



**REPUBLIKA E KOSOVËS**  
**Republika Kosova - Republic of Kosovo**  
**Gjykata Kushtetuese / Ustavni sud / Constitutional Court**

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Prishtina, 23 June 2010  
Ref. no.: RK 31/10

**RESOLUTION ON INADMISSIBILITY**

in

Case No. KI 16/09

**Sami Sekiraqa**

against

**The Decisions of the Supreme Court of Kosovo, S.C. Ap.No. 448/2006, and of the District Court of Pristina, D.C. P.No. 521/2005**

**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 Cukalovic, Judge  
Gjylieta Mushkolaj, Judge and  
Iliriana Islami, Judge

Unanimously adopts the following resolution on inadmissibility

**The Applicant**

1. The Applicant is Mr. Sami Sekiraqa. He resides in Pristina.

**The Challenged Decisions**

2. The Supreme Court of Kosovo, S.C. Ap. No. 448/2006 of 12 December 2006, and of the District Court of Pristina, D.C. P. No. 521/2005 of 1 January 2006.

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## Subject Matter

3. The Applicant argues that his rights guaranteed by Articles 31 (right to a fair and impartial trial) and 32 (right to legal remedies) of the Constitution of the Republic of Kosovo have been violated. He argues that: (1) he was tried in absence; (2) the evidence does not support his conviction and he was prosecuted because his political ideology differed from that of the ruling political party, the Communist Party.

## 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 54(b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

## Proceedings before the Constitutional Court

5. On 30 April 2009 the Applicant filed his Referral with the Constitutional Court. On 4 May 2009 the Interim Secretary of the Constitutional Court notified the Applicant that the Court would consider his Referral once the Court was fully functional.
6. On 18 December 2009 the Constitutional Court sent a letter to the Supreme Court of the Republic of Kosovo, , requesting a response in relation to the Referral.
7. On 23 December 2009 the Supreme Court of the Republic of Kosovo registered its response, Decision Ap. Nr. 448/06, which included the Court's reasoning and explanation, as well as the public decision it provided to the parties.
8. On 26 January 2010 the President of the Court appointed Judge Altay Suroy as the Judge Rapporteur.
9. On 13 May 2010 the Review Panel, consisting of Kadri Kryeziu (presiding), Gjyljeta Mushkolaj, and Almiro Rodriques, considered the Report of Judge Suroy and recommended that the full Court reject the case as inadmissible.

## The Facts

10. On 1 June 2006 the Applicant, Sami Sekiraqa, was found guilty by the District Court of Pristina of the criminal offense of unauthorized property, control, possession or use of weapons in accordance with Article 328, paragraph 1 of the Criminal Code of Kosovo. The Court pronounced a sentence of eleven months of imprisonment, and delayed its execution with a suspended sentence of two years provided that Mr. Sekiraqa did not commit any other criminal offense during the two year period. (D.C.P. No. 521/2005 of 01.06.2006).
11. The Public Prosecutor of the District of Pristina submitted an appeal of the criminal sanction to the Supreme Court of Kosovo on 18 August 2006.
12. The Applicant's attorney submitted an appeal to the Supreme Court of Kosovo.
13. On 12 December 2006 the Supreme Court of Kosovo rejected the appeals as inadmissible because the parties waived their right to appeal when they did not file the appeals within the legally required deadline. The court of first instance informed the parties of their right to appeal and their obligation to file their appeal within eight

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days of the Court's judgment, in accordance with Article 394, paragraphs 1 and 3 of the Criminal Procedure Code. (S.C. Ap. No. 448/2006 of 12.12.2006). According to Article 400, paragraph 2 of the Criminal Procedure Code, if a person entitled to appeal fails to file the appeal within the legally stipulated interval, he or she shall be deemed to have waived their right to appeal.

14. On 18 December 2008 the District Court of Pristina upheld the Applicant's request for removing his name from the sentence registry. (D.C.P No. 215/2008 of 18.12.2008 (revised by D.C.P. No. 215/2008 of 22.12.2008)).

### **Assessment of Admissibility of the Referral**

15. The Applicant states that Articles 31 (right to a fair and impartial trial) and 32 (right to legal remedies) of the Constitution are the bases for his Referral.
16. Article 113.7 of the Constitution states:  
*Individual persons are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.*
17. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo states:  
*In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.*
18. Under the Constitution, the Constitutional Court is not to act as a court of appeal, or a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
19. The Constitutional Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see among other authorities, Report of the Eur. Commission on Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87 adopted on 10 July 1991).
20. The Applicant's argument that he was tried in absence is unfounded. Mr. Sekiraqa was present, along with his attorney, in the main session in the District Court of Pristina on 1 June 2010. Additionally, the Applicant's argument that his conviction is not supported by the evidence is unfounded. The Applicant and his attorney were afforded ample opportunities to state Mr. Sekiraqa's case and to contest the application of the law to the evidence, before both the District Court of Pristina and the Supreme Court of Kosovo. Having examined the proceedings as a whole, the Constitutional Court does not find that the proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application no. 17064 of 30 June 2009).
21. Furthermore, the Applicant has not submitted any *prima facie* evidence indicating a violation of his rights under the Constitution (see *Vanek v. Slovak Republic*, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005). The Applicant does specify how Articles 31 or 32 support his claim, as required by Article 113.7 of the Constitution and Article 48 of the Law.
22. It follows that the Referral is ill-founded and must be rejected.

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## FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law, and Section 54(b) of the Rules of Procedures, unanimously

### DECIDES

- I. To REJECT this Referral as inadmissible.
- II. The Secretariat shall notify the Parties of the Decision and shall publish it in the Official Gazette in accordance with Article 20.4 of the Law.
- III. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Altay Suroy

Prof. Dr. Enver Hasani

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