case, the Applicant also requests “*Constitutional Review of the Administrative Instruction 2009/1 of the Ministry of Justice of the Republic of Kosovo*” . The Constitution clearly defines in Article 113, who may request abstract review of the constitutionality of regulations of the government.
27. Such request is an abstract challenge to the abovementioned instruction and the Law. If this is the intention of the Applicant as an individual, he cannot be considered an authorized party to request such review by the Court.
28. Articles 113.2, 113.6 and 113.8 of the Constitution explicitly provide which are the authorized parties to address the Court about the issue of the abstract review of the constitutionality of administrative instructions.

29. The Court notes that in this case the Applicant lacks “standing” or authority in the Court, because the Applicant did not meet the procedural requirements of Article 113.1 of the Constitution. Moreover, Kosovo's constitutional-legal system does not allow on the theory of "*actio popularis*" any individual, who wants to protect the public interest and constitutional order, the possibility to address the Constitutional Court regarding such violation, even when he/she does not have the status of the victim.
30. In sum, the Applicant has not shown how any of his rights, as guaranteed by the Constitution, have been violated. A mere statement that the Constitution has been violated cannot be considered as a constitutional complaint. Thus, pursuant to Rule 36 (1), c) of the Rules of Procedure, the Referral is manifestly ill-founded and, therefore, inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Rules 36 (1) c) and 55 (5) of the Rules of Procedure, on 20 January 2014, 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;
- III. This Decision is effective immediately.

Judge Rapporteur


Robert Carolan



President of the Constitutional Court


Prof. Dr. Enver Hasani