



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

Prishtina, on 18 December 2017
Ref. No.: RK 1174/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI136/16

Applicant

Vllaznim Bytyqi

**Constitutional review of Judgment Pml. No. 192/2016 of the Supreme
Court of Kosovo, of 3 October 2016**

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Vllaznim Bytyqi, residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is Judgment [Pml. No. 192/2016] of the Supreme Court of Kosovo of 3 October 2016. The Applicant did not specify the date when the challenged Judgment was served on him.

Subject matter

3. The subject matter is the constitutional review of the Judgment [Pml. No. 192/2016] of the Supreme Court of Kosovo of 3 October 2016, which has allegedly violated the Applicant's rights guaranteed by Article 36 [Right to Privacy], Article 49 [Right to Work and Exercise Profession], Article 102 [General Principles of the Judicial System] and Article 142 [Independent Agencies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] and Article 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 25 November 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 December 2016, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Ivan Čukalović and Bekim Sejdiu.
7. On 20 December 2016, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 18 October 2017, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. Based on the case file, it results that the Applicant was employed in the position of *Senior Finance Officer* in the Kosovo Deposit Insurance Fund.
10. On 4 December 2014, the Basic Prosecution in Prishtina filed the indictment [PP. II. No. 6277/14], against the Applicant for commission of the criminal offense "*Failure to report or falsely reporting property, income, gifts, other*

material benefits or financial obligations” under Article 437 of Criminal Code of Kosovo (hereinafter: CCK).

11. On 16 July 2015, the Basic Court in Prishtina, by Judgment [P. No. 3009/14] found the Applicant guilty and punished him with a fine and with imprisonment of 4 (four) months, which will not be executed within a period of one (1) year, provided that the accused, namely the Applicant during this period does not commit any other criminal offense. The Basic Court in Prishtina found that the Applicant, in a capacity of Senior Finance Officer in the Deposit Insurance Fund in Kosovo, was obliged to declare the property under Law No. 04/L-050 on the declaration and origin of the property and gifts of senior public officials (hereinafter: Law on Declaration of Property) .
12. The Applicant filed an appeal with the Court of Appeals against Judgment [P. No. 3009/14] of the Basic Court in Prishtina of 16 July 2015, with the proposal that the *“Court of Appeals in Prishtina, after reviewing the arguments provided and the evidence to render a right decision.”*
13. On 18 February 2016, the Court of Appeals of Kosovo, through Judgment [PA1. No. 1433/2015] rejected the appeal as ungrounded and upheld the Judgment of the Basic Court [P. No. 3009/14] of 16 July 2015. The Court of Appeals in its Judgment provided a detailed response to all the Applicant's allegations.
14. The Applicant filed a request for protection of legality against the Judgment [PA1. no. 1433/2015] of the Court of Appeals of Kosovo of 18 February 2016, with the proposal that the latter be annulled and the case be remanded for retrial.
15. On 3 October 2016, the Supreme Court of Kosovo, by Judgment [Pml. No. 192/2016] rejected the request for protection of legality as ungrounded. The reasoning of this Judgment, among others, states:

“[...] there are no explanations in the request what procedural violations or of the criminal code were committed by the impugned judgments, but only documents are offered for review, which according to the request, show that the courts have issued unlawful judgments. In accordance with the provisions of Article 436, paragraph 1 of CPCK when deciding on the request for protection of legality, the Supreme Court of Kosovo is limited only to determine legal violations which the Applicant invokes in his referral, and given that in the concrete case it has not been stated nor reasoned what legal provisions have been violated, the request for protection of legality is ungrounded”.

Applicant's allegations

16. The Applicant alleges that Anti-Corruption Agency, by obliging the Applicant to declare his property, violated his rights guaranteed by Article 36 [Right to Privacy], Article 49 [Right to Work and Exercise Profession], Article 102

[General Principles of the Judicial System] and Article 142 [Independent Agencies] of the Constitution.

17. As it pertains to the alleged violation of Article 36 [Right to Privacy] of the Constitution, the Applicant argues that *“arbitrary classification of technical expert position by AKK as subject of declaration is not in line with Article 3, paragraph 1.1.11 of the Law No. 04/L-50 and constitutes violation of constitutional right to privacy which guarantees freedom of citizens and right to privacy and protection of personal data when an individual is not subject to the declaration as defined by Law”*.
18. As it pertains to the alleged violation of Article 49 [Right to Work and Exercise Profession], the Applicant argues that *“this constitutional right is very important to be protected especially in instances where expert’s positions are at stake, and more importantly when young professionals graduated abroad have returned to contribute to economic development of country”*.
19. The Applicant further alleges that the decisions of the regular courts violated his rights guaranteed by Article 102 [General Principles of the Judicial System], without providing any reasoning pertaining to this specific allegation.
20. In addition, regarding allegation of violation of Article 142 [Independent Agencies] of the Constitution, the Applicant alleges that *“Anti-Corruption Agency (AAK) has violated Article 142, paragraph 1 to 3 of the Constitution (Independent Agencies), which guarantees independence of independent agencies established by the Assembly based on the respective laws that regulate their establishment, operation and competencies”*.
21. Finally, the Applicant requests the Court to annul the decisions of the regular courts and to order financial compensation for violation of the right to privacy.

Admissibility of Referral

22. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and foreseen in the Rules of Procedure.
23. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] the Constitution, which establish:

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

(...)

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”.

24. The Court also examines whether the Applicant has met the admissibility requirements as provided by the Law. In this regard, the Court refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

Article 48
[Accuracy of the Referral]

“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.”

Article 49
[Deadlines]

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...”

25. As it pertains to the fulfillment of these requirements, the Court finds that the Applicant filed the Referral as an individual and in a capacity of the authorized party, challenging an act of a public authority, namely Judgment [Pml. No. 192/2016] of 3 October 2016 of the Supreme Court after having exhausted all legal remedies determined by law. The Applicant has also clarified the rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines established in Article 49 of the Law.
26. However, the Court should examine whether the criteria provided by Rule 36 of the Rule of Procedure have been met.
27. Rule 36 [Admissibility Criteria] paragraphs (1) (d) and (2) (b) and (d) of the Rules of Procedure foresee:

*“(1) The Court may consider a referral if:
[...]*

(d) the referral is prima facie justified or not manifestly ill-founded.

*(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:
[...]*

*(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or
[...]*

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

28. The Court recalls that the Applicant alleges that the Anti-Corruption Agency, by obliging the Applicant to make the declaration of property violated his rights guaranteed by the Constitution, namely Article 36 [Right to Privacy], Article 49 [Right to Work and Exercise Profession], and Article 142 [Independent Agencies] of the Constitution. In addition, the Applicant alleges that the decisions of the regular courts have violated his rights guaranteed by Article 102 [General Principles of the Judicial System] of the Constitution.
29. The Court notes that the Applicant bases his allegations for violation of the rights guaranteed by Article 36 [Right to Privacy] and Article 49 [Right to Work and Exercise Profession] of the Constitution, arguing that the erroneous interpretation of the Law on Declaration of Property by the regular courts has resulted on arbitrary decisions. The Court recalls that this allegation pertains to the scope of legality and as such does not fall within the jurisdiction of the Constitutional Court, thus it cannot, in principle, be considered by the Court.
30. In this regard, the Court reiterates that it is not its task to deal with errors of law allegedly committed by regular courts (legality), unless and in so far as such errors may have infringed rights and freedoms protected by the Constitution (constitutionality). The Court may not itself assess the law which have led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of “fourth instance”, which would be to disregard the limits imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See: case *García Ruiz v. Spain*, ECtHR, no. 30544/96, 21 January 1999, paragraph 28; and case: *Akdivar v. Turkey*, No. 2189/93, ECtHR, Judgment of 16 September 1996, para. 65; see also case: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011, KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012, and KI32/16, Applicant *Ibrahim Svarça*, Resolution on Inadmissibility, of 16 November 2016, paragraph. 38).
31. The Court considers that the Applicant’s Referral does not indicate that the regular courts acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court can only consider whether the regular courts’ proceedings in general have been conducted in such a way that the Applicant had a fair trial (see case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991; case KI 32/16, Applicant *Ibrahim Svarça*, Resolution on Inadmissibility, 16 November 2016, paragraph. 39, and KI88/16, Applicant *N.T.SH. “ELING”*, of 26 January 2017, para. 30, as well as KI72/16, Applicant, *Kosovo Security Bureau*, Resolution on Inadmissibility, of 16 November 2016, paragraph. 30).
32. The Court finds that, based on the facts of the case arising from the presented documents and the allegations of the Applicant, the regular courts provided detailed and clear reasoning for their decisions, including the reasons based on

which the Supreme Court rejected the request for protection of legality as ungrounded through Judgment [Pml. No. 192/2016] of 3 October 2016, which is challenged by the Applicant before this Court.

33. The Supreme Court in its Judgment reasoned that the Applicant in the request for protection of legality did not claim that the challenged judgments contained essential violation of the provisions of the criminal procedure, as required by law, but only requested the reconsideration of the factual situation. Accordingly, after the review of the Applicant's allegations, the Supreme Court concluded that *"it is limited only to determine legal violations which the Applicant alleges and given in concrete case it has not been stated nor reasoned what legal provisions have been violated, the request for protection of legality is ungrounded"*.
34. In addition, the Court further notes that the Basic Court by Judgment [P. No. 3009/14] of 16 July 2015, and the Court of Appeals, by Judgment [PA1. No. 1433/2015] of 18 February 2016, have dealt extensively with the issue of interpretation of the Law on the Declaration of Property and provided detailed reasoning for all the allegations of the Applicant raised before them.
35. Regarding the Applicant's allegations filed in his Referral, the Court also refers to Judgment [PA1. No. 1433/2015] of 18 February 2016, of the Court of Appeals, which, among others, reasoned that:

"[...] that the factual situation was correctly and completely determined and in this aspect no fact remained doubtful as it is unjustly alleged in the appeal of the accused [...]. The first instance court in the court hearing administered the evidence by hearing the witnesses [...] in the capacity of senior finance officer in the Deposit Insurance Fund of Kosovo (head of finance) according to the Law no.04/L-050 for the declaration, origin and control of property of senior public officials even though he was obliged to declare his property, income, gifts, other material benefits or financial obligations in the legal term from 01.03.2014 until 31.03.2014, respectively in the deadline for regular declaration of the property, according to the list of senior officials of DIFK willingly and conscious for the consequences for non declaration he failed to fulfil this obligation."
36. Accordingly, the Court concludes that all the Applicant's allegations relevant to the resolution of the dispute were duly examined by the regular courts, that the factual and legal reasons for the impugned decisions were examined at length, and that, based on the above, the proceedings before the regular courts, taken as a whole were fair.
37. The Court also emphasizes that the mere mentioning of articles of the Constitution, alleging that they have been violated without providing further explanations as to how these violations occurred, is not sufficient to build an allegation for a constitutional violation. When alleging such violations of the Constitution, the applicants must provide a reasoned allegation and a compelling argument. (See: case of the Constitutional Court KI 136/14,

Abdullah Bajqinca, Resolution on Inadmissibility of 10 February 2015, paragraph 33).

38. The Court in particular recalls the fact that the Applicant did not provide relevant arguments in his Referral that would justify his allegations that there has been in any way a violation of his constitutional rights, except that he is dissatisfied with the outcome of proceedings. (See: case *Mezotur-Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECtHR Judgment of 26 July 2005).
39. The fact that the Applicant does not agree with the outcome of the case, cannot of itself raise an arguable claim of a breach of the Constitution allegedly committed by the regular courts. (See: case *Mezotur - Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005; see: case KI 32/16, Applicant *Ibrahim Svarça*, Resolution on Inadmissibility, of 16 November 2016, paragraph. 44, and KI88/16, Applicant *N.T.SH. "ELING"*, of 26 January 2017, paragraph. 33).
40. As it pertains to the Applicant's allegation for violation of Article 102 [General Principles of the Judicial System] and Article 142 [Independent Agencies] of the Constitution, the Court notes that it is a general principle that the articles of the Constitution which do not directly regulate the fundamental rights and freedoms have no independent effect, as their effect is valid in relation to "*the enjoyment of the rights and freedoms*" guaranteed by the provisions of Chapters II and III of the Constitution. Accordingly, these articles cannot independently be applied if the facts of the case do not fall within the scope of one or more of the provisions of the Constitution pertaining to the "*enjoyment of the rights and freedoms*". (see, *inter alia*, *E.B. v. France* [GC], paragraph 47, Judgment of 22 January 2008; *Vallianatos and others v. Greece*, paragraph 72, ECtHR Judgment of 7 September 2013; also case KI67/16 Applicant *Lumturije Voca*, Resolution on Inadmissibility, of 23 January 2017, paragraph. 28).
41. In sum, the Court considers that the Applicant has not substantiated his allegations for violation of human rights and fundamental freedoms guaranteed by the Constitution, because the facts presented by him do not show in any way that the regular courts denied him the rights guaranteed by the Constitution, as alleged by him.
42. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with Rules 36 (1) (d) and 36 (2) (b) and (d) of the Rules of Procedure.

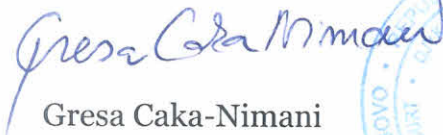
FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 of the Constitution, Article 48 of the Law, and Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, in the session held on 18 October 2017, unanimously

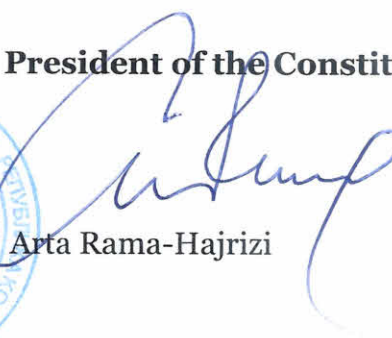
DECIDES

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

Judge Rapporteur


Gresa Caka-Nimani

President of the Constitutional Court


Arta Rama-Hajrizi

