



REPUBLIKA E KOSOVËS – РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 8 December 2014
Ref. no.: RK 737/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI36/14

Applicants

Bojan Đokić, Ljubica Đokić, Zvonko Đokić and Đorđe Đokić

**Complaint on lack of investigation of a murder and
compensation for destruction of property**

THE 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 Referral was submitted by Mr. Bojan Đokić, Ms. Ljubica Đokić, Mr. Zvonko Đokić and Mr. Đorđe Đokić, residing in Republic of Serbia (hereinafter, the Applicants).

Challenged decision

2. The Applicants do not expressly refer to a specific decision of a public authority to be challenged.
3. They complain mainly about public authorities' failure "*to enforce the investigation aiming to clarify the circumstances of the murder*" of a relative person.

Subject matter

4. The subject matter is the assessment of the Applicant's Referral on the lack of a criminal investigation of the murder of their relative and lack of compensation for destruction of property. The Applicants consider that their rights were violated, namely as guaranteed under Articles 2, 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the ECHR) and Article 46 of the Constitution.

Legal basis

5. The Referral is apparently based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution) and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

6. On 27 February 2014, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 6 March 2014, the President appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 15 April 2014, the Court notified the Applicants on the registration of the Referral and requested additional documentation on the criminal complaint they have filed on 8 October 2004 before the Public Prosecutor in the District Court in Prishtina (hereinafter, the criminal complaint).
9. On 12 May 2014, after having considered the Preliminary Report of the Judge Rapporteur Robert Carolan, the Review Panel unanimously decided to postpone the deliberation of the Referral for a next session. The Review Panel in particular recommended the Judge Rapporteur to communicate with the Applicants and respondent Parties in order to complete and clarify the facts of the Referral.
10. Thus, on 15 May 2014, the Applicants were asked to inform the Court on the registration number of the criminal complaint and attach any replies from the courts they might have.

11. On 15 May 2014, the Court sent a copy of the Referral to the District Prosecution in Prishtina and the Basic Prosecution in Prishtina, requesting them to inform "*whether there is any pending proceeding*" related with the criminal complaint and, if yes, in what stage is such proceeding.
12. Moreover, on 15 May 2014, the Court sent a copy of the Referral to the Basic Court in Ferizaj, requesting it to inform "*whether there is any pending proceeding*" related with the civil claim of the Applicants dated 17 September 2004 and, if yes, in what stage is such proceeding.
13. On 24 June 2014, the Court reiterated its request for further information to the Basic Prosecution Office in Prishtina and Basic Court in Ferizaj.
14. On 25 June 2014, the Court insisted with the Basic Court in Ferizaj and the Basic Prosecution Office in Prishtina on the requested additional information.
15. Also on 25 June 2014, the Court sent a copy of the Referral to the Special Prosecution Office in Prishtina and asked it to inform about proceedings, if any, related to the criminal complaint.
16. On 30 June 2014, the Applicant Bojan Đokić complemented the Referral on behalf of the other Applicants.
17. On 10 July 2014, the Special Prosecution Office informed the Court that "*so far, the office for registration at the Special Prosecution Office of Kosovo, did not receive any request regarding the abovementioned request*".
18. On 14 July 2014, the Court sent a copy of the Referral to State Prosecutor and requested all the information available on the actions eventually undertaken in relation to the criminal complaint, if any.
19. On 15 September 2014, the President of the Court replaced Judge Rapporteur Robert Carolan with Judge Almiro Rodrigues.
20. On 5 November 2014, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

21. On 24 June 1999, a relative of the Applicants was murdered in Ferizaj by an unidentified person or persons and his property was plundered, while the two houses and outbuildings were burnt down.
22. On 25 July 1999, Section 1 of the UNMIK Regulation NO. 1999/1 on the authority of the interim administration in Kosovo established that "*1. All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General*".
23. In 2002, the corpse of the deceased was identified and the mortal remains were received by the relatives, the now Applicants.

24. On 17 September 2004, the Applicants filed against Kosovo Government, Municipality of Ferizaj, UNMIK and KFOR a civil claim before the then Municipal Court in Ferizaj for compensation for destruction and damage of the their property (hereinafter, the civil claim). .
25. The Applicants state that *“the District Public Prosecutor in Prishtina was informed in details about this occurrence, on date 08.10.2004”*.
26. On 15 June 2008, the Constitution of the Republic of Kosovo entered into force and effect.
27. As result of the request of information by the Court, it was found that, on 19 December 2011, the Court in Ferizaj (judgment P. no. 1403/04) decided that *“the claim of the claiming party (...) for damage compensation is dismissed as inadmissible”*.
28. The Court also found that no criminal proceedings in relation to the abovementioned murder have started or were pending in the different Prosecution or judicial instances.
29. In addition, the Ferizaj Basic Court informed that the decision of the Court in Ferizaj of 19 December 2011 was never notified to the Applicants nor published in any official newspaper.

Applicants' complaints

30. The Applicants complain about the Kosovo public authorities' failure *“to act on requests for criminal charges and lawsuits, in order to enforce the investigation aiming to clarify the circumstances of the murder of the late (...), especially because the perpetrators were not found and prosecuted. Also, the constitutional claim is filed for destruction of property and failure act upon the claim for compensation of damages and actions of omission”*.
31. The Applicants claim *“that the murder of the deceased (...) and looting and destruction of his property violated the right to life-Article 2 of the ECHR in its entirety, Article 6 paragraph 1 of the ECHR - the right to fair trial and a trial within a reasonable time, of Article 13 of the ECHR - the right to an effective remedy and Protocol I - protection of property. Kosovo's Constitution: Article 3 and 24 equality before the law, Article 25 right to life, Article 31 fair and impartial trial, Article 32 the right to a remedy, Article 46 protection of property, Article 54 right to judicial protection”*.
32. In the end, the Applicants request to the Court, namely:
*“to find and prosecute the murderers of the deceased (...);
to find out who looted their property and burned it;
to get compensation for material and non-material damage for the murder of the late (...) and for property damage”*.

Admissibility of the Referral

33. First of all, the Court examines whether the Applicants have fulfilled the admissibility requirements as laid down in the Constitution, the Law and the Rules of Procedure of the Constitutional Court (hereinafter, the Rules).
34. The Court recalls that the Applicants focus their complaints mainly on two matters: the actions and omissions on investigating the murder of the deceased relative person (...) and compensation of damages for looting and destruction of property.
35. In addition, the Court preliminarily notes that the key fact of murder took place on 24 June 1999, meaning before the UNMIK taking over “*the administration of the judiciary*“ and the civil claim was filed with the Ferizaj Court on 17 September 2004, meaning well before the entering into force of the Constitution on 15 June 2008.
36. The Court observes that the first and main matter to be analysed is whether the events occurred in 1999 fall under its temporal jurisdiction. That preliminary observation is relevant to the analysis of the Applicant’s complains.
37. The Court observes that the Applicants mainly claim: (i) violation of Article 2 of the ECHR, (ii) violation of Article 6 (1) and 13 of the ECHR and (iii) violation of Article 46 of the Constitution, in relation with Protocol I of the ECHR. The second and third alleged violations are logically dependent. Thus the Court will start analyzing the first allegation.
38. In this respect, the Court refers to Rule 36 (3) h) of the Rules, which foresees: *A Referral may also be deemed inadmissible in any of the following cases:... the Referral is incompatible ratione temporis with the Constitution.*
39. The Court, having identified the main matter of the analysis, also recalls that it is bound to interpret human rights and fundamental freedoms guaranteed by the Constitution consistently with the court decisions of the European Court of Human Rights.
40. In that respect, the European Court of Human Rights (hereinafter, the ECtHR), in the case of *Mladenović v. Serbia*, Application no 1099/08, judgment of 22 May 2012, para 38, held as follows:

“Pursuant to the general rules of international law (notably, Article 28 of the Vienna Convention on the Law of Treaties), the Convention does not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before its entry into force with respect to that Party (see Blečić v. Croatia [GC], no. 59532/00, § 70, ECHR 2006-III). However, it is clear from the Court’s case-law concerning Article 2 that the procedural obligation to investigate has evolved into a separate and autonomous duty, capable of binding the State even when the death took place before ratification (see Šilih v. Slovenia [GC], no. 71463/01, § 159, 9 April 2009). Given the principle of legal certainty, the Court’s temporal jurisdiction in this regard is nevertheless not open-ended (ibid, § 161). Where the death occurred before ratification, only procedural acts or

omissions occurring after that date can fall within the Court's temporal jurisdiction (ibid, § 162). Furthermore, there must be a genuine connection between the death and the entry into force of the Convention in respect of that State for the procedural obligation to come into effect. In practice, this means that a significant proportion of the procedural steps required by this provision have been, or should have been, carried out after ratification. (See Hackett v. the United Kingdom (dec.), no. 34698/04, 10 May 2005)".

41. The ECtHR also held that “in cases concerning the obligation to investigate under Article 2 of the ECHR that where a death has occurred, applicant relatives are expected to keep track of the progress of the proceedings and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective redress (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002; *Bayram and Yildirim v. Turkey* (dec.), no. 38587/97, ECHR 2002-III; and *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 158, 18 September 2009)”. (See *Case of Mladenović v. Serbia*, Application no. 1099/08, Judgment, 22 May 2012, para. 45).
42. The Court emphasizes that the jurisprudence of the Constitutional Court is in conformity with the case law of the ECtHR while deciding that the events occurred before the entry into force of the Constitution on 15 June 2008 are incompatible *ratione temporis* with the Constitution and thus do not fall under its temporal jurisdiction. (See, among others, Constitutional Court Resolutions in Case No. KI152/11, Applicant *Bekim Murati*; Case No. KI07/11, Applicant *Vehbi Klaiqi*; Case No. KI128/11, Applicant *Ismet Boshnjaku*).
43. The Court reiterates that the murder occurred in 1999, the Applicants received the mortal remains in 2002 (three years later), they allegedly filed a criminal complaint on 8 October 2004 (five years later), and they have not kept track of the progress of the proceedings until filing the Referral with the Court on 27 February 2014 (ten years later).
44. Moreover, the Court reiterates that the murder occurred on 24 June 1999 and the civil claim was filed with the Ferizaj Basic Court on 17 September 2004.
45. Therefore, the Court considers that the facts which took place before the entering into force of the Constitution do not fall within the Court's temporal jurisdiction.
46. In sum, the Referral is incompatible *ratione temporis* with the Constitution and should be declared inadmissible, pursuant to Rule 36 (3) h) of the Rules.
47. The Court, having concluded that the Applicants' complains are inadmissible, considers that it is not necessary to examine separately the admissibility of the Applicant's complains made under Articles 6 (1) and 13 of the ECHR, and Article 46 [Protection of Property] of the Constitution.
48. Furthermore, the Court considers that, taking into account the reasoning of the conclusion above, the constitutional provisions referred to by the Applicants are not applicable to the case at all.

49. Before the foregoing, the Court finally concludes that the complains on alleged violation of Article 2 of the ECHR by the Kosovo public authorities' lack of investigation of a murder and lack of compensation for destruction of property, pursuant to Rule 36 (3) h) of the Rules, are incompatible *ratione temporis* with the Constitution and thus are inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Rule 36 (3) h) of the Rules of Procedure, in its session held on 7 November 2014, by majority:

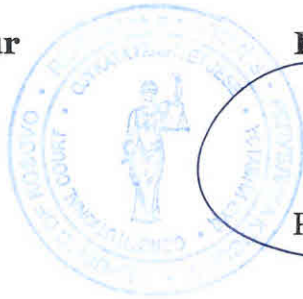
DECIDES

- 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. TO DECLARE this decision effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Prof. Dr. Enver Hasani