



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
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Pristine, 21May 2010
Ref.no:18/10

Resolution on Inadmissibility

In

Case No. Kl. 04/09

Applicant

Spartak Dervishi

Against

**The Decisions of the Municipal Court of Gjakova, Decision No. P.no.74/2002 and
of the District Court of Peja, Decision No. Ap.no.78/07**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Constitutional Court composed of

Enver Hasani, President
Snezhana Botusharova, Judge
Robert Carolan, Judge
Ivan Čukalović, Judge
Iliriana Islami, Judge
Kadri Kryeziu, Judge
Gjylieta Mushkolaj, Judge
Almiro Rodrigues, Judge and
Altay Suroy, Judge

Unanimously adopts the following Resolution on inadmissibility in relation to the Referral:

The Applicant

1. The Applicant is Mr. Spartak Dervishi, residing in Gjakova municipality represented by Lawyers, Avdi Rizvanolli, and Teki Bokshi, both from Gjakova.

The Challenged Decisions

2. The Municipal Court of Gjakova, Decision No. P.no.74/2002 and of the District Court of Peja, Decision No. Ap.no.78/07

Subject Matter

3. The Applicant maintains that his conviction for three offences for robbery under Article 253.1.1 of PCCK (Temporary Penal Code of Kosovo), for which he was sentenced to seven months imprisonment, should be set aside on the basis that he did not receive the Decision of the First Instance Court, that his lawyer did not have enough time to prepare the defence of his case and that new evidence should be taken into account. That new evidence is that he suffers or suffered from "Paranoid Psychosis".

Legal basis

4. Art. 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: 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 Section 55 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

Summary of the proceedings before the Constitutional Court

5. The Application was lodged with the Constitutional Court on 20 February 2009. The Judge Rapporteur appointed by the President of the Court was Judge Iliriana Islami. A Review Panel of the Court was appointed comprising Judge Altay Suroy, Chair, Judge Ivan Čukalović and Judge Almiro Rodrigues. On 9 February 2010 the Review Panel examined the Applicant's Referral and decided on the admissibility thereof.

The facts

6. The facts of the case were as follows:

1. The Applicant was convicted in Municipal Court of Gjakova on 11 February 2005 of the commission of three criminal offences of Aggravated Robbery,
2. Two of the offences were alleged to have been committed on the 28 December 2001, and one other Robbery offence on the 24 December 2001
3. According to the Verdict of the he was sentenced to seven months in prison; his time spent in detention from 30 December 2001 to 24 January 2002 was be taken into consideration and execution of the Decision No. P.no.74/2002 dated 11 October 2007 comes into full effect immediately for the serving the sentence.
4. An Appeal was lodged to the District Court in Peja through his lawyers on 20 June 2007.
5. The District Court in Peja on 9 April 2008 refused the appeal as unfounded and upheld the Decision of the Municipal Court.
6. On a further appeal presented to the District Court on 9 April 2008, new evidence was presented which maintained that the Applicant was legally irresponsible, according to new medical evidence which issued from a psychiatric Hospital where he was treated from 16 June 999 to 3July 1999 and where he had been diagnosed with "paranoid psychosis".
7. The Municipal Court of Gjakova issued an order dated 26 January 2009 obliging the Applicant to appear in Court in order to serve his sentence given, under penalty of arrest by the Police.

Proceedings before the Constitutional Court

7. An Application was presented on 23 February 2009 to the Constitutional Court, KI 04/09, challenging the constitutionality and legitimacy of the Decisions of the Municipal Court of Gjakova, Decision No. P.no.74/2002 and of the District Court of Peja, Decision No. Ap.no.78/07
8. On 20 October 2009, the District Court of Peja responded to a request from this Court for information on the case and enclosed with the response a Verdict from the Supreme Court in the Applicant's case dated 28 April 2009.

Assessment of the Admissibility of the Referral

9. The Applicant states that Article 31 of the Constitution is the basis for his referral, however, he did not specify or particularise how Article 31 supported his claim. Article 31 of the Constitution sets out the right to a fair and impartial trial. Article 113.7 of the Constitution of Kosovo states:

10. All individual persons are authorised to file complaints to public authorities about their violations of human and freedom rights, established and guaranteed by the Constitution, but only after exhausting all the legal means foreseen by the Law.

11. Article 48 of the Law on Constitutional Court of the Republic of Kosovo states:

“The applicant of the request is obliged to mention and clearly define which rights and freedoms have been violated and which relevant Act of the public authority is also contested.”

12. In the Referral the Applicant has not mentioned or clearly defined which rights and freedoms he alleges have been violated.

13. The medical evidence which the Applicant attempts to rely on refers to a diagnosis and period of treatment prior to the commission of the offences with which he was charged. As pointed out in the Decisions of the Courts which heard his case his medical condition was not raised by him in his defence at his trial and the evidence now produced is not so compelling as to allow him to rely on it to challenge his conviction any further.

FOR THESE REASONS

14. The Constitutional Court, pursuant to Art. 113(7) of the Constitution, Art. 20 of the Law, and Art. 55 of the Rules of Procedure, 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 Art. 20(4) of the Law.

III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Prof. Dr. Iliriana Islami

Prof. Dr. Enver Hasani

