



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

Pristina, 18 October 2010
Ref. No.: RK 56/10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 20/09

Petrit Morina

vs.

Judgment AP.Nr.495/2003 of the Supreme Court of Kosovo,
dated 7 April 2004,

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
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Petrit Morina from the Village of Polluzhe in the Municipality of Rahovec.

Challenged Decision

2. The Applicant challenges Judgment AP.Nr.495/2003 of the Supreme Court of Kosovo dated 7 April 2004.

Subject Matter

3. The Applicant requests the Constitutional Court to consider his complaint that, regarding one of the offences, for which he was charged with robbery, he had provided evidence that he was innocent. He alleges that the evidence offered has not been taken into consideration by the courts.
4. He alleges that his right to a fair trial has been violated.

Legal Basis

5. Article 113 (7) of the Constitution, Article 20 of Law (No. 03/L-121) on the Constitutional Court of the Republic of Kosovo of 16 December 2008, (hereinafter: "the Law") and Section 54 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: "the Rules of Procedure").

Proceedings before the Court

6. On 20 September 2009, the Applicant filed a Referral with the Constitutional Court. On 28 April 2010, after having considered the Report of the Reporting Judge, Iliriana Islami, the Review Panel, composed of Judges Ivan Cukalovic (Presiding), Enver Hasani and Kadri Kryeziu, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

7. It appears from the Applicant's submissions that, by judgment P.Nr.236.02 of 31 March 2003, the District Court in Peja convicted the Applicant, together with several other accused persons, on nine accounts of robbery and aggravated theft and sentenced him to 12 years imprisonment, including the time spent in detention on remand since 5 August 2002.
8. The Applicant appealed against the District Court's judgment to the Supreme Court on "the grounds of essential violation of the provisions of criminal procedure, erroneous and incomplete determination of the facts and violation of criminal law" and proposed that the Supreme Court overturn the appealed judgment and return the case to the court of first instance for retrial or amend the verdict in the way as requested by the defense counsel. He also filed a special appeal on similar grounds.
9. By submission PPA.Nr.494/2003 of 22 December 2003, the Public Prosecutor proposed to the Supreme Court to refuse the appeal as unfounded.
10. On 7 April 2004, the Supreme Court ruled that the appeal of the Applicant was partly founded and re-qualified certain criminal offences, of which the Applicant had been convicted, from "commission of robbery in a group" to "commission of theft".

Applicant's allegations

11. The Applicant alleges that the District Court in Pristina wrongfully convicted him on one account of robbery, for which he got a sentence of 30 months, while that robbery had been committed by the two co-accused and two brothers of one of them. His allegation is apparently supported by a written statement of one of the co-accused, in which the latter declared that the Applicant had not participated in this robbery.

12. The Applicant complains that he has to serve 30 months imprisonment for an offense he has not committed, since the District Prosecutor and other judicial authorities have refused to re-open the case in order to uncover the truth.

Assessment of the admissibility of the Referral

13. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court needs first to examine, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and the Law.
14. As to the present Referral, the Constitutional Court notes that the Applicant complains of Decision Ap.Nr.495/2003 of the Supreme Court which is dated 7 April 2004. This means that the Referral relates to events prior to 15 June 2008 that is the date of the entry into force of the Constitution of the Republic of Kosovo. It follows that the application is out of time and, therefore, incompatible "*ratione temporis*" with the provisions of the Constitution and the Law (see *mutatis mutandis Jasiūniē v. Lithuania, Application no. 41510/98, ECHR Judgments of 6 March and 6 June 2003*).
15. Accordingly, the Applicants' Referral must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law, and Section 54 (b) 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 Article 20 (4) of the Law.
- III. This Decision is effective immediately.

Judge Rapporteur

Dr. Iliriana Islami

President of the Constitutional Court

Prof. Dr. Enver Hasani

