



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, 15 May 2017

Ref. No.:RK1063/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI114/16**

Applicants

**Feriz Gashi and Hysni Gashi**

**Constitutional review of Judgment [Api-Kzi-6/2011] of the Supreme Court of Kosovo of 25 September 2012, and of Judgment [Ap-Kz. no. 283/2009] of the Supreme Court of Kosovo, 19 April 2011**

### **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 Feriz Gashi and Hysni Gashi from the Municipality of Shtime (hereinafter: the Applicants).

## **Challenged decision**

2. The Applicant Feriz Gashi challenges Judgment [Api-Kzi-6/2011] of the Supreme Court of 25 September 2011, which was served on him on 3 March 2013.
3. The Applicant Hysni Gashi challenges Judgment [Ap-Kz. no. 283/2009] of the Supreme Court of 19 April 2011, which was served on him on 14 July 2011.

## **Subject matter**

4. The Applicants have not specified the constitutional rights that have allegedly been violated, but they request the constitutional review of the challenged judgments, by which allegedly *"the courts of the Republic of Kosovo acted unfairly in their case."*

## **Legal basis**

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

## **Proceedings before the Constitutional Court**

6. On 16 September 2016, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 19 October 2016, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Bekim Sejdiu.
8. On 1 November 2016, the Court notified the Applicants about the registration of the Referral and the same time sent them the referral form of the Court and requested the Applicants to complete this form.
9. On 1 November 2016, the Court notified the Supreme Court of Kosovo (hereinafter: the Supreme Court) and the Court of Appeal in Prishtina (hereinafter: the Court of Appeal) about the registration of the Referral and requested the Court of Appeal to submit evidence when the challenged judgments were served on the Applicants.
10. On 21 November 2016, the Court received the completed referral form by the Applicants.
11. On 24 November 2016, the Court received the acknowledgment of the time receipt of the judgments challenged by the Applicants.



12. On 4 April 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**

13. On 22 April 2006, the Applicants were arrested as suspects of murder of A.Xh and V.Z in Shtime.
14. On 25 April 2006, the Public Prosecutor rendered Decision (PP. No. 239-1/06) to initiate investigations against the suspects, Feriz Gashi and Hysni Gashi.
15. On 10 January 2007, the Public Prosecutor filed with the District Court in Prishtina (hereinafter: the District Court) the indictment against the Applicant Feriz Gashi, for the criminal offense of aggravated murder and the criminal offense unauthorized ownership, control, possession or use of weapons, and against the Applicant Hysni Gashi, for the criminal offense of incitement to commit the criminal offense, aggravated murder.
16. On 6 March 2007, the District Court confirmed the indictment filed by the Public Prosecutor against the Applicants.
17. On 27 March 2009, the District Court rendered Judgment [P. no. 10/2007] which found the accused Feriz Gashi guilty and sentenced him to imprisonment of 25 (twenty) years and six (6) months, and found the accused Hysni Gashi guilty and sentenced him to imprisonment of 20 (twenty ) years.
18. Within legal deadline, the Applicants filed an appeal with the Supreme Court against the Judgment [P. no. 10/2007], of the District Court, on the grounds of essential violation of the Criminal Procedure Law, violation of the Criminal Law and erroneous and incomplete determination of factual situation.
19. Within legal deadline, the separate appeals were filed by the injured parties E.F. and G.B. through their legal representatives, challenging in particular the decision on the degree of punishment and proposing the modification of the Judgment and the imposition of long-term imprisonment against two accused.
20. On 30 April 2010, the Public Prosecutor, proposed that the appeals be rejected as ungrounded and that the Judgment [P. no. 10/2007] of the District Court be upheld.
21. On 19 April 2011, the Supreme Court rendered Judgment [Ap-Kz. no. 283/2009] by which modified the decision of the District Court on punishment for the Applicant Feriz Gashi, rendering a sentence of 30 (thirty) years, while it upheld the Judgment for the Applicant Hysni Gashi.
22. On 13 July 2011, the Applicant Feriz Gashi filed an appeal against the Judgment [Ap-Kz. no.283/2009] of the Supreme Court, as he was sentenced by long term punishment and he was allowed to appeal in the third instance, emphasizing that the Judgment of first and second instance *"have erroneously*

*and incompletely determined the factual situation, the criminal law has been violated and that the criminal sanction was erroneously imposed.”*

23. On 25 September 2012, the Supreme Court rendered Judgment [Api-Kzi-6/2011] which rejected the appeal of the Applicant Feriz Gashi as ungrounded, while it modified *ex-officio* Judgment [Ap-Kz no. 283/2009] of the Supreme Court regarding the sentence, by reducing the imprisonment sentence to 29 (twenty nine) years.

### **Applicant’s allegations**

24. The Applicants allege that *“the courts of the Republic of Kosovo acted unfairly”* and request the Court to *“bring justice to them, as to all citizens of Kosovo when they are innocent.”*

### **Admissibility of Referral**

25. The Court first examines whether the Applicants have fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.

26. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish that:

*“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”.*

27. In the present case, the Court notes that the Referral was submitted by the Applicants, in accordance with the requirements of Article 113, paragraph 1 and 7 of the Constitution, which means that the Applicants have met the criteria to be recognized as an authorized party and they have exhausted legal remedies provided by law.

28. However, the Court also refers to Article 49 of the Law, which provides:

*“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...”*

29. The Court further takes into account Rule 36 (1) c) of the Rules of Procedure, which specifies:

*“1) The Court may consider a referral if:*

*(...)*



*(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant.”*

30. Having reviewed the Applicants’ Referral, the Court concluded that the Applicant Hysni Gashi challenges Judgment [Ap-Kz. no. 283/2009] of the Supreme Court of 19 April 2011, which was served on him on 14 July 2011.
31. The Applicant Feriz Gashi challenges Judgment [Api-Kzi-6/2011] of the Supreme Court of 25 September 2012, which was served on him on 6 March 2013.
32. The Court also notes that the Applicants submitted their Referral to the Court on 16 September 2016.
33. Accordingly, the Court concludes that the Applicants’ Referral was submitted after the deadline of 4 (four) months.
34. The Court recalls that the purpose of the 4 (four) month legal time limit under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure is to promote legal certainty, to ensure that cases raising constitutional issues are dealt with within a reasonable time and that previously rendered decisions are not endlessly open to challenging (See case of *O’ Loughlin and Others v. the United Kingdom* no. 23274/04, ECtHR Decision of 25 August 2005 and see case no. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility, of 17 March 2014, paragraph 24).
35. Based on the foregoing, it results that the Applicants’ Referral was submitted out of legal time limit stipulated by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, and as such is inadmissible.

## FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure, on its session held on 4 April 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**

Selvete Gërxhaliu-Krasniqi



**President of the Constitutional Court**

Arta Rama-Hajrizi

