



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

Prishtina, on 20 December 2017
Ref. no.: RK 1176/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI67/17

Applicant

Hazir Krasniqi

**Constitutional review of Judgment (Pml. No. 48/2017) of the Supreme
Court of Kosovo of 16 March 2017**

THE 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 Hazir Krasniqi from Vushtrri (hereinafter: the Applicant) who is represented with power of attorney by lawyer Sheremet Ademi.

Challenged decision

2. The Applicant challenges Judgment (Pml. No. 48/2017) of the Supreme Court of Kosovo of 16 March 2017, which rejected as ungrounded the Applicant's request for protection of legality filed against the Judgment (PAKR. No. 355/2016) of the Court of Appeals of Kosovo of 6 January 2017 and Judgment (P. No. 509/2013) of the Basic Court in Mitrovica of 12 November 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly has violated the Applicant's rights guaranteed by Articles 3 [Equality Before the Law], 21 [General Principles], 30 [Rights of the Accused], 31 [Right to Fair and Impartial Trial], and 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: Constitution) as well as Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 05 June 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 5 June 2017, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 14 June 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo.
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 Referral.

Summary of facts

9. On 30 December 2009, the Basic Prosecution Office in Mitrovica filed an indictment (PP.I.333/2009) against the Applicant due to grounded suspicion of having committed the criminal offense of misappropriation in office.
10. On 12 November 2016, the Basic Court in Mitrovica, by Judgment (P. No. 509/2013), found the Applicant guilty for the criminal offense of Misappropriation in office and sentenced him to an imprisonment sentence of

one (1) year, which will not be executed if the accused fails to commit another criminal offense within 2 (two) years.

11. By the same Judgment, the Applicant is obliged to compensate the injured Crediting-Saving Association "Ardhmeria Begaj" in Vushtrri in the amount of EUR 25,061.79 under the threat that the imprisonment sentence will be executed in case the Applicant fails to fulfill the obligation in relation to the compensation of damage in the abovementioned amount.
12. By this Judgment an accessory punishment was also imposed on the Applicant prohibition on exercising public functions within 3 (three) years and a fine in the amount of 1,000 euro.
13. The Basic Court in Mitrovica based the Judgment on the Applicant's guilty plea for all counts of the indictment in the presence of his defense counsel.
14. The Basic Prosecution Office in Mitrovica filed an appeal with the Court of Appeals of Kosovo against the Judgment of the Basic Court due to decision on the length of sentence, with a proposal that the Judgment be modified and on the Applicant be imposed higher fine and effective imprisonment sentence.
15. The Applicant also filed an appeal against the same Judgment, on the grounds of essential violation of the criminal procedure and violation of the criminal law, with a proposal to annul the judgment, and to dismiss the prosecution's indictment, stating that the time-limits for the investigation were unlawfully extended by the Basic Court and that the indictment is filed out of the prescribed deadline.
16. On 6 January 2017, the Court of Appeals of Kosovo, by Judgment (PAKR. No. 655/2016) upheld the Judgment of the Basic Court in Mitrovica and rejected the appeals of the Basic Prosecution in Mitrovica and the Applicant as ungrounded.
17. The Applicant filed a request for protection of legality with the Supreme Court of Kosovo against the Judgment of the Court of Appeals, repeating the same appealing allegations concerning the length of the investigation and raising the indictment out of time, with a proposal that the request be approved, the challenged judgment be annulled or modified, so that the indictment be rejected.
18. On 3 March 2017, the State Prosecutor of Kosovo by submission (KMLP. II. No. 36/2017), filed a response to the Applicant's request for protection of legality, proposing that the request be rejected as unfounded.
19. On 16 March 2017, the Supreme Court of Kosovo, by Judgment (Pml. No. 48/2017) rejected the Applicant's request for protection of legality as ungrounded.

Applicant's allegations

20. First, the Applicant alleges that the Prosecutor's Office violated the time-limit for the investigation of 6 (six) months, and that the indictment was filed only after 18 (eighteen) months.
21. The Applicant considers that the extension of the investigations was done unlawfully and that the right to fair and impartial trial was violated.
22. Secondly, the Applicant alleges that the Basic Court should have dismissed such an indictment, because it was filed out of time and should not have accepted as correct the evidence obtained in such an investigation.
23. The Applicant considers that the evidence was obtained unlawfully, that these allegations were pointed out in the appeal proceedings before the Court of Appeals and the Supreme Court, which did not provide a reasoned response to these allegations, thereby allegedly denied the Applicant's right to a reasoned court decision.
24. Finally, the Applicant alleges a series of violations of the Criminal Code and the Criminal Procedure Code, which he emphasized in the appeal proceedings and concludes that these violations resulted in violation of the Constitution.
25. The Applicant requests the Court "...*TO CONCLUDE that there were violations of Articles 3, 21, 30, 31 and 32 of the Constitution of the Republic of Kosovo... TO DECLARE invalid Judgment Pml. No. 48/2017 of the Supreme Court of 16.03.2017, and TO REMAND the Judgment to thr Supreme Court [...] for reconsideration.*"

Admissibility of the Referral

26. The Court first examines whether the Applicant has met the admissibility requirements established in the Constitution and as further specified in the Law and foreseen in the Rules of Procedure.
27. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of 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."*
28. The Court also refers to Article 48 [Accuracy of Referral] 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.

29. In addition, the Court recalls Rule 36 (1) (d) and (2) (a) of the Rules of Procedure, which stipulates:

*(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:
[...]
(a) the referral is not prima facie justified.*
30. In the present case, the Court notes that the Applicant is authorized party to submit a Referral to the Court and that he has exhausted effective legal remedies. Therefore, he met the procedural requirements provided for in Article 113.7 of the Constitution. However, to determine the admissibility of the Referral, the Court still has to assess whether the Applicant has met the requirements of Article 48 of the Law and the admissibility criteria stipulated in Rule 36 of the Rules of Procedure.
31. The Court considers that the Applicant has built his case on legal grounds, namely on erroneous interpretation of a large number of legal norms of the Criminal Procedure Code and the Criminal Code.
32. The Court notes that the Applicant repeats identical allegations which he emphasized also in the appeal before the Court of Appeals and the Supreme Court, regarding the length of investigations and non-reasoned court decision.
33. The Court first notes that the Court of Appeals, in its reasoning, gave a detailed and exhaustive reply to these allegations of the Applicant:

“The appealing allegations whereby the appealed judgment was based on inadmissible evidence allegedly all evidence were processed by the prosecutor after expiry of set deadline for investigations, are not grounded because; based on the case files and by the reasoning of the appeal, it is established that the first instance court , during the pre-trial, has extended time limit of investigations as it is provided in provisions of CCRK....

Also, appealing allegations whereby the appealed judgment does not contain reasoning on decisive facts, respectively it does not contain evidence whereby the factual situation was established are ungrounded because of the guilty plea; therefore, it is considered that the factual situation was correctly and completely determined.”
34. Furthermore, the Applicant reiterates his claims regarding the incorrect application of the substantive law and the exceeding of the time-limit for filing the indictment, which he pointed out before the Supreme Court in the request for protection of legality.

35. The Court also notes that the Supreme Court has responded in detail, by reasoning:

“...If the State Prosecutor does not complete investigations within this time limit, the prosecutor cannot take investigative actions after it; however, the prosecutor may file the indictment even after expiry of the time limit if it is considered that evidence collected provide sufficient ground to refer the case for trial before the court.

In this specific case, as stated by the case files, all evidence were collected within this time limit because; we are here mostly dealing with material evidence collected within the time limit, whereas it is true that the indictment was filed later on; however within the time limit of the provisions stated above...”

36. The Court reiterates that it is not its role to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). When alleging violation of the rights and freedoms guaranteed by the Constitution, committed by the public authority, the Applicant must present a reasoned and a convincing argument.
37. In addition, the Court also reiterates that the role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution, and not to deal with, the interpretation and application of the domestic law; it is the role of regular courts (see case: *Garcia Ruiz vs. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, see also case: KI70/11, Applicants: *Faik Hima, Magbule Hima and Bestar Hima* Constitutional Court, Resolution on Inadmissibility of 16 December 2011).
38. The Court considers that the Applicant had the opportunity to present before the regular courts the factual and legal reasons for the resolution of dispute; his arguments were duly heard and examined by the Court of Appeals and the Supreme Court; the proceedings taken as a whole were fair and the rendered decisions were reasoned in detail.
39. The Court further considers that the Applicant does not agree with the outcome of the proceedings before the regular courts. However, the dissatisfaction of the Applicant with the outcome of the proceedings before the regular courts cannot of itself raise an arguable claim of the violation of the right to fair and impartial trial (see: *mutatis mutandis* case *Mezotur - Tiszazugi Tarsulat v. Hungary*, paragraph 21 no. 5503/02, ECtHR, Judgment of 26 July 2005).
40. The Applicant did not provide any *prima facie* evidence which would indicate a violation of his constitutional rights (see: *Trofimchuk v. Ukraine*, ECtHR, paragraph 50-55, Judgment no. 4241/03, of 28 October 2010).
41. The Court considers that the Applicant has not substantiated his allegations that the relevant proceedings have been in any way unfair or arbitrary and that the challenged judgment violated constitutional rights and freedoms

guaranteed by the Constitution and the ECHR (see: *mutatis mutandis: Shub vs. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).

42. Therefore, the Court considers that the admissibility requirements, established in the Constitution, as further specified in the Law and foreseen in the Rule of Procedure have not been met.
43. Accordingly, the Court finds that the Applicants' Referral is inadmissible, as manifestly ill-founded on constitutional basis.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 (1) and (7) of the Constitution, Article 48 of the Law and Rule 36 (2) (a) and 56 of the Rules of Procedure, in the session held on 18 October 2017, unanimously

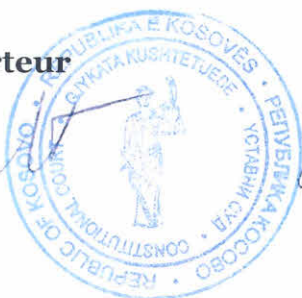
DECIDES

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

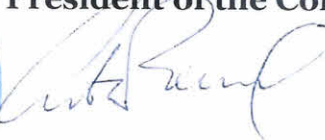
Judge Rapporteur



Ivan Čukalović



President of the Constitutional



Artta Rama-Hajrizi