



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

Pristine, 11 June 2012
Ref. No.: RK250/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI46/10

Applicant

Sebahate Shala
on behalf of the Organizational Council
“Justice for the Kiqina case”

Constitutional Review of Judgment P. nr. 162/03 dated 7 April 2005 of the District Court in Gjilan Judgment P.nr.628/04 dated 8 March 2007 of the District Court in Prishtina, Judgment of the Supreme Court Ap.nr.393/2006 dated 21 May 2008, Judgment API. Nr. 04/2009 dated 16 September 2009 of the Special Criminal Panel of the Supreme Court and Judgment of the Supreme Court Ap.nr.84/09 dated 3 December 2009

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 Mrs. Sebahate Shala from Krajkovë Glllogovc who files the Referral based on the authorization of the Organizational Council “Justice for the Kiqina case”. The Applicant has submitted to the Constitutional Court (hereinafter: the “Court”), a petition with the signatures of approximately fifty-thousand (50.000) citizens of the Republic of Kosovo in support of its Referral with the Court.

2. The Organizational Council "Justice for the Kiqina case" is comprised of students from Prishtina University, the Council for Protection of Rights of UCK fighters, activists from civil society, and others.
3. The Referral states that the Applicant is represented by Visar Zogaj, a student from Malisheva; however, she signed the Referral Form herself.

Challenged decisions

4. The Applicant challenges Judgment P. nr. 162/03 dated 7 April 2005 of District court in Gjilan, judgment P.nr.628/04 dated 8 March 2007 of the District Court in Prishtina, judgment of the Supreme Court Ap.nr.393/2006 dated 21 May 2008 Judgment API.nr.04/2009 dated 19 September 2009 of the Special Criminal Panel of the Supreme Court and judgment of the supreme Court Ap.nr.84/09 dated 3 December 2009.

Subject matter

5. The subject matter, according to the Applicant, is the alleged wrongful conviction of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina for serious crimes, including murder. The Applicant states that she represents an organization which claims that the convictions for murder and other serious offences of certain named persons, "the Kiqina cases", amounted to serious violations of human rights.

Legal basis

6. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (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

7. On 25 June 2010, the Applicant submitted this Referral with the Court.
8. On 29 June 2010, Arben Kiqina filed a Referral with the Court which was registered on the same date under no. KI52/10.
9. On 29 March 2011, Jeton Sefer Kiqina filed a Referral with the Court which was registered on the same date under no. KI 43/11.
10. On 7 June 2011 Burim Ramadani, Arsim Ramadani, Arben Kiqina and Blerim Kiqina submitted to the Court a Referral registered under no. KI 78/11.
11. On 13 June 2011, Burim Ramadani and Arsim Ramadani submitted to the Court a Referral registered under no. KI 81/11.
12. On 11 November 2010, the President, appointed Judge Snezhana Botusharova as Judge Rapporteur in this Referral, KI 46/10. On the same date, the President appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Cukalovič.
13. On 19 July 2011, the President, by order BK-46/10, joined all of these separate Referrals KI46/10, KI52/10, KI43/11, KI78/11 and KI81/11, due to the relationship of one another as to subject matter and as to the persons making the Referrals. . The

Judge Rapporteur and the Review Panel remained the same as was appointed for this Referral.

14. On 14 May 2012, due to the temporary unavailability of Judge Ivan Čukalović, the President appointed himself, Enver Hasani, as a replacement Judge on the Review Panel.
15. On 15 May 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.

Summary of facts according to the Applicant's documents filed with the Court

16. From the Referral and the documents submitted therewith the following brief summary of facts can be ascertained.
17. In the evening of 20 August 2001, H H together with his wife and children attended a wedding in the village of Baicë. After leaving the wedding, later that night his vehicle was ambushed and he, his wife, his son and two daughters were shot to death. One young daughter survived.
18. On 4 July 2002, Blerim Kiqina was questioned as a witness by the Kosovo and International Police whereby he gave an incriminating statement against himself and others that were allegedly involved in the murders. The incriminating statement of Blerim Kiqina was video recorded.
19. On 7 July 2002, Blerim Kiqina repeated the incriminated statement which he gave on 4 July 2002, before the investigating judge.
20. The investigation procedure led to the indictment and trial of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina and others.
21. On 7 April 2005, the District Court in Gjilan by way of Judgment P. nr. 162/03, found Burim Ramadani, Arsim Ramadani, Arben Kiqina and several other accused persons guilty of the murder, attempted murder and complicity in the criminal act of murder of H H and his family. Burim Ramadani, Arsim Ramadani and Arben Kiqina were all individually sentenced with imprisonment for 30 years. Some charges were dismissed in that court process.
22. The Defendants appealed that conviction and on 20 May 2008, the Supreme Court of Kosovo in its Judgment, Ap.nr.393/2006, rejected the appeal of Burim Ramadani, Arsim Ramadani and Arben Kiqina as ill-founded and it upheld the conviction of the District Court in Gjilan, whereas for the rest of the accused the Supreme Court acquitted them because it could not be verified that they had committed the criminal acts for which they were charged.
23. On 16 September 2009, the Special Criminal Panel of the Supreme Court, by way of Judgment API. Nr. 04/2009, rejected a further appeal lodged by Burim Ramadani, Arsim Ramadani and Arben Kiqina against the above-mentioned Judgment of the Supreme Court as ill-founded.

Summary of facts in relation to Jeton Kiqina according to the Applicant's documents filed with the Court

24. On 8 March 2007 The District Court in Prishtina by way of Judgment P.nr.628/04, found Jeton Kiqina guilty on several counts entailing murder, attempted murder and complicity to commit the criminal act of murder of H H and his immediate family. Jeton Kiqina was sentenced to 15 years of imprisonment.
25. On 3 December 2009, the Supreme Court of Kosovo by way of Judgment Ap.nr.84/09, partially upheld the appeal of the accused Jeton Kiqina whereby it found that the latter is guilty on the counts of murder and attempted murder but is vindicated on the count of complicity to commit the act of murder of H H and his immediate family.

Applicant's request and her allegations

26. The Applicant requests that the Constitutional Court;
 - a) To make review, analysis, and to reassess the violation of human rights against the convicted persons,
 - b) To give an opinion and make an interpretation of the violation of human rights arising from the convictions,
 - c) To give an opinion about the violation of human rights against the convicted persons,
 - d) To made a decision according to the competences of the Court if it concludes that violations have been proved against the convicted persons.
27. The Applicant maintains that the following Articles of the Constitution have been violated; Articles 21 [Fundamental Rights and Freedoms], Article 22 [Direct Applicability of International Agreements and Instruments], Article 29 [Right to Liberty and Security], Article 31 [Right to Fair and Impartial Trial] and Article 6 of the European Convention on Human Rights (hereinafter: the "Convention").
28. The Applicant claims that none of three instances of trial has legally verified the culpability of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina.
29. The Applicant claims that in the last judgment issued in 2009, the Special Criminal Panel of the Supreme Court did not approve the appeals of the defense. The Special Criminal Panel issued a judgment which upheld the sentence, but not the accusations. The Applicant claims that the judgment in question was in contravention with the two lower trial instances, and that the rationale of the Special Criminal Panel of the Supreme Court was in contradiction with itself.
30. The Applicant claims that the main co-accused Skënder Halilaj together with Florim Kiqina and Zeqir Kiqina were set free on 12 July 2008, the said persons were accused for the same act – planning, organizing and participation in the murder of H H and his family.
31. The Applicant claims that material evidence and results of the examined evidence which proved the innocence of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina were lost and never found.

32. The Applicant claims that charges against Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina are fabricated and completely prepared beforehand by the UNMIK International Investigating Team.
33. The Applicant claims that Jeton Kiqina was sentenced to 16 years of imprisonment under the count of having supplied Florim Kiqina with weapons who later on has allegedly participated in the murder of H H. However, F K was found not guilty by the Supreme Court of Kosovo in July 2008, whereas the “supplier” of weapons – Jeton Kiqina is still in jail. The District Court in Gjilan had sentenced F K to 21 years of imprisonment, under the count of planning, organizing and participating in the murder of H H and his family.
34. The Applicant claims that at the time the murder of H H occurred on 20 August 2001, at 23:17 hrs, according to the KFOR registration, this group of lads was celebrating the birthday of Burim Ramadani, in a local bar in Glllogvc. There were also present three policemen, who heard on radio-connection the news of a terrible murder which had occurred in the village of Tërstenik in Glllogvc. This news was allegedly heard by everybody that was celebrating.
35. The Applicant claims that Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina were denied the right to fair trial in contravention to Article 31 of the Constitution in connection with Article 6 of the Convention.
36. Furthermore, the Applicant asks the Court to give an opinion and interpretation about the alleged violation of human rights and injustice incurred against Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina.

Preliminary assessment of the admissibility of the Referral

37. In order to be able to adjudicate the Applicant’s Referral, the Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
38. The first and the foremost admissibility criteria that the Court examines in relation to the instant and indeed any Referral brought before it is to ascertain whether the Applicant has filed the Referral within the view of Article 113.1 of the Constitution which stipulates:

“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties”.

39. In the instant case, the Applicant has filed a Referral with the Court on behalf of the Organizational Council “Justice for the Kiqina case” concerning the convictions of Burim Ramadani, Arsim Ramadani, Arben Kiqina and Jeton Kiqina, however it has not submitted documentation from the said persons which ought to expressly authorize the Applicant to represent them before this Court.
40. The Court notes, that in the instant case, the Applicant does not have *locus standi* before it, because the Applicant did not meet the procedural requirements of Article 113.1 of the Constitution, meaning that the Referral was not filed in a legal manner by an authorized party.
41. In relation to the petition signed by approximately fifty-thousand (50.000) citizens of the Republic of Kosovo filed with the Court by the Applicant in support of the Referral, the Court notes that it does not have jurisdiction to deal with Referrals which are *actio*

popularis, meaning that normative acts and decisions cannot be challenged in the abstract and that parties before this Court must show that they are directly affected by the challenged normative act and/or decision and indeed must be an authorized party before this Court in accordance with Article 113 of the Constitution which regulates the jurisdiction of the Court and provides legal basis for the Applicants to file Referrals before this Court.

42. This Court in the case of Referral Case No. KI51/10, Zivic Ljubisa, Constitutional Review of the Decision of President of the Republic of Kosovo on the appointment of Mr. Zdravkovic Goran as a member of the Central Election Commission representing the Serbian Community, dated 2 March 2012, stated as follows;

“A person who is not affected in this manner does not have standing as a victim since the Constitution does not provide for actio popularis. In other words, an Applicant cannot complain in the abstract about measures by public authorities which have not been applied to them personally, such as is the case before this Court.”

43. As in that case the Applicant in this case is not affected by the convictions in the Courts of Kosovo and therefore is not an authorized party and the Referral must be rejected as inadmissible.

FOR THESE REASONS

The Court, following deliberations on 15 May 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

DECIDES

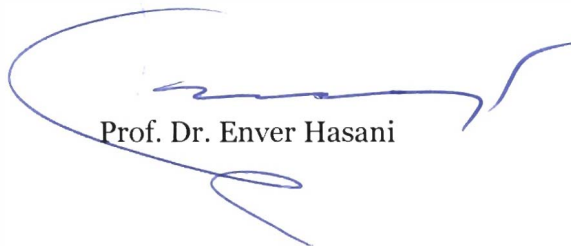
- I. TO REJECT the Referral as inadmissible,
- II. This Decision is to be notified to the Applicant, and
- III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Prof. Dr. Enver Hasani