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

Pristina, 12 June 2017
Ref.No.: RK 1089/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 50/15

Applicant

Florim Leci

Constitutional review of Judgment Pml. no. 230/2014 of the Supreme Court of 4 December 2014

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral is submitted by Mr. Florim Leci (hereinafter: the Applicant), residing in village Gmica, Municipality of Kamenica. The Applicant is represented by Mr. Shabi Sh. Isufi, a practicing lawyer from Gjilan.

Challenged decision

2. The Applicant challenges Judgment Pml. no. 230/2014 of the Supreme Court of 4 December 2014, which was served on the Applicant on 18 December 2014.

Subject matter

3. The subject matter is the constitutional review of Judgment Pml. no. 230/2014 of the Supreme Court, by which, allegedly, Article 31 [Right to Fair and Impartial Trial] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the "ECHR") have been violated.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 17 April 2015, the Applicant submitted the Referral by post to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 20 April 2015, the Referral was registered by the Court.

7. On 2 June 2015, the President of the Court, by Decision No. GJR. KI 50/15, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI 50/15, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Bekim Sejdiu.

8. On 5 June 2015, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.

9. On 2 November 2016, the President appointed Judge Altay Suroy to replace Robert Carolan on the Review Panel.

10. On 28 March 2017, 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

11. On 12 March 2012, one person was murdered and several others were injured during a robbery at a private residence. The robbery was committed by more than one person.

12. On the same day, the Forensics Unit of the police inspected the crime scene and produced a report.

13. On the same day, the Applicant and two other persons were taken into pre-trial detention accused of having committed the criminal act.

14. On 3 April 2012, the District Prosecutor questioned the Applicant about the robbery. The Applicant requested DNA testing be performed on the blood stains and the clothes of the victims and the suspects so that the factual situation could be determined (Minutes PPH. No. 65/2012).

15. On 11 June 2012, at the hearing session on the extension of his detention, the Applicant repeated his request for DNA testing (Minutes PPr. No. 27/12).

16. On 8 October 2012, the District Public Prosecutor's Office filed an Indictment (PP. no. 65/2012) with the District Court in Gjilan against the Applicant for having committed the criminal offence under Article 256, paragraph 2 [Grave Cases of Theft in the Nature of Robbery or Robbery], as read in conjunction of Article 23 of the Provisional Criminal Code of Kosovo (hereinafter: the "PCCK").

17. On 22 November 2012, the hearing session confirming the Indictment was held. The Applicant requested DNA testing at this hearing session confirming the Indictment. Specifically, the Applicant proposed comparing the blood samples of the victim, the injured party and that of the suspects. This testing would be vital, according to the Applicant, in order to determine the correct factual circumstances, given that there are substantial contradictions between the statements of the co-accused.

18. On the same day, the District Court in Gjilan (Judgment P. (k.a.) No. 171/12) confirmed the indictment of 8 October 2012 (PP. no. 65/2012). In its decision, the District Court in Gjilan did not address the Applicant's request for DNA testing that was raised during the hearing session.

19. On 25 January 2013, the Applicant addressed the Basic Court - Department for Serious Crimes requesting a direct examination of the Applicant by a committee of medical experts to determine whether a person suffering from Type I Diabetes, at the level of severity of the Applicant, would be physically capable to undertake the actions necessary for committing the criminal offence.

20. On 9 February 2013, the Applicant addressed the Basic Prosecutions Office - Department for Serious Crimes with a submission requesting an examination of the Applicant by a committee of medical experts in order to determine the factual circumstances of the criminal offence.

21. On 19 June 2013, the University Clinical Center of Kosovo (hereinafter: the UCCK), as requested by the Basic Court in Gjilan, submitted to the Basic Court in Gjilan a medical report with respect to the Applicant. The Court had required the Commission of Doctors to give their expert opinion as to whether the accused person (the Applicant) was able to undertake the actions which he

is charged with in the Indictment, taking into account also the medical diagnosis under which he is treated.

22. The medical report ascertained, *inter alia,* the following:

> *1. "[The Applicant], born on 27.03.1993, in October 2010 was diagnosed with type I diabetes, a lifelong disease, which requires the application of insulin permanently for survival, as prescribed by the endocrinologist.*
>
> *2. The disease, when well controlled, enables good physical and mental skills. [...]*
>
> *3. [...] It is impossible to conclude how it was at the time of the offense the blood glucose due to a stressful situation and whether he received in advance insulin. Since the act of theft in question was premeditated and prepared, it is difficult to believe that the accused committed the criminal act without taking insulin and without knowing the blood glucose level.*
>
> *4. [The Applicant] after 2 years with diabetes and acquaintance with hypoglycemia, including subjective signs, seems not likely that he has put himself in such a situation. [...]*
>
> *5. [...]"*

23. On 9 September 2013, the Applicant again addressed the Basic Court - Department for Serious Crimes with a submission objecting to the medical report of the UCCK on the grounds that the Applicant was not directly examined. The Applicant further requested that the Basic Court - Department for Serious Crimes act in accordance with his request dated 25 January 2013, for a direct examination.

24. On 13 September 2013, the Applicant addressed the Presiding and Members of the Trial Panel of the Basic Court - Department for Serious Crimes (P.No. 2006/12), objecting to the expertise performed by the UCCK on grounds that the conclusions of the report are untenable and unfounded given that the Applicant was not examined directly. Furthermore, the Applicant, in his submission addressed to the Presiding and Members of the Trial Panel of the Basic Court - Department for Serious Crimes (P.No. 2006/12), repeated his request for DNA testing, stating that,

> *"[...] based on the proposal made to the pre-trial Judge on 11 September 2012, and, necessarily, the proposal made earlier to the Prosecutor on 03 April 2013, because the explanation according to which the traces do not exist or have been lost, is of no importance to us, because this explanation is incomplete and ungrounded. The explanation according to which the decisive evidence from the crime scene is also ungrounded, because the Prosecution and the Police should give grounded and fact-based explanation. The Defense cannot be satisfied in this case by the response that the pieces of evidence are missing and keep silent before this ungrounded explanation, as, unfortunately, the crime is serious, while the Accused, in their statements, contradict each other."*

25. On 23 December 2013, the UCCK, as requested by the Basic Court in Gjilan, submitted to the Basic Court in Gjilan a forensic-psychiatric report in respect of the Applicant. The Court had required the Commission of Doctors to give their opinion as to whether the accused person (the Applicant) was able to undertake the actions which he is charged with in the Indictment, taking into account also the diagnosis under which he is treated.

26. The report ascertained, *inter alia,* the following:

    1. *"During the ambulant psychiatric examination, it was not ascertained that he suffers from any mental disease of a permanent or temporary nature. No other mental disease has been found.*

    2. *[...]*

    3. *Regarding personality characteristics: calm, does not manifest irritability, different concerns. He is very concerned and critical for the situation.*

    4. *There is no reduction of liability for the criminal offence which he is charged with.*

    5. *He can participate in the court session. His testimonies are valid.*

    6. *[...]"*

27. On 27 December 2013, the Basic Court in Gjilan - Department for Serious Crimes (Judgment P. No. 206/2012) found the Applicant guilty of having committed the criminal offence under Article 256, paragraph 2 [Grave Cases of Theft in the Nature of Robbery or Robbery], as read in conjunction of Article 23 of the PCCK.

28. With regard to the Applicant's claim of inability to commit the offence due to his Type I Diabetes, the Basic Court concluded that, based on the report compiled by the UCCK, "*since the act of the theft in question has been premeditated and prepared, it is difficult to believe that the [Applicant] has gone to commit the criminal offence without taking and without knowing the level of glycemia.*"

29. The Court, in the main hearing session, heard the Injured Party, Witnesses, and the Forensics Expert, reviewed the Photo-album NJHR-0048/2012 of 12 March 2013 compiled by the Forensics Unit from the crime scene and the sketch of the crime scene; reviewed the photo-album of the reconstruction of the crime scene and Report no. NJHR-0048/12 on the Criminal Scene Inspection, of 03 July 2013; reviewed the CD taken from the photo cameras; read the Autopsy Report, as well as Photo-album MA. no. 12/050 on Abduction, of 12 March 2012; read the Forensics Expertise Report for the Injured, compiled by the Service Office N.SH.Uka. no. 028/050, of 02 October 2012; read the Forensics Expertise Report no. 3539 of the UCCK,

Endocrinological Clinic, of 028/2013, for the [Applicant]; it read Report no. 257 of the UCCK-Psychiatry Clinic, for [the Applicant], of 23 December 2013.

30. From the witness testimonies, the Basic Court ascertained that, *"[...] a man was lying prostrate while the now Late H was hitting him with hands. He heard the person shouting:* "Do not hit me because I suffer from the sugar disease". *This fact was also confirmed by the Injured – V.K., who stated that he had heard the Injured H mentioning that the person who was there had said,* "release me because I suffer from the sugar disease". *Even the [Applicant] himself did not deny the fact that he suffers from the sugar disease."*

31. The Basic Court continues, "*The Court has also considered the Defense argument according to which the [Applicant] could not commit this criminal offence even if he wanted to, due to the diabetes and the high level of sugar and that he had taken insulin. Such defense is not based on any piece of material evidence because based on the Medical Report of the UCCK-Endocrinological Clinic in Prishtina, it was ascertained that the [Applicant] was diagnosed with type I diabetes and that if well controlled, the disease enables good physical and mental abilities and that the theft act has been premeditated and well prepared. It is difficult to believe that the [Applicant] has gone to commit the criminal offence without taking the insulin and without knowing the level of glycemia. Therefore, the Court considers that such defense of the [Applicant] has been addressed by him with the sole purpose of averting the criminal responsibility and that the actions of the [Applicant] contain all the characteristics of the criminal offence of theft or robbery, provided by Article 256, paragraph 2, as read in conjunction with Article 23 of the PCCK."*

32. Against this Judgment, the Applicant filed an appeal with the Court of Appeal. The Applicant challenged the Basic Court's rejection of the proposal for DNA analysis and contended that it "*essentially violated the provisions of the criminal procedure, pursuant to Article 403, paragraph 2, item 1 and 2 of the PCPCK*".

33. The Applicant also alleged a violation of the same provisions of the Provisional Criminal Procedure Code of Kosovo (hereinafter: PCPCK), because the court did not fairly consider his proposal of forming a committee of endocrinology experts to directly examine the Applicant, instead of the report of the experts who provided their opinion without a direct examination.

34. On 30 June 2014, the Court of Appeal (Judgment PAKR. No. 261/2014) rejected the Applicant's appeal and upheld the Judgment of the Basic Court. The Court of Appeal found each individual allegation of the Applicant untenable because the Judgment of the first instance court did not include violations of the provisions of the criminal procedure or violations of the criminal law.

35. According to the Court of Appeal, the allegations in the appeal do not stand, that the DNA analysis should be done and the consultative team of doctors for the ascertainment of the condition of the Applicant should be created for the purpose of a correct ascertainment of facts, whether the Applicant, in the

presence of his sickness – diabetes – could have undertaken the actions to commit the criminal offense for which he was found guilty. The Court of Appeals reasoned that,

> *"[...] due to the reason that both expertises of which the Appeal alleges have been conducted, and based on the expertise conducted [...], it is not contested that the [Applicant] suffers from type one diabetes, a sickness which is permanent, and based on the same expertise on the actions of the Accused for the commission of the criminal offense, in the presence of taking the insulin, the sickness can be controlled well, and the physical and mental abilities are well preserved, and it cannot be concluded that at the moment of the commission of the criminal offense, his glycemia had risen due to the situation where the [Applicant] found himself. [...] as regards the DNA analysis, it was not even necessary to be done due to the fact that the perpetrators of the criminal offense the [Applicant] and the Juvenile, as well as the Deceased and the Injured Person, who suffered severe bodily injuries, have been identified, and there was no need for a DNA analysis, because nothing new would have been confirmed by it [...]."*

36. On 15 September 2014, the Applicant filed a request for protection of legality with the Supreme Court of Kosovo against the Judgment of the Court of Appeal.

37. On 4 December 2014, the Supreme Court (Judgment Pml. no. 230/2014) rejected as ungrounded the Applicant's request for protection of legality. The Supreme Court reasoned that the majority of the Applicant's allegations against the challenged Judgments "[...] *are related to the ascertainment of the factual situation, whereas in conformity with the provision of Article 432, of CPCK, the request for protection of legality cannot be filed for this legal basis.*"

38. With regards to the Basic Court's rejection of the request for a DNA test, the Supreme Court of Kosovo found that the Basic Court in Gjilan "*provided the legal reasons, and those reasons are based on the ascertained factual situation during the procedure of administration of pieces of evidence, and the second instance court has correctly admitted them as lawful.*"

39. Furthermore, with regards to the medical expertise, the Supreme Court found that the Applicant's mental and health condition were ascertained by doctors of relevant fields and, based on these expert reports, it was ascertained that the Applicant was capable of undertaking the actions necessary for committing the criminal offence for which he was found guilty.

Applicant's allegations

40. The Applicant alleges the following:

    1. Violation of Article 31 of the Constitution:

    Specifically, the Applicant alleges that "*[...] according to the pieces of evidence which are submitted to the Constitutional Court, it results that*

the Applicant, in order to correctly ascertain the factual situation and find the truth of this criminal case, requested to perform the DNA analysis, to administer a lie-detector test, to establish a Medical Committee in order to certify the physical capabilities of the Applicant to commit the criminal offence wherefore he has been adjudicated, which were disregarded by the Prosecution, the first instance Court, and other Courts, aiming to finalize this criminal case as soon as possible, while it has not been acted in the same manner as in other cases, based on the case law, and in this manner the right for a fair and impartial trial, based on the Constitution of the Republic of Kosovo, has been flagrantly violated."

2. Violation of Article 53 of the Constitution:

Specifically, the Applicant alleges that *"[...] the fundamental human rights and freedoms, guaranteed by this Constitution, are interpreted in harmony with the judicial decisions of the European Court of Human Rights, which, in the present case, it was not acted in the same manner, because the rights of the parties to the procedure are guaranteed by the Constitution, and the courts of the state in this case should have applied the legal provisions which guarantee the equality of the parties, the human rights and freedoms, by fairly and impartially adjudicating and deciding in relation to the submissions of the Applicant in all stages of the procedure and in all the Courts whereto they have been submitted."*

Assessment of the Admissibility of the Referral

41. In order to be able to adjudicate the Applicant's Referral, the Court has to first assess whether the Applicant has met all the requirements for admissibility, which are foreseen by the Constitution, the Law and the Rules of Procedure.

42. The Court needs to determine first whether the Applicant is an authorized party within the meaning of Article 113 (7) of the Constitution, which states that,

"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."

43. In this respect, the Court notes that the Referral was submitted to the Court by an individual.

44. Furthermore, in accordance with Article 49 of the Law, an Applicant must submit the Referral within four (4) months after the final court judgment. On 4 December 2014, the Supreme Court rendered Judgment Pml. no. 230/14, whereas the Judgment was served on the Applicant on 18 December 2014. The Applicant sent the Referral by post to the Court on 17 April 2015. Therefore, the Applicant has complied with the necessary deadline for filing a referral with the Court.

45. In addition, the Supreme Court is considered as a last instance court to adjudicate the issue in this criminal proceeding. As a result, the Court also

determines that the Applicant has exhausted all the legal remedies available to him under Kosovo law.

46. Finally, Article 48 of the Law establishes that, "*In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been* violated *and what concrete act of public authority is subject to challenge.*"

47. In this respect, the Court notes that the Applicant challenges the Judgment of the Supreme Court, whereby he alleges that his rights guaranteed by Article 31 [Right to a Fair and Impartial Trial] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution and Article 6 (Right to a fair trial) of the ECHR have been violated. Therefore, the Applicant has also fulfilled this requirement.

48. However, the Court also takes into account Rules 36 (1) (d) and36 (2) of the Rules of Procedure, which provide that,

> *"(1) The Court may consider a referral if:*
>
> *[...]*
>
> *(d) the referral is prima facie justified or not manifestly ill-founded.*
>
> *(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*
>
> *(a) the referral is not prima facie justified, or*
> *(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
> *(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*
> *(d) the Applicant does not sufficiently substantiate his claim."*

49. The Court notes that the Applicant's claim relates to the manner in which the various trial courts handled the evidence in the proceedings against him. The principle claim of the Applicant concerns the consistent refusal of the regular courts to authorize a DNA analysis and a direct medical examination of his person in order to verify the factual situation of the events.

50. In this connection, the Court refers to Article 31 [Right to Fair and Impartial Trial] of the Constitution, which, in its fourth paragraph, provides that,

> *"4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence."*

51. The Court also refers to Article 6 [Right to a fair trial] of the ECHR which, in its third paragraph, provides that,

"3. Everyone charged with a criminal offence has the following minimum rights:
[...]
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;"

52. The Court observes that Article 6 (3.d) consists of three distinct elements, namely: a) the right to challenge witnesses for the prosecution (or test other evidence submitted by the prosecution in support of their case); b) the right, in certain circumstances, to call a witness of one's choosing to testify at trial, i.e. witnesses for the defense; and c) the right to examine prosecution witnesses on the same conditions as those afforded to the defense witnesses.

53. The Court recalls the consistent case-law of the European Court of Human Rights (hereinafter: ECtHR), that, *"As a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce. More specifically, Article 6 para. 3 (d) (art. 6-3-d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses, in the "autonomous" sense given to that word in the Convention system; it "does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as is indicated by the words 'under the same conditions', is a full 'equality of arms' in the matter". [...] The task of the European Court is to ascertain whether the proceedings in issue, considered as a whole, were fair as required by paragraph 1 (art. 6-1)."* (*see* Vidal v. Belgium, Application no. 12351/86, Judgment of 22 April 1992).

54. Moreover, in the ECtHR's Judgment in the V.D. case (*see* V.D. v. Romania, Application no. 7078/02, Judgment of 28 June 2010) a Romanian national was sentenced to ten years' imprisonment for rape, five years for incest and six months for armed robbery. The decision was based mainly on statements given to the village police by the applicant's grandmother and her neighbor. It was further based on the statements of five indirect witnesses and on a forensic medical report which did not include a DNA test, despite the applicant's requests to that effect.

55. In this case, the ECtHR held that, *"A DNA test would at least have confirmed the victim's version of events or provided V.D. with substantial information in order to undermine the credibility of her account. However, the courts had not authorised any such test."* The ECtHR further held that *"There had also been other shortcomings in the investigation conducted on 1 April 2001, including the failure of the police to search for any traces of assault at the scene."* Consequently, the ECtHR held that there had been a violation of Article 6 (1) and (3.d) of ECHR.

56. Following the above-mentioned reasoning, the Court notes that the "Equality of arms" principle requires that each party be afforded a reasonable opportunity to present its case under the conditions that do not place it at a substantial disadvantage vis-à-vis another party. Although, there is no exhaustive definition as to what are the minimum requirements of "equality of

arms", there must be adequate procedural safeguards appropriate to the nature of the case and corresponding to what is at stake between the parties. These may include opportunities to adduce evidence.

57. In this respect, the Court notes that the refusal by a court to nominate an expert, hear a witness or to accept other types of evidence might in certain circumstances render the proceedings unfair unless such limitations are consistent with the principle of "equality of arms", the full realization of which is the essential aim of Article 6 (3) (d) and also Article 31 of the Constitution.

58. Furthermore, persons alleging a breach of Article 6 (3) (d) must prove not only that they were not permitted to call a certain witness, but also that hearing the witness was absolutely necessary in order to ascertain the truth, and that the failure to hear the witness prejudiced the rights of the defense and fairness of the proceedings as a whole.

59. In this regard, the question before this Court is whether the regular courts violated the Applicant's Constitutional "[...] *right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.*" However, it is not within the authority of this Court to determine whether under the law there was sufficient evidence to find the Applicant guilty of the crime. The Court only seeks to determine whether procedurally the regular courts violated the Applicant's rights pursuant to the Constitution.

60. In this respect, the Court notes that, from the above-mentioned case law, there are five criteria applicable in determining whether a rejection of a request by the defense to hear a witness has affected whether the proceedings as a whole were fair or not. These criteria are as follows:

(1) the request for a witness is not vexatious;

(2) the request for a witness is sufficiently reasoned;

(3) the request for a witness is relevant to the subject matter of the accusation;

(4) the request for a witness arguably strengthens the position of the defense or may even lead to acquittal; and

(5) relevant reasons are provided by the court for rejecting a request for a witness.

61. As to the first criterion, the Court notes that the requests made by the Applicant were logically consistent with the accusations and the factual events described by the eye-witness testimony and were raised throughout the judicial proceedings in order to build a case for the defense to the charged offence. Therefore, the Court does not consider the Applicant's requests for expert witnesses to be vexatious.

62. With respect to the second criterion, the Court observes that the Applicant made the request for a direct medical examination by expert witnesses on the following grounds: "*The performance of this expertise is proposed since* [the Applicant] *is seriously ill from diabetes, a fact that is known by the Prosecution, and moreover* [the Applicant] *in all stages of the investigation procedure has denied committing the offence for which he is accused, while on the other hand there are contradictions between* [the Applicant] *and the minor defendant*".

63. With regard to the request for DNA testing, the Applicant's proposal was made on the following grounds: "[...] *at all stages of the procedure I have proposed DNA testing to compare the blood samples of the victims with the blood samples of the suspect* [...] *and I consider that it is of vital importance in verifying the facts because until now between* [the Applicant] *but also the minor defendant* [...] *there are major contradictions*".

64. In these circumstances, the Court finds that the Applicant's requests for additional expert witness testimony were sufficiently reasoned.

65. With regard to the third criterion, the Court concludes that the requests for direct examination and DNA testing are relevant to the subject matter of the accusation in the criminal case since the Applicant sought the former to prove that he was unable to undertake the actions he was charged with and the latter to confirm the identity of the actual perpetrator of the criminal offence.

66. As to the fourth criterion, the Court considers that the Applicant's requests for expert witnesses to perform a direct medical examination and DNA testing may have played a significant role in strengthening the position of the Applicant's defense or even led to his acquittal (see, *inter alia, Dorokhov v. Russia*, Application no. 66802/01, Judgment of 14 February 2008), given that the criminal court is bound by the *in dubio pro reo* principle (see *Melich and Beck v. the Czech Republic*, Application no. 35450/04, Judgment of 24 July 2008).

67. Concerning the final criterion, the Court notes that the first instance court, by implicitly rejecting the request for DNA testing, failed to provide relevant reasoning for its decision to reject the Applicant's request. Moreover, the Court notes that the first instance court did not address the Applicant's request for a direct examination by a committee of medical experts, relying instead on the report of the endocrinologists of the UCCK, which provided their professional opinion based on the case-file. As such, the Court considers that the medical expertise expressed an opinion on the status of persons in similar situations as the Applicant, but did not provide an opinion on the exact state of the Applicant.

68. However, the Court notes that the second instance court addressed the Applicant's requests for a medical expertise and for DNA evidence.

69. Regarding the request for a direct medical examination of the Applicant the second instance court reasoned that, "[...] *based on the expertise conducted [...], it is not contested that the [Applicant], suffers from type one diabetes, a sickness which is permanent, and based on the same expertise on the actions*

of the [Applicant] for the commission of the criminal offense, in the presence of taking the insulin, the sickness can be controlled well, and the physical and mental abilities are well preserved, and it cannot be concluded that at the moment of the commission of the criminal offense, his glycemia had risen due to the situation where the [Applicant] found himself."

70. Regarding the request for DNA evidence of the blood stains, the second instance court reasoned that there was a large amount of other corroborating evidence such that, *"as regards the DNA analysis, it was not even necessary to be done due to the fact that the perpetrators of the criminal offense the [Applicant] and the Juvenile, as well as the Deceased and the Injured, who suffered severe bodily injuries, have been identified, and there was no need for a DNA analysis, because nothing new would have been confirmed by it, and in the presence of the pieces of evidence put forward in the court hearing session, hearing of the witnesses, photo documentation, phone tapping, viewing of the CD recordings obtained by NTP "Toqi", in Malisheva, the expertise of experts of endocrinology and internists, the expertise of neuropsychiatry as well as the expertise of the Forensics expert [...]."*

71. In these circumstances, the Court finds that the regular courts have reasoned their decisions to reject the Applicant's requests for DNA testing and direct medical examination, because the regular courts considered that they had sufficient other evidence available to them to support their verdict.

72. Therefore, the Court considers that the Applicant has not substantiated his claims to a violation of the rights to a fair trial due to the failure of the regular courts to call for a DNA test on the blood stains in the victim's and the Applicant's clothing, coupled with the regular courts' decision to reject the Applicant's request for a direct medical examination.

73. In conclusion, the Court considers that the Applicant's Referral has not met the admissibility requirements established by the Constitution, and as further foreseen by the Law and specified by the Rules of Procedure.

74. Therefore, the Referral is manifestly ill-founded on a constitutional basis, and is to be declared inadmissible, in accordance with Rules 36(1)(d) and 36(2)(d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113, paragraphs 1 and 7, of the Constitution, Articles 46 and 48 of the Law and Rules 36 (1) (d) and 36(2)(d) of the Rules of Procedure, at its session held on 28 March 2017, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the parties;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Arta Rama-Hajrizi