



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

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Pristine, 06 September 2012  
Ref. No.: RK 295/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case.No.KI131/10**

Applicant

**Fatbardh Gabraj**

**Constitutional Review of the District Court of Peja Judgment P.no.46/2001 dated 8 October 2001, Supreme Court of Kosovo Judgments Ap.nr.14/2002 dated 27 June 2002, API.nr.3/07 dated 23 November 2007 and Supreme Court of Kosovo Decision Pr.no.20/2010 dated 11 March 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 and  
Ivan Čukalović, Judge

#### **The Applicant**

1. The Applicant is Fatbardh Gabraj from Bajram Curri in Albania and is currently serving a sentence of imprisonment in the prison of Dubrava in Istog.

## **Challenged decisions**

2. The District Court of Peja Judgment P.no.46/2001 dated 8 October 2001, Supreme Court of Kosovo Judgments Ap.nr.14/2002 dated 27 June 2002, API.nr.3/'07 dated 23 November 2007 and Pr.no.20/2010 dated 11 March 2010.

## **Legal basis**

3. Article 113.7 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No.03/L-121 on the Constitutional Court of the Republic of Kosovo dated 15 January 2009 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## **Subject matter**

4. The subject matter of the Referral is an allegation by the Applicant that his trial and conviction for murder was unfair, unlawful and that his constitutional rights were violated.

## **Proceedings before the Constitutional Court**

5. On 28 December 2010, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 28 January 2011, the Applicant was notified about the registration of the Referral. On the same date the Referral was communicated to the District Court of Peja and the Supreme Court of Kosovo respectively.
7. On 2 February 2011, the District Court of Peja replied.
8. On 14 February 2011, the President by Order No.GJR.KI-131/10, appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur. On the same date, the President by Order No.KSH.KI-131/10, appointed the Review Panel composed of Judges Robert Carolan (presiding), Altay Suroy and Almiro Rodrigues.
9. On 19 June 2012, the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

## **Description of the facts of the case as evidenced by the documents furnished by the Applicant**

10. On or about 10 November 2000, in the roadway Peja-Istog near the village Arbëresh of Vitimirica, near primary school "7 September", the Applicant together with two other co-executors SHB and GL, armed with submachine guns and grenades drove their car near V.E and G.E and shot at them, while the latter were driving towards Istog with a car (red Golf), thereby wounding to death V.E, who later on died from gunshot wounds.
11. On 2 may 2001, the District Public Prosecutor of Peja filed indictment PP. No.184/2000 against the Applicant and SHB. (GL who also was involved in the attack against the injured party had died from the injuries he sustained after a car crash).
12. On 8 October 2001, following indictment and subsequent trial, the District Court of Peja by way of judgment P.No.46/2001, found the Applicant and SHB guilty and

sentenced them to seventeen (17) years of imprisonment. The Applicant was sentenced on the count of murder of V.E and attempted murder of G.E, A.E and I.E.

13. On 27 June 2002, following the approval of the appeal of the District Public Prosecutor in Peja and partially due to the appeal of the defense of the Applicant and SHB (accomplice), the Supreme Court of Kosovo by way of Judgment Ap.no.14/2002 changed the District Court of Peja Judgment P.No.46/2001 dated 8 October 2001, in relation to the legal qualification of the actions of the accused and the ruling on sentence.
14. Following changes made to the District Court of Peja Judgment P.No.46/2001 dated 8 October 2001, The Supreme Court of Kosovo sentenced the Applicant and SHB to 22 (twenty-two) years of imprisonment to each one of them individually by taking into account the time they spent on detention.
15. On 23 November 2007, the Supreme Court of Kosovo by way of Judgment API.no.3/07, rejected the appeal of the Applicant and SHB as ill-founded, thereby upholding the District Court of Peja Judgment P.No.46/2001 dated 8 October 2001, and Supreme Court of Kosovo Judgment Ap.No.14/2002 dated 27 June 2002.
16. On 11 March 2010, the Supreme Court of Kosovo by way of Decision P.No.20/2010, rejected the joint appeal of the convicted against the District Court of Peja Judgment P.No.46/2001 dated 8 October 2001, as ill-founded.

#### **Alleged violations of the Constitution**

17. The Applicant alleges violation of Article 23 [Human Dignity], Article 24 [Equality before the Law], Article 30 [Rights of the Accused], Article 31 [Right to a Fair and Impartial Trial] of the Constitution and Article 33 [The Principle of Legality and Proportionality in Criminal Cases].

#### **Legal arguments presented by the Applicant**

18. The Applicant claims that the afore-mentioned constitutional provisions were violated to his detriment because he was allegedly initially beaten up by the family members of the injured party until he lost his senses. He further maintains that the District Public Prosecutor in Peja acted unconstitutionally because the investigations conducted against him were allegedly tendentious, biased and politically motivated and that the indictment against him was based on inconclusive evidence and false statement of the injured party. He also maintained that the District Court of Peja and of the Supreme Court of Kosovo wrongly found him guilty of murder and attempted murder while he is innocent.
19. The Applicant proposes to the Court to approve a decision whereby the Court would ascertain violation of constitutional provisions by the District Court of Peja and the Supreme Court of Kosovo and would cancel the said decisions and remand this criminal case to the first instance court for a retrial.

#### **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, the Law and rules of Procedure.

21. With regard to Applicants' Referral, the Court refers to Article 49. of the Law which provides as follows:

*"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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."*

22. From the submission can be found that the Referral was filed on 28 December 2010, and the Applicant had been served with the last instance court decision on 11 March 2010, which means that the Referral was not filed within the time lines provided by the Article 49 of the Law.
23. It follows that the Referral is out of time.
24. Even assuming that the Referral was indeed filed within the time line provided by Article 49 of the Law. The Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is within the jurisdiction of the regular courts and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (see, mutatis mutandis, *inter alia*, *Akdivar v. Turkey*, 16 September 1996, R. J. D, 1996-IV, para. 65 also see *Resolution on Inadmissibility in Case. NO. KI-86/11 – Applicant Milaim Berisha – Request for Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev. no. 20/09, dated 1.3.2011 – issued by the Constitutional Court of Kosovo on 5 April 2012*).
25. From the facts submitted with the Referral, the Applicant has used all legal remedies available, and that the regular courts have taken into account and indeed answered the Applicant's appeals in relation to the pre-trial and main trial proceedings, admission of evidence and assessment of their veracity, and determination of the factual situation. The Constitutional Court, therefore, considers that there is nothing in the Referral which indicates that the courts hearing the case lacked impartiality or that proceedings were otherwise unfair.
26. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has been committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.
27. The mere fact that the 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, Meztur-Tiszazugi Tarsulat vs. Hungary, Judgment of 26 July 2005*).
28. For these reasons the Referral should be rejected as inadmissible.

**FOR THESE REASONS**

The Court, following deliberations on 19 June 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

**DECIDES**

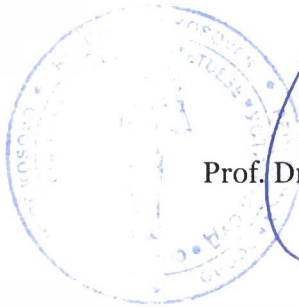
- I. TO REJECT the Referral as inadmissible;
- II. This Decision is to be notified to the Applicant; and
- III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

**Review Panel Presiding Judge**

**President of the Constitutional Court**



Robert Carolan



Prof. Dr. Enver Hasani