



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

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Prishtina, 17 June 2013  
Ref. No.:RK427/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI98/12**

Applicant

**Ruzhdi Shala**

**Constitutional referral against excessive length and inefficiency of the  
investigative proceedings PPN no. 812-1/2008 by the District Prosecution  
in Prishtina**

**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 Ruzhdi Shala represented by the law firm "Sejdiu & Qerkini" l.l.c with residency in Prishtina.

### **Challenged decisions**

2. The Applicant challenges the excessive length of investigation proceedings PPN no. 812-1/2008 by the District Prosecutor in Prishtina.

### **Subject matter**

3. The subject matter of the Referral is the Applicant's complaint that the District Prosecutor in Prishtina has not concluded for four years investigations regarding the homicide of his daughter.
4. The Applicant asks the Court to hold a hearing in accordance with Rule 39 of the Rules of Procedure.

### **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution; Article 20 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law), and Rule 56.2 of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

### **Procedure before the Court**

6. On 15 October 2012, the Applicant submitted a referral to the Constitutional Court of Kosovo (hereinafter: the Court).
7. On 5 November 2012, the President Appointed Judge Ivan Čukalović as Judge Rapporteur and a Review Panel composed of Judges Almiro Rodrigues (presiding), Snezhana Botusharova and Kadri Kryeziu.
8. On 13 November 2012, the Court notified the Applicant and the District Prosecution in Prishtina as well as the Chief State Prosecutor of Kosovo about the registration of the Referral.
9. On 7 December 2012, the Chief State Prosecutor replied to the Court in relation to the Referral.
10. On 17 December 2012, the District Prosecution in Prishtina replied to the Court in relation to the Referral.
11. On 24 December 2012, the Applicant wrote to the Court inquiring about the status of the Referral and asking the Court to hold an oral hearing in accordance with Rule 39 of the Rules of Procedure.
12. On 28 December 2012, the Court replied to the Applicant's inquiries.

13. On 29 April 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**

14. On or about midnight of 1 December 2008, the Applicant's daughter MSH was tragically deprived of her life by persons still unknown for the prosecution. The Applicant's daughter was in a vehicle with four other persons, during the time the shots were fired. She got hit but the other four persons, inside the vehicle, were unharmed.
15. The Applicant's daughter was rushed to the Emergency Unit of the Kosovo University Clinic Center where she had passed away. The medical report proved that she was killed by a fire arm.
16. On 2 December 2010, the Applicant appeals with the Kosovo Police Inspectorate, in order to find out about his daughter's death.
17. On 6 January 2011, the Applicant addressed his concern with Center for Legal Advice and Regional Development (hereinafter: CLARD).
18. On 20 January 2011, the Applicant lodged a request with the EULEX Prosecutor in Prishtina to express his doubts about the investigation of his daughter's death as well as to ask EULEX Prosecutor to take over the case.
19. On 28 January 2011, the Applicant lodges a request with the Prishtina District Prosecution, regarding the investigations about his daughter's death.
20. On 17 October 2011, the Applicant informs the Ombudsperson about his case.
21. On 24 November 2011, the Applicant was informed that his daughter's case was devolved to the Prishtina Public Prosecutor.
22. On 19 May 2012 and 9 July 2012, the Applicant together with CLARD ask the Prishtina District Prosecutor for the copies of papers of the case-file based on the rights of the injured party afforded by the Criminal Procedure Code of Kosovo, European Convention on Human Rights (hereinafter: the Convention), as well as other International Legal Instruments applicable in Kosovo.
23. The Applicant has met with the Head of the Prosecutorial Council of Kosovo, the President of the Republic of Kosovo in order to explain his case, and has also tried to establish contact with the Prime-minister of the Republic of Kosovo and the President of the Assembly of the EULEX Judges.
24. On 17 December 2012, the District Prosecutor in Prishtina replied to the Court in relation to the Referral, thereby explaining the measures undertaken by the Prosecution including covert technical measures, lack of evidence and reasonable doubt that the suspected persons have committed the crime,

interviewing of witnesses and so on. The Prosecution also informed that they had contacted the Applicant several times, and that they are awaiting the results of covert technical measures in order to act on the grounds of collected evidence.

### **Applicant's allegations**

25. The Applicant claims that as the father of the deceased girl, he is an authorized person to file a Referral before this Court, and he cites the case-law of the ECtHR to back up his claim.
26. The Applicant claims that 4 years of investigations have elapsed without any proof of substantial action by the Prosecution, to identify any suspect who committed the homicide, to file an indictment or suspend it, or to close the case altogether.
27. The Applicant claims that he has received an "informative report" issued by the General Police Directorate for the Prishtina District Prosecutor, from which: *"one cannot draw a single explanatory bit of information regarding the death of his daughter"*.
28. The Applicant claims that the prosecution has denied his rights to have access, as the next-of-kin of the deceased person, into the investigation dossier of the Prosecution. The Applicant claims that the said rights are afforded to him, as an injured party, by Article 143 [Inspection of files] of the Provisional Criminal Procedure Code of Kosovo (hereinafter: PCPCK), and Article 40 [Public hearings and access to documents] of the Convention.
29. Furthermore, the Applicant respectfully requests the Court:
  - to hold that the Referral is admissible;
  - to order an oral hearing in accordance with Rule 39 of the Rules of procedure;
  - to hold that there is a violation in relation to inefficiency of the investigating procedure and of the individual rights of the Applicant as guaranteed by Article 54 [Judicial Protection of Rights] of the Constitution, Article 7 [Equality before the law] of the Universal Declaration of Human rights, as well as Article 1 [Obligation to respect human rights], Article 2 [Right to life] and Article 13 [Right to an effective remedy] of the Convention; and
  - to determine the rights and responsibilities for the parties mentioned in this referral that this Court deems reasonable and legally grounded.

### **The Law**

#### *PCPCK CRIMINAL CHAPTER XVI: INSPECTION OF FILES*

### **Article 143**

- (1) *The injured party and his or her legal representative or authorized representative shall be entitled to inspect, copy or photograph records and physical evidence available to the court or to the public prosecutor if he or she has a legitimate interest.*
- (2) *The court or public prosecutor may refuse to permit the inspection, copying or photocopying of records or physical evidence if the legitimate interests of the defendant or other persons override the interest of the injured party or if there is a sound probability that the inspection, copying or photocopying may endanger the purpose of the investigation or the lives or health of people or would considerably delay the proceedings or if the injured party has not yet been examined as a witness.*

*Law No.03/L –225 ON STATE PROSECUTOR*

### **Article 10 Public Relations**

1. *The State Prosecutor shall regularly provide information about its activities to the public.*
2. *Notwithstanding paragraph 1 of this Article, the State Prosecutor shall not provide any information directly or indirectly which would disclose official secrets, would jeopardize a pending investigation or criminal proceeding, be harmful to the integrity, dignity, security, and rights to privacy of any persons, or violate the rights of minors.*

### **Assessment of admissibility**

30. In order to be able to adjudicate the Applicant's 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.
31. The Court refers to Article 53 [Interpretation of Human Rights Provisions] of the Constitution:  
  
*"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".*
32. The Court considers that, based on the case-law of the ECtHR, the Applicant as the parent of the deceased girl is an indirect victim and therefore is authorized to file a referral before this Court. (*See the case of Gakiyev and Gakiyeva v Russia Application no.3179/05, Judgment dated 6 November 2009*).
33. As to the Applicant's claim of the breach of Article 1 [Obligation to respect human rights], Article 2 [Right to life] in conjunction with Article 13 [Right to an effective remedy] of the Convention, regarding the excessive length of

investigation proceedings, by the public authorities of Kosovo, the Court notes that based on the case-law of the ECtHR, the State has both substantive and procedural obligations to protect the life of all persons under its jurisdiction, meaning that the right to life must be protected by law as a substantive obligation on one hand, and by development of an adequate investigation as a procedural requirement on the other.

34. The Court notes, that based on the case-law of ECtHR, there are several elements that secure the 'essential purpose' of the investigation, namely: i) the obligation of public authorities to initiate an investigation once the matter has come to their attention, independently from a formal complaint lodged by the next-of-kin, ii) independence and impartiality in law and in practice of the persons that are responsible for the investigation, iii) the investigation must be adequate in the sense that it must be capable of leading to a decision as to the cause and circumstances of death, [...] and the 'identification and punishment of those responsible'.
35. In the instant case, the Court notes that, based on the documents contained in the Referral : i) the state authorities had indeed taken reasonable investigation measures once the matter had come to their attention, ii) there is no proof or indication of a breach of independence nor impartiality of the persons involved in the investigation, iii) the investigation is still underway and yet to be concluded, but that does not mean that the investigation is inadequate because investigation is not an obligation of result but of means.
36. The Court observes, that in the instant case, the Applicant has not laid blame on the public authorities of Kosovo for the actual death of his daughter; nor has it been suggested that the authorities knew or ought to have known that the life of the Applicant's daughter was at risk by the third parties and failed to take appropriate measures to safeguard the Applicant's daughter from that risk. (See ECtHR, *Decision as to the Admissibility of Application no.47916/99, Menson and Others v. the United Kingdom, dated 6 May 2003*). The Applicant's case is therefore to be distinguished from cases involving the alleged use of lethal force either by agents of the State or by private parties with their collusion.(see, for example, *McCann and Others v. the United Kingdom, judgment of 27 September 1995, Series A no. 324; Hugh Jordan v. the United Kingdom, no. 24746/94, judgment of 4 May 2001, ECHR 2001-III (extracts); Shanaghan v. the United Kingdom, no. 37715/97, judgment of 4 May 2001, ECHR 2001-III (extracts)*)
37. The Court refers to the general principles applied by the ECtHR in relation to investigations, which expound, first of all, that the lack of conclusions of any given investigation does not, by itself, mean that it was ineffective: an obligation to investigate "is not an obligation of result, but of means" (see *Paul and Audrey Edwards V. the United Kingdom, no. 46477/99, § 71, ECHR 2002 – II*).
38. In the concrete case, from the documents contained in the referral, the Court notes that the investigations are still underway and that there, for the time being, the Prosecution has yet to gather sufficient evidence in order to file an indictment against any potential suspects.

39. The Court notes that under the applicable law in Kosovo, access to investigation dossier, is discretion of the Prosecutor for the purposes of investigation itself and for the protection of everyone involved in the said process.
40. The Court was informed by the Prosecution that the Applicant has been contacted several times by them, whereby several witnesses were questioned based on his initiative and proposal; and that the Applicant has also been notified about the measures taken by the Prosecution and the status of investigations.
41. The Court observes that development of the investigation procedure including its conclusion or dismissal, in addition to the protection of the investigation dossier, is a discretion and prerogative of the Prosecutor afforded to it by the applicable law in Kosovo, therefore any interference by the Court in the discretion of the Prosecutor constitutes an infringement to its autonomy.
42. Furthermore, the District Public Prosecution Office has informed the Court about the status of investigation and that the Prosecution will act on the grounds of collected evidence.
43. It follows that the referral is manifestly ill-founded and must be rejected as inadmissible.
44. As to the Applicant's request to hold an oral hearing, the Court refers to Article 20 of the Law:
  - "1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.*
  - "2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files".*
45. The Court considers that the documents contained in the Referral are sufficient to decide this case as per wording of paragraph 2 of Article 20 of the Law.
46. Therefore, the Applicant's request to hold an oral hearing is rejected.

### **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 (1) c of the Rules of Procedure, on 17 June 2013, unanimously:

### **DECIDES**

- I. TO REJECT the Referral as inadmissible;
- II. TO REJECT the request to hold oral hearing;
- III. 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
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Prof. dr. Ivan Čukalović

Prof. dr. Enver Hasani





