



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

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Prishtina 23 January 2013  
Ref. No.: RK366/13

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI103/11

Applicant

**Gani Morina**

**Constitutional Review of the Judgment of the District Court in Peja, AP. Nr.  
90/10, dated 8 April 2011**

**CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge and  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Applicant is Gani Morina, a lawyer, from the Municipality of Klina.

### **Challenged decision**

2. The Challenged decision is the Judgment of the District Court in Peja, AP.Nr.90/10, dated 8 April 2011 which was served on the Applicant on 25 April 2011.

### **Subject matter**

3. The subject matter of the Referral is the complaint of the Applicant in relation to the wrongful execution of a search warrant on his dwelling house on 17 April 2007, he having being arrested and handcuffed and the trauma to himself and his wife in relation to the violation of their dwelling house and their privacy.
4. Moreover, the Applicant has asked the Constitutional Court not to divulge his identity.

### **Legal basis**

5. The Referral is based on Article 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 of Procedure).

### **Procedure before the Court**

6. On 25 July 2011 the Applicant submitted a referral to the Constitutional Court of Kosovo (hereinafter: the Court).
7. On 17 August 2011 the President appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy, presiding, Almiro Rodrigues and Iliriana Islami.
8. The Court requested information from the Public Prosecutor of Kosovo on 22 September 2011 and October 2011. A reply was received from the Public prosecutor dated 11 November 2011.
9. Supplementary documentation from the Applicant was received by the Court in a letter dated 26 July 2011 but received by the Court on 14 October 2011.
10. The Court requested further information from the Applicant in relation to the referral on 8 December 2011. A reply, dated 15 December 2011, was received from the Applicant on 23 December 2011.
11. On 26 November 2012, the President by Decision (No. GJR.KI103/11) appointed Judge Robert Carolan as Judge Rapporteur after the term of office of Judge Gjyljeta Mushkolaj as Judge of the Court had ended. On the same date, the President by Decision (No.KSH.KI103/11), appointed the new Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Ivan Čukalović, after the term of office of Judge Iliriana Islami as Judge of the Court had ended.
12. On 17 January 2013, 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 the facts as evidenced by the documents furnished by the Applicant**

13. A search warrant was issued by an International Judge from the District Court of Prizren on 16 April 2007 authorizing a search of three different premises in connection

with an investigation into drug dealing. One of the premises was alleged to be owned by SS and HS, a three storey house in Bajram Curri Street, Klina. The time within which the search was to be conducted was between 0600 hours and 2200 hours.

14. This warrant was executed 17 April 2007 by certain Police Officers in Klina. The police Report prepared on 2 May 2007 indicated that according to the information available to the Police the house in Bajram Curri Street had two separate entrances in the front side. It was suspected that the two suspects SS and HS lived there and that if the entrance at the back side, in which two elderly people lived, had no connection to the first entrance the back part should not be searched. The search commenced at 0550 hours at a house that had no number on it. The writer of the Police report noted that the two entrances were a joint one, which meant that one could move from the first entrance to the second one. The Applicant, a lawyer, Gani Morina was arrested there, handcuffed for 2-3 minutes but then these were removed.
15. There was also a female person there, the wife of the Applicant, since deceased. A female Police Officer was assigned to her and she was not handcuffed. The Applicant was handcuffed for 2-3 minutes. The search warrant was read to him in English. During the search, the commanding field operator was contacted who confirmed that the search was being conducted at the right location. The search continued and eventually terminated at 0706 hours.
16. On 20 April 2007 the Applicant addressed a complaint to the District Prosecutor's Office in Prizren, regarding the implementation of a search warrant issued by the District court of Prizren dated 16 April 2007; however, he did not receive any response.
17. On 21 April 2007 the Applicant addressed the Municipal Prosecutor's Office in Peja raising charges under; Article 166 (1) and (3) (the criminal offence of violation of the integrity of residences), Article 167 (criminal offence of illegal search), and Article 304 (1) and (2) (Criminal offence of not reporting criminal offence, or not reporting the perpetrators of a criminal offence) of the Provisional Criminal Code of Kosovo (hereinafter: PCCK). The Applicant brought these charges because he claimed that F.H., R.F., S.H, and D.V. violated the provisions of Article 240 (5), Article 242 (1), (2), (3) and (4), and Article 245 (5) of the Provisional Criminal Procedure Code of Kosovo (hereinafter: the PCPCK).
18. On 11 June 2007 the Municipal public Prosecutor in Peja heard the witnesses to the contested search. He reached the conclusion that there was room for procedure and accountability of those who conducted the search. This conclusion was given protocol sign PPN.nr.64/02 dated 16 July 2007.
19. On 24 August 2007 the Applicant wrote to the Municipal Public Prosecutor in Peja complaining about the reduction of the charge, however he received no response.
20. On 15 November 2007 the Municipal Public Prosecutor in Peja presented proposed charges with a punitive warrant PP.nr.1853/2007 against the defendants R.F., S.H. and D.V., but not against F.H. who was the main person responsible for issuing the order to search nor E.I., who despite being part of the search team, was only heard in the capacity of a witness. The charges against R.F., S.H., and D.V. were reduced to the criminal offence of unlawful search under Article 167 of the PCCK.

21. On the 22 November 2007, the Applicant wrote to the Municipal Public Prosecutor requesting the changing and expansion of the proposed charges as to include the repeated search, which the applicant alleges took place without witnesses, without the owner and without being reported. The Applicant claims that this was in violation of the provisions of Article 243 (7) of the PCPCK. The Applicant received no response to this submission.
22. On 14 December 2007 the Municipal Court in Klina issued its Judgment P.nr.162/2007 and held that R.F., S.H. and D.V were guilty of committing the criminal offence of unlawful search under Article 167 (1) in conjunction with Article 23 of the PCCK and punished them with a fine amounting to € 250 each and expenses.
23. The Municipal Court stated in its reasoning that it reached this decision based on the evidence attached to the proposal for issuing a punitive order such as the criminal charge brought by the Applicant, the search warrant, dated 16 April 2007, the search report, the article the Applicant published in Epoka e Re newspaper, the doctor's reports for the Applicant's wife, and other case files.
24. On 10 January 2008 R.F., S.H and D.V appealed the Decision P.nr.162/07. They claimed the punitive order was issued based on erroneous evidence. They requested that the proposal of the prosecutor for the issuing of the order be rejected and that the Municipal Court schedule a main hearing regarding the case.
25. On 18 February 2010 in his final speech after rendering evidence the Public Prosecutor in Peja withdrew from the proposed charges against R.F., S.H and D.V. due to lack of witnesses. The Applicant however continued the case as a subsidiary plaintiff.
26. On 22 February 2010 the Municipal Court in Klina by its Judgment P.nr.162/07 released R.F., S.H and D.V from the proposed charges.
27. The Municipal Court held, that based on the confirmed evidence from the main hearings and based on the testimonies of the witnesses, the search warrant and the hearing of the R.F., S.H and D.V. The Municipal Court came to the conclusion that in the behavior of the R.F., S.H and D.V. there were neither elements nor features of the criminal offence of unlawful search. Therefore, the Municipal court released R.F., S.H and D.V. from the proposed charges, since even the Municipal Prosecutor from Peja, in his final speech withdrew from the criminal prosecution of R.F., S.H and D.V. because of the absence of evidence.
28. On 25 may 2010 the applicant appealed the Judgment P.nr.162/07. The Applicant claimed that in the judgment there were essential violations of the provisions of criminal procedure, erroneous and incomplete acknowledgment of the state of facts, and violations and wrongful interpretation of the material rights.
29. On 8 April 2011 the District Court in Peja issued a Judgment Ap.nr.90/10 affirming the Decision of the Municipal Court in Klina P.nr. 162/07.
30. On 6 May 2011 the Applicant made a request for protection of legality to the Office of the Chief State Prosecutor of Kosovo.
31. On 12 May 2011 the State prosecutor of Kosovo rejected the Applicant's request. They stated that after the reviewing of the Applicant's proposal in detail, no founded reasons were found from Article 451 and 452 of the PCPCK, for the presentation of a request for protection of legality.

### **Applicant's allegations**

32. The Applicant claims a violation of Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights], Article 55.5 [Limitations on Fundamental Rights and Freedoms] of the Constitution. The Applicant also claims the violations of Articles 1 – Obligation to respect human rights and 8 – Right to respect for private and family life of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention).
33. The Applicant maintains, inter alia,
  - that the search warrant was in a language that he did not understand,
  - that it did not contain his name or the name of any member of his family,
  - that the police report states that the house was two and not three storeys,
  - that his house had the number 13 on the outside,
  - that no drugs were found in his yard or bunker,
  - that the search was repeated after 0900 hours with trained dogs without the presence of witnesses or the owner and no report of this was prepared.
34. The Applicant maintains that many provisions of the PCKK, PCPCK, Law on the Police and the Law on the State Prosecutor's Office were violated at the time of the making of the search and during the Court procedures that followed.

### **Preliminary assessment of admissibility**

35. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
36. As to the Applicant's Referral, the Court refers to Rule 36 (3) (h) which reads as follows:

*"A Referral may also be deemed inadmissible in any of the following cases:  
(h) the Referral is incompatible ratione temporis with the Constitution."*
37. In order to establish the Court's temporal jurisdiction it is essential to identify, in each specific case, the exact time of alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of constitutional right alleged to have been violated (see, mutatis mutandis, European Court of Human Rights Chamber Judgment in case of Blečić v. Croatia, Application no.59532/0, dated 8march 2006, para. 82).
38. The Court notes that the Applicant complains of a wrongful execution of a search warrant on his dwelling house on 17 April 2007 by the Kosovo Police.
39. This means that the alleged interference with Applicant's right guaranteed by the Constitution occurred prior to 15 June 2008 that is the date of entry into force of the Constitution and from which date the Court has temporal jurisdiction.

40. The Court, similarly decided in the case KI100/10 Resolution on Inadmissibility, the Applicant Eduard Thaqi (also known as Sokol Thaqi) – Constitutional Review of the Decision of the Kosovo Police, no.398-SHPK-2002 dated 22 October 2002.
41. Furthermore, the Court rejects the Applicant’s request not to disclose his identity on the grounds that he did not justify the granting of such request.
42. It follows that the Applicant’s referral is incompatible “*ratione temporis*” with the provisions of the Constitution.

#### **FOR THESE REASONS**

The Constitutional Court, Pursuant to Article 113.7 of the Constitution and Article 20 of the Law and in compliance with the Rule 36 (3) h of the Rules of Procedure, on 17 January 2013, unanimously:

#### **DECIDES**

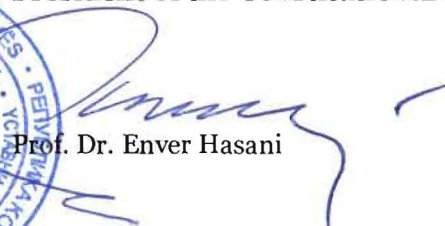
- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20(4) of the Law; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Robert Carolan

**President of the Constitutional Court**



Prof. Dr. Enver Hasani