



REPUBLIKA E KOSOVËS – РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristine, 09 March 2012
Ref. No.: RK202/12

Resolution on Inadmissibility

In

Case No. Kl 59/11

Applicant

Zyfer Sahitolli

Concerning the constitutionality of the Judgment issued by the Supreme Court of the Republic of Kosovo, SCA 15/07 of 26 December 2007

The Constitutional Court, 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 Zyfer Sahitolli residing in Lipjan Correctional Facility, Kosovo.

Subject Matter

2. The Applicant challenges the Judgment of the Supreme Court, No. 15/07, dated 26 December 2007, affirming the judgment and verdict of the District Court in Pristina, No. 297/2004, dated 15 September 2006, of the crime of aggravated murder in violation of Article 147, paragraph 1, subparagraph 11 of the Criminal Code of the Republic of Kosovo and unauthorized use of a firearm in violation of Article 328,

paragraph 2 of the Criminal Code of the Republic of Kosovo. He was sentenced to 12 years in prison from 2 March 2004.

3. The Applicant wants the Constitutional Court to find a violation of his right to a fair trial and to be given a new trial and/or to have his conviction for premeditated murder reduced to murder with a disturbed state of mind.

Legal Basis

4. Article 113.1 and 7 of the Constitution of Kosovo; Article 20 of the Law; and, Rule 36 of the Rules.

Proceedings before the Court

5. On 29 April 2011, the Applicant submitted his Referral to the Court.
6. On 3 May 2011 the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and a Review Panel of Judges Alay Suroy (Presiding), Ivan Cukalovic and Kadri Kryeziu.
7. On 27 June 2011 the Constitutional Court notified the District of Pristina and the Supreme Court of the making of the Referral by the Applicant. The Constitutional Court also requested the Supreme Court to furnish evidence of the service of the Judgment of the Supreme Court on him.
8. On 29 June 2011 the Court wrote to the Applicant requesting the date of service of the Judgment of the Supreme Court on him.
9. Replies were not received to the correspondence issued by the Court.

Summary of the Facts

10. On 15 September 2006, the Applicant was convicted by the District Court of Pristina of premeditated murder and illegal possession of a firearm.
11. On 26 December 2007 the Supreme Court of Kosovo affirmed the verdict and judgment of the District Court of Pristina convicting the Applicant of premeditated murder and illegal possession of a firearm. The Supreme Court did, however, modify the sentence imposed upon the Applicant by increasing it to 17 years from 2 March 2004.
12. On 2 March 2004 the Applicant and the deceased, Kadri Krasniqi, and his brother, Sabri Krasniqi met in the post office premises in the Village of Lipjan. During this meeting a quarrel began between the Applicant and the Krasniqi brothers because the brothers suspected that the Applicant had on numerous occasions called them on the telephone and had insulted them. During the quarrel Kadri Krasniqi punched the Applicant several times.

13. Later on 2 March 2004 the Applicant returned to Adem Jashari Street in Lipjan, and in a confrontation with Kadri Krasniqi, he fired two bullets into the body of Kadri Krasniqi which caused him to bleed to death.
14. After the Applicant shot Kadri Krasniqi he then chased Sabri Krasniqi who was fleeing towards the police station and fired several shots towards Sabri Krasniqi but was not able to hit him with any of the fired bullets.
15. The Applicant did not have a license to use or possess the firearm, a Helvan 9mm handgun with the serial number 1052235, that he used to shoot Kadri Krasniqi and that he used in shooting in the direction of Sabri Krasniqi.
16. The Applicant previously knew the deceased and his brother. Indeed, the Applicant had previously dated Sabri Krasniqi's wife before she married Sabri Krasniqi.
17. During the trial several witnesses to the shooting testified as well as a psychiatrist, Dr. Nazmije Musliu. Dr. Musliu testified with respect to the Applicant's state of mind at the time of the shooting.
18. The District Court carefully reviewed all of the witness testimony and then concluded that the evidence established that the Applicant shot the deceased, Kadri Krasniqi. It concluded that the shooting was not done in self-defense and that it was not the product of psychologically disturbed state of mind. It found that the Applicant could have retreated from the confrontation and further concluded that the Applicant intended to kill not only the deceased, but also the deceased's brother by chasing him and firing bullets in his direction when he was fleeing to the police station.
19. The Supreme Court carefully reviewed the findings and judgment of the District Court. It concluded that it was undisputed that the Applicant and the victims of this offense had previously known one another and that there were continuing disputes between them, that on the day of the murder there was a physical confrontation between the Applicant and the victims and that later that day the Applicant once again confronted the victims while this time armed with an unlicensed firearm.
20. The Supreme Court further concluded that as a matter of law the mitigating defense of a "disturbed state of mind" is an extraordinary defense that applies only in those situations where the perpetrator's body is in danger or injured and where the perpetrator does not provoke the assault on his body. The Supreme Court found that in this case the Applicant had disturbed the injured party and had created the confrontation resulting in the shooting death of Kadri Krasniqi and the attempted shooting of Sabri Krasniqi. The Supreme Court concluded that this is not such an action that would allow the Applicant to claim that he was suffering from a disturbed psychological condition at the time of the shooting.

Disputed and Undisputed Facts

21. There are no undisputed facts. The conclusions to be made from the facts are, however, disputed.

Legal Arguments presented by the Applicant

22. The Applicant claimed that he did not have a fair trial implying a violation of Article 32, paragraph 2 of the Constitution of the Republic of Kosovo. He specifically claims that there was insufficient evidence for the courts to find him guilty of premeditated murder.
23. The Applicant also claimed that he was not allowed to have the victim, Sabri Krasniqi's wife to testify or his brother-in-law to testify that his children were in his father-in-law's house. He also claimed that he was not allowed to have his wife testify with respect to his plan of activities to have his children registered on the day of the shooting of Kadri Krasniqi.
24. The Applicant also claimed that he the indictment filed by the prosecutor and approved by the court was improper because he was not first interviewed by the prosecutor.
25. The Applicant also complained that he was not allowed to ask questions of the victim's father and was interrupted several times when interrogating the witness Sabri Krasniqi.

Assessment of the Admissibility of the Referrral

26. Article 32, paragraph 2, of the Constitution provides:
Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.
27. Article 6 of the European Convention on Human Rights provides:
 1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*
 2. *Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*
 3. *Everyone charged with a criminal offence has the following minimum rights:*
 - *(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
 - *(b) to have adequate time and the facilities for the preparation of his defence;*

- *(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- *(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;*
- *(e) to have the free assistance of an interpreter if he cannot afford one.*

28. With respect to the witnesses that the Applicant wished to call or interrogate more extensively during the trial, there is no offer of proof by the Applicant as to what evidence could have been elicited from those witnesses that would be relevant to any issue or defense that the Applicant could raise to the indictment. Certainly the trial court can and must manage what is relevant and what is not relevant evidence in a case. The Applicant has made no showing before this Court or the Supreme Court that any of that evidence would have been relevant.

29. There was no evidence to support that any of the Applicant's rights pursuant to the Constitution of the Republic of Kosovo or the European Convention on Human Rights were violated.

30. Rule 36. 2 requires the Court to reject a Referral as manifestly ill-founded if the Referral is not prima facie justified or when the Applicant does not sufficiently substantiate his claim.

31. The Court refers to:

- a. Rule 36 (1) (a) and (c) of the Rules: *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.*
- b. Rule 36 (2) (b) and (d): *the Court shall reject a referral as being manifestly ill-founded when it is satisfied that the presented facts do not in any way justify the allegation of a violation of the constitutional right or the Applicant does not sufficiently substantiate his claim.*

32. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has been committed, nor has he furnished evidence to prove that a right guaranteed by the Constitution has been violated.

33. Moreover, the Referral does not indicate that the District or Supreme Court acted in an arbitrary or unfair manner. The mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise a valid claim of a breach of the Constitution. In these circumstances, the Applicant cannot be considered to have fulfilled the abovementioned established admissibility requirements.

34. There is no evidence to support the Applicant's claim.

FOR THESE REASONS

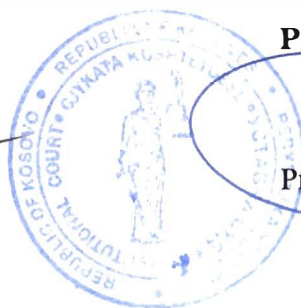
The Court, following deliberations on 29 November 2011, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

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


Robert Carolan



President of the Constitutional Court


Prof. Dr. Enver Hasani