



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

Pristina, 24 March 2014
Ref.no.:RK579/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI90/13

Applicant

Lumni Limaj

**Constitutional review of the Decision MD/PLK. No. 457/12, of the
Conditional Release Panel of the Ministry of Justice, of 28 December
2012**

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 Mr. Lumni Limaj from Prizren (hereinafter: Applicant), currently serving sentence in the Dubrava Prison.

Challenged decision

2. The challenged decision is Decision MD/PLK. No. 457/12, of the Conditional Release Panel of the Ministry of Justice, of 28 June 2012, served on the Applicant on 29 January 2013.

Subject matter

3. The subject matter is the constitutional review of Decision MD/PLK. No. 457/12, of the Conditional Release Panel of the Ministry of Justice, of 28 December 2012, which is related to a criminal procedure, in which the Applicant was found guilty for the criminal offence of theft in the nature of robbery, and sentenced him to imprisonment of ten years.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law), and Rule 56, paragraph 2 of the Rules of Procedure (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 5 May 2013, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 24 May 2013, the Court requested from the Applicant to fill in the official Court Form for registration of Referral.
7. On 24 June 2013, the Applicant filed with the Court the official Court form for registration of Referral.
8. On 28 June 2013, by Decision of President No. GJR. KI90/13, Judge Kadri Kryeziu was appointed Judge Rapporteur. On the same date, by Decision of the President No. KSH. KI90/13, was appointed a Review Panel, composed of judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Ćukalović.
9. On 3 July 2013, the Constitutional Court requested from the Applicant to once again fill in the official Court form for registration and to sign the same, since the form of 24 June 2013, was not signed, and to clarify which decision he challenges.
10. On 20 January 2014, the Review Panel after having considered the report of the Judge Rapporteur, recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. On 21 March 2007, the Supreme Court of Kosovo, deciding upon the complaint of the defense counsel of the Applicant, and defense counsels of other convicts against the Judgment of the Supreme Court Ap. no. 186/2006 of 14 September

2006 rendered the Judgment API. no. 9/2006, thereby rejecting the complaint as ungrounded, upheld the adjudicating part of the Supreme Court Judgment Ap. no. 186/2006 of 14 September 2006, and rejected the complaint of the Applicant as inadmissible for the other parts of the Judgment.

12. The Supreme Court further reasons:

“In reviewing the challenged Judgment in relation to the essential violations of the criminal procedure provisions, pursuant to the provision of Article 415 of the PCPCK, the Supreme Court finds that this Judgment does not contain any essential violations of criminal procedure’s provisions nor it violates the criminal code, violations which the court is obliged to review ex officio and that would condition the Judgment’s annulment”.

13. On 20 December 2010, the Supreme Court of Kosovo, deciding upon request of the Applicant for extraordinary mitigation of sentence, rendered the Decision Pzd. No. 128/2010, rejecting as ungrounded the request of the Applicant. The Supreme Court reasoned:

“The abovementioned mitigation circumstances, noted on the request for extraordinary mitigation of punishment are not of such nature as, in conformity with Article 448, to be taken as a basis for extraordinary mitigation of punishment, and in particular when taking into account the circumstances and the manner the criminal offences were committed...”.

14. On 28 December 2012, the Ministry of Justice, namely its Conditional Release Panel, acting upon the request for conditional release, rendered the Decision MD/PLK. Nr 457/12, thereby rejecting the request for conditional release, with the following reasoning:

“Re-socialization has not been achieved, taking into consideration the summative opinion of the Correctional Centre on re-socialization scale. Therefore, the Panel considers that the purpose of punishment has not been reached in conformity with Article 34 of PCCK, therefore his request is rejected with a possibility of revision in one year”.

Applicant’s allegations

15. The Applicant has not specified the alleged violation of any individual constitutional provision.

Admissibility of the Referral

16. 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 and further specified in the Law and the Rules of Procedure.
17. In this respect, Article 113, paragraph 7 of the Constitution, provides:

“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”.

18. In this regard, the Court refers to the Article 48 of the Law, which 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.“
19. In his Referral, the Applicant has not specified the Court decision he challenges, and the constitutionally guaranteed rights and freedoms he alleges to have been violated, as provided by Article 113.7 of the Constitution and Article 48 of the Law. Taking into account the fact that the burden of proving constitutional violations falls with the Applicant, the Court shall only review the documents attached to the Referral. In the present case, the Applicant has not presented any evidence to lead the Court to the finding of a possible violation of any constitutional provision.
20. Furthermore, the Constitutional Court cannot substitute the role of the regular courts. It is the role of regular courts to interpret and apply pertinent rules of procedural and material law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I).
21. The Applicant also has not filed any *prima facie* evidence that would point to the violation of constitutional rights (see, *mutatis mutandis*, Vanek v. Republic of Slovakia, ECtHR Resolution on Admissibility of Application, no. 53363/99 of 31 May 2005).
22. Consequently, the Referral is manifestly ill-founded, in compliance with Rule 36 (2) a) and d) of the Rules of Procedure, which provide: *“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”.*

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 36 (2) a) and d) of the Rules of Procedure, on 20 January 2014, unanimously

DECIDES

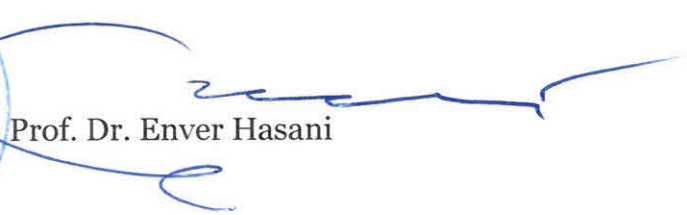
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court


Kadri Kryeziu




Prof. Dr. Enver Hasani