



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
G.JYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Pristine, 21 May 2012
Ref. No.: RK 238/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI66/11

Applicant

Astrit Shabani

Constitutional Review of Supreme Court Judgment, Pn-Kr 56/2006, Supreme Court Judgment Ap. No. 52/2004 and District Court of Pristina Judgment P. Nr. 94/01

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 Applicant is Astrit Shabani of Mramor, Municipality of Pristina. The Applicant is currently serving a sentence of imprisonment in Dubrava Prison, Istog.

Subject Matter

2. The Applicant alleged, without specifying a provision of the Constitution, that his right to fair trial has been violated by virtue of a conviction based on nonexistent evidence and evidence which was tampered with [Article 31 of the Constitution of the Republic of Kosovo]. The applicant also alleged, without specifying a provision of the Constitution, that his sentence violates the principles of legality and proportionality in criminal cases [Article 33 of the Constitution of the Republic of Kosovo].

Legal Basis

3. The Referral is based on Art. 113.7 of the Constitution, Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Procedure before the court

4. On 16 May 2011, the Applicant filed a Referral with the Constitutional Court.
5. On 17 August 2011, the President of the Constitutional Court appointed Judge Snezhana Botusharova as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (presiding), Dr. Altay Suroy, and Dr. Iliriana Islami.
6. On 20 March 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 the facts of the case

7. On 14 August 2003 the District Court of Pristina in judgment P. Nr. 94/01 found the Applicant guilty of murder, per Article 30, Paragraph 2 of the Criminal Law of Kosovo in connection with Article 22 of the Criminal Code of the Federal Republic of Yugoslavia as made applicable by UNMIK Regulation 1999/24. The Applicant was sentenced to 20 years imprisonment.
8. The Applicant filed an appeal to the Supreme Court within the legal time limit on the following grounds: essential violations of the Law on Criminal Procedure, incorrect and incomplete establishment of the facts and imposition of a wrongful sentence. The Applicant requested that the Supreme Court nullify the verdict of the District Court and return the case to the lower court for retrial or acquit and release the applicant, or that a reduced sentence be imposed.
9. On 2 August 2005 the Office of the Public Prosecutor of Kosovo recommended that the Supreme Court amend the enacting clause of the verdict in order to reflect the applicability of UNMIK Regulation 2000/59 and reject the appeal of the Applicant as unfounded.
10. On 21 November 2005 the Supreme Court in judgment Ap. 52/2004 partially approved the Applicant's appeal and modified his sentence to 18 years imprisonment. The Supreme Court rejected the remainder of the Applicant's appeal as unfounded.
11. On 6 April 2006 the Applicant submitted a request for protection of legality against Supreme Court judgment Ap. 52/2004 and District Court of Pristina judgment P. Nr.

94/01, alleging violations of UNMIK Regulation No. 2000/59 and the Provisional Criminal Procedure Code of Kosovo.

12. On 7 November 2006 the Supreme Court in judgment Pn-Kr 56/2006 rejected the Applicant's request for protection of legality as unfounded.
13. In his Referral the Applicant stated he filed requests with the Supreme Court on the following dates: 10 June 2009, 31 July 2009 and 3 September 2009. However, copies of these requests are not included in the Referral, nor is there anything to indicate in the Referral that these requests were based on a proper remedy available to the Applicant.

Assessment of the admissibility of the referral

14. As to the present Referral, the Court notes that the original decision of the Supreme Court is dated 21 November 2005 and the rejection of the Request for Protection of Legality was rejected by the Supreme Court on 7 November 2006, whereas the Referral was submitted to the Constitutional Court on 16 May 2011. This means that the Referral relates to the events prior to 15 June 2008, when the Constitution entered into force. It follows that the Referral is out of time, and therefore incompatible *ratione temporis* with the provisions of the Constitution and the Law (see Resolution on Inadmissibility of the Constitutional Court, Case KI 25/09 Shefqet Haxhiu v Workers Organization "Industria e akumulatoreve", of 21 June 2010, and Blečić v Croatia, Application no. 59532/00, ECtHR Judgment of 29 July 2004).
15. Furthermore, Rule 36 (3) h) of the Rules foresees that "a Referral may also be deemed inadmissible" if "the Referral is incompatible *ratione temporis* with the Constitution". Therefore, the Court considers that the Referral is out of time "ratione temporis".

FOR THESE REASONS

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

DECIDES

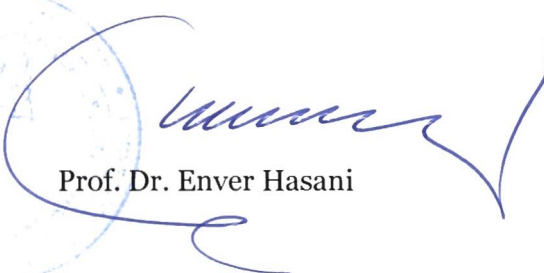
- I. Unanimously TO REJECT the Referral as inadmissible;
- II. By a majority to find that the reason for inadmissibility is incompatible with the Constitution *ratione temporis*;
- III. This Decision is to be notified to the Applicant; and
- IV. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court


The signature of Prof. Dr. Enver Hasani is written in blue ink over a circular official seal of the Constitutional Court of Kosovo. The seal contains the text "KOSOVA" and "KONSTITUCIONALE KURTI" around a central emblem.

Prof. Dr. Enver Hasani