



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

Pristine, on 02 July 2012
Ref. no.: RK263/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 145/11

Applicant

Shkumbin Mehmeti

Constitutional review of District Court Judgment P. nr. 2003/2006, dated 9 November 2007, and judgments of the Supreme Court AP. nr. 190/2009, dated 27 January 2010, API. nr. 1/2010, dated 26 November 2010, and PKL-36/11, dated 10 August 2011.

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. Shkumbin Mehmeti, residing in Podujeva, represented by Teki Bokshi, a lawyer.

Challenged decision

2. The Applicant challenges the District Court Judgment, P. nr. 2003/2006, dated 9 November 2007, and judgments of the Supreme Court AP. nr. 190/2009, dated 27 January 2010, API. nr. 1/2010, dated 26 November 2010, and PKL-36/11, dated 10 August 2011.

Subject matter

3. Applicant's Referral relates to the alleged violation of the right to fair and impartial trial, the right of the accused, and the right to effective legal remedies, of the Constitution, in relation to the criminal offence pursuant to the filed indictment – aggravated murder and attempted aggravated murder.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (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").

Proceedings before the Court

5. On 10 November 2010, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Court").
6. On 17 January 2012, the President, by Decision Nr. GJR. 145/11, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President, by Decision Nr. KSH. 145/11, appointed the Review Panel composed of judges: Ivan Čukalović (Presiding), Gjyljeta Mushkolaj (member) and 3. Iliriana Islami (member).
7. On 18 January 2012, the Court, through the Secretary General, notified Applicant's representative and requested additional information from him. The Supreme Court of Kosovo and the District Court in Prishtina were also notified on the same date.
8. On 30 January 2012, Applicant's representative submitted documents requested by the Court.
9. On 8 May 2012, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

10. On 9 November 2007, the District Court in Prishtina issued Judgment P. nr. 203/2005 finding the Applicant guilty of the criminal offences he was charged with: "aggravated murder", carried out in complicity with the others, "attempted murder" and "unauthorized weapons possession". The Applicant was sentenced to 30 years of imprisonment for the offences he was charged with. Time he had been held in detention on remand from 7 April 2004 until the judgment became final had been included in the pronounced sentence. Applicant's father, Mr. Gani Mehmeti, filed an appeal against this judgment with the Supreme Court of Kosovo.

11. On 27 January 2010, the Supreme Court issued Judgment AP. nr. 190/2009, rejected Applicant's father's appeal, Mr. Gani Mehmeti, rejected Applicant's appeal as ungrounded and partially approved the appeal of Applicant's lawyers, amended the Judgment of the District Court in Prishtina, P. nr. 203/2005, dated 9 November 2009, counts (a) and (b) in the enacting clause of this Judgment have been qualified as one (1) count of aggravated murder and aggravated attempted murder pursuant to Article 30, paragraph 2, subparagraph (6) of the Criminal Code of Kosovo (CCK) in conjunction with Articles 19 and 22 of the Criminal Code of SFRY (CC SFRY), the pronounced sentence for both counts amounts to thirty (30) years, whilst the aggregated sentence for all counts is thirty (30) years of imprisonment. On 30 March 2006, the Supreme Court transformed the twelve year prison sentence pronounced by the District Court in Peja Judgment P. nr. 126/2005, dated 3 Augusts 2005, into an aggregated sentence of thirty (30) years of imprisonment. Applicant's detention on remand has been confirmed by this court until the judgment became final through a special resolution. An appeal could be lodged against this judgment.
12. On 8 March 2010, Applicant's defense filed an appeal against Judgment AP. nr. 190/2009, followed by Applicant's father, who filed an appeal on 18 March 2010, and by the Applicant himself, who filed an appeal on 12 April 2010.
13. On 26 November 2010, the Supreme Court issued Judgment API. 1/2010; it rejected as ungrounded the appeal of 8 March 2010 filed by Applicant's lawyer; it rejected as ungrounded the appeal of 18 March 2010 filed by Applicant's father, Mr. Gani Mehmeti; and it also rejected Applicant's appeal filed on 12 April 2010. This court confirmed Judgment AP. nr. 190/2009 as fair and in accordance with applicable laws in the Republic of Kosovo.
14. On 21 February 2011, Applicant's defense filed a request for the protection of legality against: District Court of Prishtina Judgment, P. nr. 203/2005, dated 9 November 2007; Supreme Court of Kosovo Judgment AP. nr. 190/2009, dated 27 January 2010, and API. nr. 01/2011, dated 26 November 2010.
15. On 5 July 2011, the Supreme Court rejected as ungrounded the request for the protection of legality filed by Applicant's defense, and confirmed the judgment of the Supreme Court pursuant to Article 456 of PCKK. This Court rejected all allegations of the defense regarding the violation of essential provisions of the criminal procedure, analyzing them separately, and it came to the conclusion that the request for the protection of legality was ungrounded.

Applicant's allegations

16. The Applicant claims that the judgment of the District Court and judgments of the Supreme Court have violated his Constitutional rights guaranteed by: Article 21 [General principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 24 [Equality Before the Law], Article 27 [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment], Article 29 [Right to Liberty and Security], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], and Article 33 [The Principle of Legality and Proportionality in Criminal Cases] of the Constitution.
17. Among other things, the Applicant claims that regular courts have violated essential provisions of the criminal proceedings; he claims that the trial was unfair and biased, that the right to effective legal remedies has been violated, courts did not have direct evidence that the Applicant belonged to the assaulters' group.

Assessment of the admissibility of the Referral

18. 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 and the Rules of Procedure of the Court.
19. The Court should first determine if the Applicant is an authorized party to submit a Referral with the Court pursuant to the requirements of Article 113.7 of the Constitution and Article 47.2 of the Law. The Applicant is currently serving the sentence, and he has authorized his representative (lawyer) to represent him in the court. His representative has furnished the Court with a power of attorney and substantiated that he is an authorized party pursuant to Article 21 of the Law and complied with the requirements of Article 113.7 [Individual Referrals] of the Constitution.
20. The Court also determines if the Applicant has tried to meet the requirements of Article 47.2 of the Law. Since the Applicant has submitted sufficient evidence that he has met the requirement for the exhaustion of legal remedies, the Court considers that the Applicant has met requirements of Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36.1 (a) of the Rules of Procedure.
21. The Applicant should also prove he has met requirements of Article 49 of the Law concerning the timely submission of the Referral. It can be seen from the case file that the final decision on Applicant's case is the Judgment of the Supreme Court, PKL-36/11, dated 5 August 2011, served on the Applicant on 10 August 2011, whilst the Applicant submitted the Referral with the Court on 10 November 2011, meaning that the Referral was submitted within the four month deadline prescribed by law.
22. The Court also determines if the Applicant has specified and clarified in his Referral what rights and freedoms he claims to have been violated, by what act and by what court or public authority. In his Referral the Applicant has mentioned the alleged violations of the constitutional provisions. But the Applicant should provide convincing arguments that facts he claims to have brought to the violation of his rights and freedoms guaranteed by the Constitution incontestably constitute, in their essence, elements of the violation of any right.
23. In this regard, the Court refers to the Rule 36.1 item (c) of the Rules of Procedures, which clearly determines that :

*"(1) The Court may only deal with Referrals if:
c) the Referral is not manifestly ill-founded."*
24. In the present case, the Applicant has failed to prove that alleged violations of the constitutional rights mentioned in the Referral constitute incontestable elements of the violation/violations of his rights. So, one of the admissibility requirements is if the Referral is not manifestly ill-founded so that the Court can go into its merits.
25. The Court goes into the grounds of the Referral only when it considers that the party has met formal and procedural requirements to proceed further with the Referral, so, based on this fact, the Court cannot go into the merits of the case because the alleged violations of the Constitution and Human Rights Convention do not meet the requirements of the admissibility of the Referral pursuant to Article 46 of the Law and Rule 36.2 (b) and (d) of the Rules of Procedure of the Court.

26. It is, therefore, not the task of the Constitutional Court to assess the legality and accuracy of decisions issued by competent court institutions, unless there is convincing evidence that such decisions have been rendered in an unfair and unclear manner
27. As far as alleged violations of constitutional rights are concerned, it is the task of the Court to analyze and assess if proceedings, in their entirety, have been fair and in compliance with the protection explicitly determined by the Constitution, so, the Constitutional Court is not a fourth instance of appeal, it has no jurisdiction to reopen court proceedings or replace regular court decisions with its conclusions.
28. There is no evidence that the District Court in Prishtina and the Supreme Court have incorrectly assessed and analyzed the evidence submitted by the Applicant. In fact, the Applicant has failed to reason his Referral that regular courts have committed a violation of Articles 21, 22, 24, 27, 29, 31 and 32 of the Constitution of the Republic of Kosovo and European Convention on Human Rights.
29. Because of said reasons, the Court finds that Applicant's Referral is manifestly ill-founded and it should be rejected as inadmissible (*see Resolution on Inadmissibility of 17 June 2010, Case No. KI 13/09, Sevdail AVDYLI, against Supreme Court Judgment A. No. 533/2006 of 11 September 2006, and Supreme Court Judgment A. No. 533/2006 of 2 December 2006*).
30. With that said, it results that the Referral has not met the formal admissibility requirements, as required by Article 46 of the Law and Rule 36.2 (b) and (d) of the Rules of Procedure because the Applicant has failed to prove that alleged violations constitute sufficient grounds in order for the Court to deal with the merits of the case.
31. It follows that Applicant's Referral is considered inadmissible pursuant to Article 113.7 of the Constitution, Article 20 of the Law, Rule 56.2 of the Rules of Procedure.

FOR THESE REASONS

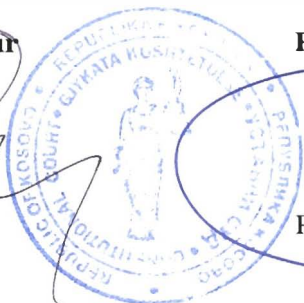
The Constitutional Court, pursuant to Article 46 of the Law on the Constitutional Court, Rule 36.2 (b) and (d) of the Rules of Procedure, on 8 May 2012, unanimously:

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 on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. dr. Enver Hasani