



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

Pristine, 23 January 2012
Ref. No.: RK188/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 14/11

Applicant

Baki Musa

**Constitutional Review of the Decision of the Supreme Court, Pzd. no. 135/2010,
dated 21 January 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. Baki Musa residing in Bernice e Eperme, Municipality of Pristina.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court, Pzd. no. 135/2010, of 21 January 2011, which was served on the Applicant on 1 February 2011.

Subject matter

3. The Applicant alleges that the decision of the Supreme Court is in violation of Articles 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").

Legal basis

4. Article 113.7 of the Constitution, Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121), (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").

Proceedings before the Court

5. On 8 February 2011, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 2 March 2011, the President, by Order No. GJR. 14/11, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Order No. KSH. 14/11, appointed the Review Panel composed of Judges Snezhana Botusharova (Presiding), Enver Hasani and Ivan Čukalović.
7. On 4 May 2011, the Court communicated the Referral to the Supreme Court.
8. On 8 July 2011, the Court requested additional documents by the Applicant, which replied on 1 August 2011 submitting the requested documents.
9. On 23 November 2011, 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 facts

10. On 24 July 2002, the Public Prosecutor filed an indictment with the Municipal Court in Pristina against the Applicant for the commission of the criminal act of having inflicted serious and light body injury upon a third party.
11. On 18 February 2003, the Municipal Court in Pristina rendered a judgment finding the Applicant guilty of having committed the criminal offence he was indicted with and sentenced him to eight months imprisonment (Judgment P.no. 1643/2002). The Applicant complained of this Judgment to the District of Pristina.
12. On 20 May 2005, the District Court in Pristina changed the Judgment of the Municipal Court and sentenced the Applicant to six months imprisonment (Judgment Ap.no. 438/2003). The Applicant complained of this Judgment to the Supreme Court.
13. On 2 November 2005, the Supreme Court of Kosovo annulled the Judgment of the District Court and sent it back to the District Court for retrial (Judgment Pkl.no. 34/2005). The Supreme Court concluded that the judgment of the District Court was in

violation of Article 403 (2) (1) of the Criminal Procedure Code, since the complaint of the public prosecutor had not been communicated to the Applicant.

14. On 20 March 2006, the District Court retried the case and rendered a Judgment, sentencing the Applicant to six months imprisonment (Judgment Ap.no. 83/2006). The Applicant again complained the Judgment of the District Court to the Supreme Court.
15. On 15 January 2009, the Supreme Court annulled the Judgment of the District Court and sent it back for retrial (Judgment Pkl.no. 1/2009). The Supreme Court again concluded that the judgment of the District Court was in violation of Article 403 (2) (1) of the Criminal Procedure Code, since the complaint of the public prosecutor had not been communicated to the Applicant.
16. As a result, the District Court forwarded the complaint to the Applicant for comments. On 2 December 2009, the District Court decided to change the Judgment of the Municipal Court and to sentence the Applicant to six months imprisonment (Judgment Ap.no. 68/2009). Again the Applicant complained against this Judgment to the Supreme Court requesting a reduction of sentence.
17. On 21 January 2011, the Supreme Court rejected as unfounded the request of the Applicant to reduce the sentence. The Supreme Court concluded that there were no new circumstances justifying a reduction in sentence and that the pronounced judgment of the District Court was just and based on the law (Decision Pzd.no. 135/2010).

Applicant's allegations

18. The Applicant alleges a breach of Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution, for the reason that the Municipal Court and the District Court rendered a judgment with procedural errors, the complaint of the public prosecutor not having been communicated to him.

Assessment of the admissibility of the Referral

19. The Applicant alleges a breach of Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution, for the reason that the Municipal Court and the District Court rendered a judgment with procedural errors, the complaint of the public prosecutor not having been communicated to him.
20. However, in order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
21. In this respect, the Court notes that an Applicant can not complain that the regular courts have committed errors of fact or law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution.
22. In this connection, the Constitutional Court emphasizes that it is not a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).

23. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, mutatis mutandis, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87 adopted on 10 July 1991).
24. As to the present case, the Court notes that the District Court, Judgment Ap.no. 68/2009 of 2 December 2009, implemented the Judgment of the Supreme Court by forwarding the complaint of the public prosecutor to the Applicant for comments. Furthermore, the Supreme Court, by Decision Pzd.no. 135/2010 of 21 January 2011, concluded that there were no new circumstances justifying a reduction in sentence and that the pronounced judgment of the District Court was just and based on the law.
25. In this respect, the Court considers that the Applicant has not shown in which manner the Decision of the Supreme Court was unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no_ 17064/06 of 30 June 2009 and Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005) and amounted to an infringement of the constitutional rights invoked by the Applicant.
26. In these circumstances, the Referral is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*
27. Accordingly, the Applicants' Referral must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (1.c) and Rule 56 (2) of the Rules of Procedure, on 23 November 2011, unanimously

DECIDES

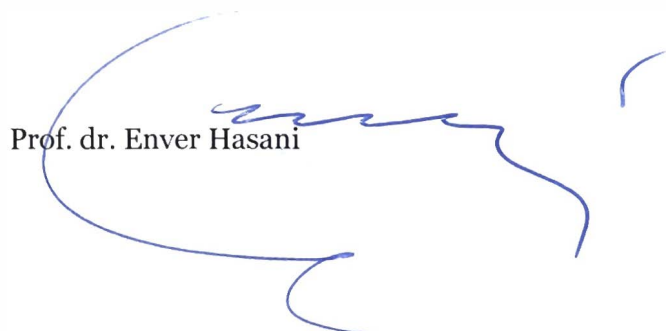
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately.

Judge Rapporteur



Kadri Kryeziu

President of the Constitutional Court



Prof. dr. Enver Hasani