



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

Pristine, 04 May 2012
Ref. No.: RK230/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 155/11

Applicant

Avni Sahiti and other members of the Sahiti family

Request for review of the judgment of the Municipal Court in Viti no. 22/2004 dated 28 May 2007, the judgment of the District Court in Gjilan no. 323/2007 dated 26 October 2007 and the judgment of the Supreme Court of Kosovo no. 52/2008 dated 10 June 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.

The Applicant

1. The Referral was filed by Avni Sahiti from Lubishte in Viti (hereafter, the "Applicant") in his own name and on behalf of the relatives of Binaze Sahiti and Mergim Sahiti. The Applicant is the uncle of the deceased Binaze Sahiti.
2. The Applicant believes that he and all of his family members, in total 27 of them, have been deprived of the right to compensation as a result of the decisions of the lower courts by deciding not to grant compensation to all family members, including extended relatives, but to limit compensation to the parents and siblings of the victim.

Legal basis

3. The Referral is based on Articles 113 (1) and 113 (7) of the Constitution, Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the “Law”), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the “Rules”).

Proceedings before the Court

4. On 1 December 2011, the Applicant submitted to the Court a Referral registered under no. KI 155/11.
5. On 17 January 2012, the President appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.
6. On 19 April 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 facts

7. On 10 September 2002, the Municipal Court in Viti handed down its judgment (no. P.o. 92/2002) finding A.B. guilty of a traffic offence resulting in the death of Binaze Sahiti and causing serious injury to Mergim Sahiti. A.B. was sentenced to 18 months in prison.
8. A.B. held motor vehicle insurance with “Kosovo e Re”. The immediate and extended family members of Binaze Sahiti and Mergim Sahiti filed a claim for compensation from the insurance company for the “spiritual and physical pain” resulting from the loss of their family member, Binaze Sahiti, and pain associated with the injury caused to Mergim Sahiti. The father of the deceased also claimed for the cost of medical treatment incurred from the time of the accident up to 29 May 2002, when Binaze Sahiti died in hospital. Other expenses claimed included the burial cost and the cost of erecting a memorial.
9. On 27 November 2003, the Municipal Court in Ferizaj concluded that it did not have jurisdiction over the compensation matter and ruled that the case be sent to the Municipal Court in Viti.
10. On 28 May 2007, by judgment no. 22/2004, the Municipal Court in Viti ordered the insurance company to pay compensation to only some of the claimants, namely the immediate family members. The Municipal Court came to its decision pursuant to Article 154 of the LCP by considering the statement of claim, the forensic evidence and the representations made in court by the parties. Having assessed the claims, the Municipal Court decided not to grant the full amount claimed.
11. The claimants then filed an appeal with the District Court in Gjilan against the decision of the Municipal Court, in relation to the compensation awarded to them. The claimants argued that the Municipal Court had wrongly applied the substantive law, violated procedural provisions and had made an incomplete determination of the factual situation.
12. On 26 October 2007, by judgment no. 323/2007, the District Court in Gjilan evaluated the appeal and rejected it as partly ungrounded. The District Court affirmed the decision of the Municipal Court in Viti. Unsatisfied with the outcome in

the District Court, the claimants filed the revision with the Supreme Court of Kosovo against the District Court decision.

13. On 10 June 2011, by decision no.52/2008, the Supreme Court of Kosovo rejected the revision as ungrounded because the adjudicated amounts awarded to the claimants (the parents and siblings) by the District Court were in compliance with the substantive and procedural provisions. Therefore, the District Court was held to have applied the law in a correct manner. Furthermore, the Supreme Court found no violations of the procedural provisions by the Municipal and District Courts.
14. In its reasoning the Supreme Court specify as follows: “[T]his court evaluates that the courts of lower instances have applied the substantive law in a right miner also in the part of the claimant of claim of other claimants when they found that it is totally ungrounded, because pursuant to Article 201 par 1 of the Law on Obligations, is provided that in case of death of a person, the court may entitle the member of his close family (spouse, children and parents) the right to compensation with the money for their spiritual pain, while with para 2. of the same article is foreseen that this compensation can be adjudicated to brothers and sisters, if between them and the dead person existed continuous cohabitation. In this case the claimants do not belong to the close family of the late and the conditions par.2 of the same law were not fulfilled.”

Applicant’s allegations

15. The Applicant alleges that the extended family of Binaze Sahiti are also entitled to compensation because they lived “in family union” based on “Albanian (Kosovar) habits, customs and traditions” and therefore the extended relatives are all entitled to compensation, not just the parents and siblings, since they are a “big family” who have all suffered loss.
16. The Applicant also alleges that the insurance company should have responded to his request for payment to send Binaze Sahiti overseas for medical treatment which may have saved her life.
17. The Applicant claims that the lower courts violated court procedures from the commencement of proceedings in the District Court up to the final decision of the Supreme Court. The Applicant alleges the courts have violated the Constitution without specifying any particular article.

Assessment of admissibility

18. In order to be able to adjudicate the Applicant’s referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements.
19. In this regard, the Court refers to Rule 36 (1) (a) and (c) of the Rules which state that the Court may only deal with referrals if all effective remedies available under the law have been exhausted and the referral is not manifestly ill-founded. Rule 36 (2) provides that the Court shall reject a Referral as being manifestly ill-founded when it is satisfied that (a) the Referral is not prima facie justified; (b) when the facts do not in any justify the allegation of a violation of the constitutional rights; (c) when the Applicant is not a victim of a violation of rights guaranteed by the Constitution; or (d) when the Applicant does not sufficiently substantiate his claim.
20. It is evident from the Referral that the Applicant is asking the Court to review the decisions of the lower courts in relation to the adequacy of compensation awarded to

the Sahiti family as well as the decision not to compensate the Applicant and the extended family members.

21. The Court must reiterate that that it is not a court of fourth instance and therefore it cannot retry cases or assess the facts which have led the lower courts to adopt one decision rather than another.
22. This Referral stems from a misapprehension of the Court's role. The Court may not assess the facts that led to the decisions of the lower courts unless there has been a flagrant and manifestly arbitrary conclusions reached by the courts resulting in the infringement of an individual's rights and freedoms protected by the Constitution (*Sisojeva and Others v. Latvia*, Decision of ECHR, No. 60654/00 of 15 January 2007).
23. After reviewing the proceedings in its entirety, there is no evidence that the decisions from the lower courts were in any way incorrect or arbitrary (see *mutatis mutandis*, *Shub vs Lithuanis*, Decision of ECHR on admissibility of request, No. 17064/06 of 30 June 2009).
24. Furthermore, the Applicant has failed to substantiate the allegation that the decisions of the lower courts violated his or his family's constitutional rights and freedoms.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113(7) of the Constitution and Rule 36 of the Rules, unanimously:

DECIDES

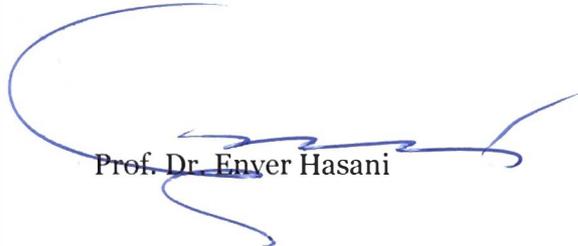
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur



Robert Carolan

President of the Constitutional Court



Prof. Dr. Enver Hasani