



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

Pristine, 11.october 2012
Ref. No.: RK/312/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI21/11

Applicant

Valbona Zogaj

Constitutional review of the Judgment of the Supreme Court Ap. No.329/09, of 3 June 2010, and the Judgment of the District Court in Prizren P.No. 187/2008, of 30 June 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

Applicant

1. The Applicant is Valbona Zogaj, who is currently serving a prison sentence in KCC in Lipjan. Before the Constitutional Court the Applicant is represented by Nushe Kuka Mekaj, practising lawyer from Peja.

Challenged decision

2. Challenged decisions are the Judgment of the Supreme Court of Kosovo, Ap. No. 329/09 of 3 June 2010, and the Judgment of District Court in Prizren P.No. 187/2008 of 30 June 2009.

Subject matter

3. The Applicant considers that the challenged decisions violated her right to a fair and impartial trial, particularly the right to adequate professional defence during the criminal proceedings instituted against her.
4. The Applicant alleges that, during the criminal proceedings, her two defence counsels have erroneously advised her, not to tell the truth before the court. Therefore, the truth was not presented before the court. According to the Applicant, that was the reason she was erroneously found guilty for criminal offence of aggravated murder.
5. The Applicant considers that in the proceedings she should have had adequate defence lawyer, especially in cases of criminal offence, claiming that this is provided by provisions in Article 75 para. 4 Provisional Criminal Procedural Code of Kosovo. She claims that she was not in a situation to understand the severity of the criminal offence, and that, hiding reality arguments before the Court was harmful to her, as well as the fact that the Court was obliged to provide her the adequate professional defence during the procedure.
6. The Applicant requests from the Constitutional Court to conclude that the challenged decisions were taken in violation of the rights guaranteed by the Constitution, and, therefore, allow the reopening of criminal proceedings before the regular courts.

Legal basis

7. Article 113.7 of the Constitution of the Republic of Kosovo, Article 49 of the Law, Rule 36 para. 1 (b) of the Rules of the Procedure.

Proceeding before the Court

8. On 18 February 2011, the Applicant submitted a Referral to the Constitutional Court.
9. On 2 March 2011, the President by Order No. GJR. 21/11 appointed Judge Iliriana Islami as Judge Rapporteur.
10. On 7 October 2011, the Secretariat of the Court requested from the lawyer of the Applicant Nushe Kuka Mekaj, from Peja, to provide the Court with copies of the last court decision, with a duly signed receipt.
11. On 21 May 2012, the District Court in Prizren, provided the Secretariat of the Constitutional Court of the Republic of Kosovo with a copy of the duly signed receipt on service of the Judgment to the Applicant, which clearly shows that the Applicant in person received the Judgment of the District Court P.187/08 of 30 June 2009, as well as the Judgment of the Supreme Court No. Ap.329/2009, of 3 June 2010, was served to her in person on 9 July 2010.
12. On the same day the District Court in Prizren, provided the Secretariat of the Constitutional Court of Kosovo with a copy of the signed receipts of the challenged Judgments of the Supreme Court of Kosovo and the District Court in Prizren, by the

Applicant's defence lawyers. It results that a defence lawyer received the Judgment of the Supreme Court on 8 July 2010, while the other one on 9 July 2010.

13. On 2 July 2012, the President appointed Judge Altay Suroy as Judge Rapporteur, replacing Judge Iliriana Islami.
14. On 3 July 2012, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

15. On 30 June 2009, pursuant to Judgment of the District Court in Prizren P. No. 187/08, the Applicant was found guilty and sentenced to 18 years of imprisonment for criminal offence of aggravated murder from Article 147 para. 1 item 4 and criminal offence of unauthorized ownership, control, possession or use of weapons from Article 328 para. 2 of the Provisional Criminal Code of Kosovo
16. Unsatisfied with the outcome the Applicant, through her lawyers, filed a complaint with the Supreme Court of Kosovo, for essential violation of the criminal procedure, erroneous and incomplete assessment of factual situation, violation of the criminal law and decision on criminal sanction. Moreover, the Applicants defence counsels have filed a response to the appeal of the Public Prosecutor's Office.
17. On 3 June 2010, the Supreme Court of Kosovo rendered the Judgment Ap.No. 329/2010 and confirmed the Judgment of the District Court in Prizren, and rejected appeals of the Applicant's defence counsels and of the Public District Prosecutor, as unfounded. The Supreme Court in the reasoning of this judgment stated, inter alia, as follows " *this Court found as unfounded the appealing claims that the disputed judgement violated criminal law against the defendant, since from the proceeded evidences without any suspicion results that defendant has committed the criminal offence, for which she was found guilty from the first instance court. The first instance court, has properly applied the provisions of the criminal code when it has brought the actions of the defendant in the legal norm of serious murder from Article 147, paragraph 1, item 4 of the CCK...* "

Assessment of admissibility of the Referral

16. In order to be able to adjudicate the Referral of the Applicant, the Court has to assess beforehand whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution, the Law and the Rules of Procedure.
17. As to the Applicant's Referral the Court refers to the Article 49 of the Law, which provides the following:

"Deadlines

The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."

18. The Court notes that the Applicant in her Referral claims the violation of her right to a fair and impartial trial, respectively, that her defence lawyer, she had chosen herself, erroneously advised her during the proceedings before the court.
19. However, the Court notes that the final court decision was issued on 3 June 2010, while the Applicant and her attorneys was served on 8 July 2010 and on 9 July 2010.
20. The Court notes that the Applicant's referral was submitted to the Constitutional Court on 18 February 2011, what means that the Referral was submitted out of the time limit of four months as prescribed by Article 49 of Law.
21. Consequently, pursuant to the Article 113. 7 of the Constitution of the Republic of Kosovo, Article 49 of the Law and Rule 36 para. 1(b) of the Rules of Procedure, Referral should be rejected as inadmissible.

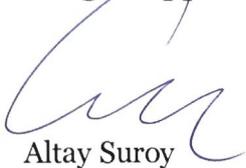
FOR THESE REASONS

Pursuant to Article 113.7 of the Constitution, Articles 48, 49 and 56 of the Law on Constitutional Court, unanimously:

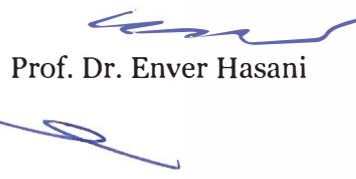
DECIDES

- I. TO DECLARE the Referral 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


Altay Suroy

President of the Constitutional Court


Prof. Dr. Enver Hasani

