



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, 21 March 2011  
Ref. No.: 114 /11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 50/10**

Applicant

**Alil Memetoviq**

**Constitutional Review of the Judgment of the District Court of Prishtina,  
P.nr.49/2006, dated 30.08.2006, and Judgment of the Supreme Court of  
Kosovo, Pkl. nr/8/09, dated 19.04.2010**

### **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  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge,

#### **Applicant**

1. The applicant is Mr. Alil Mehmetoviq from the village of Sfirca, currently serving his prison sentence at Dubrava Prison.

### **Challenged decisions**

2. Challenged decisions are:  
Judgment of the District Court of Prishtina, P.nr.49/2006, dated 30.08.2006, and  
Judgment of the Supreme Court of Kosovo, Pkl.nr/8/09, dated 19.04.2010.

### **Subject matter**

3. The subject matter of the case submitted with the Constitutional Court of the Republic of Kosovo on 29 June 2010 is the constitutional review of the Judgment of the District Court of Prishtina, P.nr.49/2006, dated 30.08.2006, declaring Mr. Alil Mehmetovic guilty and pronouncing him a 30 year prison sentence for the criminal offences he was declared guilty, and of the Judgment of the Supreme Court of Kosovo, Pkl.nr/8/09, dated 19.04.2010, refusing his request for the protection of legality against the final Judgment of the District Court.

### **Alleged violations of constitutionally guaranteed rights**

4. Even though pursuant to Article 48 of the Law on the Constitutional Court in his referral, the applicant should accurately clarify what rights and freedoms he claims to have been violated, Mr. Mehmetovic did not clarify in his referral what rights he claims to have been violated, even though from his referral submitted with the Court it can be assumed that the applicant claims that "his right to a fair and impartial trial", guaranteed by Article 31 of the Constitution of the Republic of Kosovo, has been violated.

### **Legal basis**

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2009 (hereinafter referred to as: the Law), and Section 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules).

### **Proceedings before the Court**

6. The Applicant filed the Referral with the Constitutional Court on 29 June 2010.
7. On 26 August 2010, the Constitutional Court notified the Supreme Court regarding the Referral submitted with the Constitutional Court and the Court has not received any reply within the legal time limit.
8. On 14 December, after having considered the Report of the Judge Rapporteur, Kadri Kryeziu, the Review Panel, composed of Judges Altay Suroy (Presiding), Gjyljeta Mushkolaj and Iliriana Islami, members of the Panel, on the same date, recommended to the full Court to reject the case as inadmissible.

### **Applicant's complaint**

9. The applicant complains that the District Court of Prishtina had issued an unfair judgment by incorrectly determining the factual situation of his case, especially by not doing site reconstruction, and that the sentence pronounced to him for the criminal offence he claims not to have committed is too severe. He also emphasizes that Supreme Court judgments regarding his and his defense attorney's complaints are unjust and based on incomplete and erroneous determination of the factual situation, even though

he provides the same reasoning in these complaints for site non-reconstruction and for the reconciliation with the family of the victims of the incident he had caused.

### **Summary of the facts**

10. On 30 August 2006, the District Court of Prishtina, acting as a first instance court, issued Judgment P.nr 49/2006, declaring Mr. Alil Mehmetovic, from the village of Sfirca – Medvegja municipality, now residing in Prishtina, guilty of the criminal offence of aggravated murder under Article 147, para. 1, item 11 of PCKK, and of the criminal offence of “unauthorized ownership, control, possession or use of weapons” under Article 328, para. 2 of PCKK, and pronounced him an imprisonment of 29 (twenty-nine) years for the first offence and an imprisonment of one year and six months for the second offence, including the time spent in pretrial detention.
11. On 25 April 2007, the Supreme Court of Kosovo, acting pursuant to the complaint of Mr. Mehmetovic’s legal representative, issued Judgment Ap.nr7/2007, amending the Judgment of the District Court of Prishtina, P.nr 49/2006, again declaring him guilty of criminal offences of aggravated murder and attempted murder under Article 146, respectively Article 147, para. 1, item 11 as read with Article 20 of PCKK, pronouncing him a long-term imprisonment of 29 (twenty-nine) years including the time spent in pretrial detention, from 23 October 2005 onwards.
12. On 4 June 2008, the Supreme Court of Kosovo, acting as a third instance court, pursuant to the complaint of the accused Alil Mehmetovic and of his defense lawyer, issued Judgment Api.nr.4/2007, refusing as ungrounded complaints of the accused and of his defense lawyer and confirming the Judgment of the Supreme Court, Ap.nr.7/2007, dated 25 April 2007.
13. On 10 April 2010, the Supreme Court of Kosovo, through Judgment Pkl.nr.8/09, refused the request for the protection of legality of the accused Mr. Alil Mehmetovic, submitted against the final Judgment of the District Court of Prishtina, p.nr.49/2006, dated 30.08.2006, and the Judgment of the Supreme Court of Kosovo in Prishtina, Api.nr.4/2007, dated 04.06.2008.
14. Finally, unsatisfied with all mentioned judgments, on 26 June 2010, Mr. Mehmetovic filed a referral with the Constitutional Court of the Republic of Kosovo.

### **Assessment of the admissibility of the referral**

15. In order to be able to adjudicate on Applicant’s Referral, the Court preliminarily refers to Article 113.1 of the Constitution, which stipulates that:

*“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties,”*

and Article 47, respectively 48, of the Law on the Constitutional Court of the Republic of Kosovo, which stipulate:

#### **Article 47 - Individual Requests**

*1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

#### **Article 48 - Accuracy of the Referral**

*In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims so have been violated and what concrete act of public authority is subject to challenge.*

16. In connection to this, the Constitutional Court also stresses that Article 102 of the Constitution provides that:
  1. Judicial power in the Republic of Kosovo is exercised by the courts.
  3. Courts shall adjudicate based on the Constitution and the law.
17. In fact, the correct and complete determination of the factual situation is a full jurisdiction of regular courts and site inspection or reconstruction of the event outside the main trial is a discretionary right of the Court if the Court deems this necessary (see Article 366, para 2 of the Provisional Criminal Procedure Code of Kosovo), so, from applicant's claims related to this issue, the Constitutional Court does not see that regular courts have acted in incompliance with the Constitution.
18. With that said, the Court finds that the District Court, through Judgment P.nr.49/2006, dated 30.08.2006, and the Supreme Court, through judgments issued based on complaints submitted by the accused and his defense lawyer, mentioned in items 8, 9, and 10 of this Report, have concluded the fact that Mr. Alil Mehmetoviq has committed the criminal offences he is accused of and pronounced him the prison sentence as described in the enacting clause of the judgments. The Constitutional Court did not find any element of the violation of Article 31 of the Constitution (Right to Fair and Impartial Trial), or Article 6 of the European Convention for the Protection of Human Rights (Right to Fair and Impartial Trial) in Applicant's complaints.
19. On this occasion, the Constitutional Court of Kosovo reiterates it does not enjoy appellate jurisdiction. The task of the Constitutional Court is to ensure compatibility with the rights guaranteed by the Constitution and other legal instruments and, therefore, it cannot act as "a fourth instance court", (see *mutatis mutandis*, i.a., Akdivar vs. Turkey, 16 September 1996, R.J.D, 1996-IV, para. 65).
20. From facts submitted with the referral, it appears that the applicant has not met the legal obligation regarding the accuracy of the referral, because he did not accurately specify what rights guaranteed by the Constitution have been violated by acts of public authorities. Moreover, the Court considers that there is nothing in the Referral which indicates that courts hearing the case lacked impartiality or that proceedings were otherwise unfair. The mere fact that applicants are 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 vs. Hungary, Judgment of 26 July 2005).
21. In these circumstances, the referral is manifestly ungrounded since the applicant has not met the requirements for the admissibility of the referral

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113(7) of the Constitution, Article 20 of the Law on the Constitutional Court, and Rule 36 of the Rules of Procedure, unanimously

### **DECIDES**

I. TO REJECT the Referral as Inadmissible.

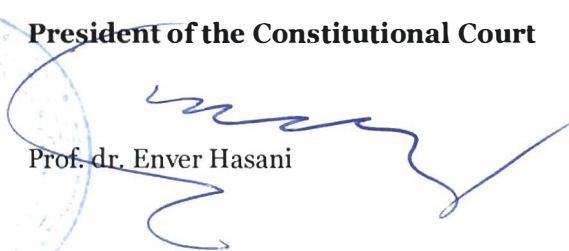
This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court.

This Decision is effective immediately.

**Judge Rapporteur**

  
Kadri Kryeziu

**President of the Constitutional Court**

  
Prof. dr. Enver Hasani

