



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

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Pristine, 17 January 2012  
Ref. No. RK 183/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 10/11**

Applicant

**Nexhat Ramadani**

**Constitutional Review of the Judgment of the District Court of Gjilan P.No.142/04  
of 19 May 2005 and Judgments of the Supreme Court, Ap.Kz.No179/2007 of 23  
June 2009 and No PKL-KZZ 131/09 of 05 June 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 Nexhat Ramadani from Gjilan currently serving a sentence of imprisonment in Dubrava prison.

### **Legal Basis**

2. The Referral is based on Art. 113.7 of the Constitution; Articles , 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure)

### **Challenged court decisions**

3. In his referral the Applicant challenges the Judgment of the District Court of Gjilan P.No.142/04 of 19 May 2005. He also mentions and submits copies of the Judgment of Supreme Court Ap.Kz.No179/2007 dated 23 June 2009 and the Judgment of the Supreme Court of Kosovo No PKL-KZZ 131/09 dated 05 June 2010 that was served on his defence counsel on 5 August 2010.

### **Procedure before the Court**

4. On 5 December 2010 the Applicant submitted a letter to the Constitutional Court (hereinafter referred to as the Court) alleging violation of individual human rights.
5. On the 27 January 2011 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: "the Court") together with the necessary documentation.
6. On 14 February 2011 the President appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Gjyljeta Mushkolaj.
7. On 15 February 2011 the Court notified the Supreme Court of Kosovo of the Referral.
8. On 31 August 2011 the District Court of Gjilan provided the Court with copy of its Judgment P.No.142/04 of 19 May 2005 as well as the Supreme Court judgements Ap.Kz.No179/2007 dated 23 June 2009 and the Judgment No PKL-KZZ 131/09 dated 5 June 2010.
9. On 29 November 2011, after having considered the Report of the Judge Rapporteur, the Review Panel, made a recommendation to the full Court on the inadmissibility of the Referral

### **Summary of the Facts**

10. On 19 May 2005, the District Court in Gjilan, in its Judgment of 19 May 2005, sentenced the Applicant to 16 years of imprisonment for the criminal offence of aggravated murder under Articles 146 and 147 item 5 in relation to Article 25 of the Provisional Criminal Code of Kosovo (UNMIK/REG/2003/25, hereinafter: "the PCCK") as well as for participating in a group committing criminal offence as envisaged by Article 200, paragraph 1 of the PCCK.

11. According to this judgment the Applicant was pronounced guilty because he, *inter alia*, on 17 March 2004 “deprived S.P. from life in cooperation with others by chasing S.P. together with other accomplices as his property was attacked by a large angry crowd, he jumped over the body of S.P. by hitting him twice with a stick, once to his arms and once to his head whereby other crowd members attacked S.P. with sticks and stones.”
12. The Applicant appealed against the Judgment of the District Court in Gjilan to the Supreme Court of Kosovo, claiming, a violation of essential criminal procedure, in particular, (Article 403 paragraph 1 item 12 of the Provision Criminal Procedure Code of Procedure of Kosovo (UNMIK/REG/2003/26, hereinafter “the PCPCK”), violations of criminal law (Article 404 of PCPCK), erroneous and incomplete evaluation of the factual situation (Article 405 PCPCK) and that the court failed to determine his punishment correctly (Article 406 of PCPCK).
13. On 23 June 2009 the Supreme Court of Kosovo by its Judgment Ap.Kz No 179/2007 approved partially the Applicant’s appeal in relation to the offence of assisted aggravated murder. The Supreme Court found that the old law (Article 30 Par.2 item 5 of KCL) was the applicable law because the new law (Articles 146 and 147 item 5 in relation to Article 25 of the PCCK) was not more favorable for defendants. This requalification of the offence had no effect in the punishment which remained 16 (sixteen) years imprisonment. The rest of the appeal was rejected.
14. On 25 November 2009 both the Applicant and his defence counsel each submitted requests for protection of legality against the District Court Judgment, P. No 142/04, dated the 19 May 2005 and the Judgment of Supreme Court, Ap.Kz.No179/2007, dated 23 June 2009. The Applicant’s defence submitted the request arising from alleged violations of essential provisions of the criminal procedure (Article 403 par. 1 item 12 of PCPCK) as well as violation of the Criminal Law (Article 404 of PCPCK) in the District Court Judgment. The Applicant’s defence also submitted a request for protection of legality against the Supreme Court Judgment for alleged violation of the Criminal law in Kosovo. It was argued, *inter alia* that “The reasons are entirely unclear and to a considerable extent inconsistent with the critical facts and testimony from heard witnesses as well other evidence elaborated in the main review and with the contents of documents and minutes from the main view.” The Applicant also submitted a request based on a breach of criminal law and violation of the Criminal Procedure in the two previously mentioned Judgements.
15. On 15 June 2010 the Supreme Court of Kosovo issued Judgment No. PKL-KZZ 131/09 and rejected both the Applicant’s and his defence counsel’s request for protection of legality as unfounded. It was emphasized, *inter alia*, that “the Supreme Court entirely agrees with what the second instance court has stated, which is in accordance with the international and European legal standards.”

### **Applicants Allegations**

16. The Applicant claims a violation of Article 23 [Right to Human Dignity], Article 24 [Right to Equality Before the Law] and Article 31 [Right to a Fair Trial] of the Constitution of the Republic of Kosovo (hereinafter: “the Constitution”).

17. The Applicant alleges that there has been a violation of his right to human dignity as guaranteed by Article 23 of the Constitution from the moment the Public Prosecutor in Gjilan District filed an indictment against him on suspicion of murdering S.P. right through all the different court decisions because they all resulted in him being labeled a “murderer, criminal, chauvinist and cruel murderer”
18. The Applicant claims that there was a violation of his right to equality before the law as guaranteed under Article 24 of the Constitution. The Applicant asserts that he was placed in an unequal position before the law because, he was only charged because he was Albanian, the diversity of charges against the Applicant were “unprecedented”, the International Public Prosecutor (hereinafter “IPP”) did at no time establish a difference between the Article 146 and Article 147, he was charged by the IPP alternately with the commission of offences in accordance with the old Applicable Law and the new law which resulted in the applicant not knowing what he was being charged with and how he would be convicted. He also asserted that the Supreme Court, seeing the errors and weakness of the prosecutor and the Court of first instance only changed the qualification of the crime because they were driven by the same political motive as the others, and finally, he argued that the aggravated murder charges were dropped against the others leaving him as the only accused perpetrator.
19. The Applicant alleges that his right to a fair and impartial trial as protected by Article 31 was violated because, he was harshly treated during the interrogation, he should have had mandatory defence counsel at the interrogation stage because he only has a fourth grade education, there was bias against him during the trial by presenting him as the sole perpetrator of the murder of S.P. and there was bias as the international community wanted to find someone liable for the riots of 17 March 2004.

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

20. 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, further specified in the Law on the Constitutional Court and the Rules of Procedure.
21. The Court recalls that in his referral the Applicant challenges the Judgment of the District Court of Gjilan P.No.142/04 of 19 May 2005. It follows that the alleged interference with the Applicant’s rights lies in the District Court of Gjilan judgment of 19 May 2005.
22. The Court recalls that the public authorities of the Republic of Kosovo can only be required to answer to facts and acts which occurred subsequently to the entry into force of the Constitution.
23. However, as it was said earlier, *the Court notes that in his referral lthe Applicant also mentions and submits copies of the Judgment of Supreme Court Ap.Kz.No179/2007 dated 23 June 2009 and the Judgment of the Supreme Court of Kosovo No PKL-KZZ 131/09 dated 05 June 2010 that was served on his defence counsel on 5 August 2010.*
24. In that respect, the Constitutional Court recalls its task is not to act as a court of appeal, when considering decisions rendered by ordinary courts. It is the role of the lower courts to interpret and apply the pertinent rules of both procedural and substantive law (see

*mutatis mutandis*, Garcia Ruiz v Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECtHR] 1999-I)

25. The Applicant did not submit any *prima facie* evidence indicating a violation of his rights under the Constitution (see Vanek v Slovak Republic, ECtHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
26. The Court notes that the Supreme Court addressed the Applicant's allegations in the Judgment of Supreme Court Ap.Kz.No179/2007 dated 23 June 2009 and the Judgment of the Supreme Court of Kosovo No PKL-KZZ 131/09 dated 05 June 2010. Having taken this into consideration the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, Shub v Lithuania, ECtHR Decision as to the Admissibility of Application no.17964/06 of 30 June 2009).
27. It follows that the Applicant's Referral should be rejected as inadmissible, pursuant to Article 113.7 of the Constitution and Rule 36 of the Rules of Procedure.

### FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Rule 36 of the Rules of the Procedure unanimously:

### DECIDES

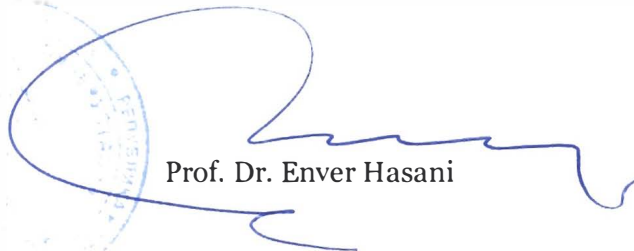
- I. TO REJECT the Referral as Inadmissible.
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law.
- III. This Decision is effective immediately.

**Judge Rapporteur**



Snezhana Botusharova

**President of the Constitutional Court**



Prof. Dr. Enver Hasani