



**Republika e Kosovës  
Republika Kosova-Republic of Kosovo  
Gjykata Kushtetuese / Ustavni sud / Constitutional Court**

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Prishtina, 13 June 2010  
Ref. No.:RK 23/10

**RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 50/09**

Applicant

**Afrim (Ajet) Haxha**

vs.

**Opposing Party**

**District Public Prosecutor, Mitrovica**

**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

**The Applicant:**

1. The Applicant is Mr. Afrim (Ajet) Haxha from the Municipality of Mitrovica.

**The Opposing Party:**

2. The Opposing Party is the District Public Prosecutor of Mitrovica.

## **Subject Matter**

3. Applicant alleges that on 22 and 23 March 1996, police forces surrounded his house and broke into it. He maintains that certain policeman, in concert with other named persons, stole personal property from his residence.
4. The Applicant is requesting that the District Court in Mitrovica find those people guilty of crimes and is requesting that they be sentenced to the maximum penalty for their alleged crimes and that his family (Haxha) be compensated in the amount of 8000 Deutsch Marks, plus interest from the date of the alleged crime.
5. The Applicant alleges that all of the appropriate public authorities have failed to prosecute the alleged perpetrators for their crimes. On February 20, 2006, he requested the District Court of Mitrovica and the District Prosecutor to prosecute these individuals for the crimes they allegedly committed. On October 31, 2008, he demanded that the Kosovo Public Prosecutor prosecute these individuals. On October 31, 2008, he also requested the Supreme Court of Kosovo to intercede in his case. He also asked the Minister of Justice, to intervene and to order the District Prosecutor and the District Court of Mitrovica to prosecute these individuals.
6. In a letter accompanying his referral to this Court, the Applicant stated that he had complained everywhere but that no one had given him any reply. He stated that the Constitutional Court should solve his problem or he would have to take the law into his own hands. He maintained that the majority of the letters he had sent to institutions had not been responded to and that the Court was his last recourse.
7. The Applicant appears to be alleging that his right to judicial protection and to an effective legal remedy has been violated pursuant to Article 54 of the Constitution.
8. There has been no response by any judicial or public authority of Kosovo other than a letter from the Ministry of Justice, on 24 October 2008, stating that the Ministry of Justice was not competent to act on Applicant's claim.

## **Legal basis**

9. Article. 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.

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

10. *Article 6 of the Provisional Criminal Code of Kosovo* authorizes an appropriate public prosecutor of Kosovo to initiate a criminal proceeding if there is reasonable suspicion that a person may have committed a crime, see *Article 6 (3)*. By their failure to commence any criminal proceedings against anybody in response to the Applicant's complaint, it is reasonable to infer that the appropriate public prosecutors concluded that they did not have reasonable suspicion that a person may have committed a crime or that there was not sufficient evidence to maintain a prosecution. If the public prosecutor decides that there are no grounds to initiate or continue a criminal proceeding, his or her role as a prosecutor may be assumed by the injured party see *Article 6 (4)*. There is no evidence that the Applicant, as an injured party commenced any criminal proceedings against anybody for the incident of 22 and 23 March, 1996.

11. It appears that the Applicant is alleging that the suspects in this case committed the crime of *Aggravated Theft in violation of Article 253 of the Provisional Criminal Code of Kosovo*. If convicted, the maximum penalty that could be imposed for such a crime is 5 years in prison. The Statute of Limitations for when a crime of this nature can be prosecuted is 5 years; see *Article 90 of the Provisional Criminal Code of Kosovo*. Therefore, the time limit for any prosecution to have been commenced against any suspects in this case had probably expired by 21 or 22 March, 2001 (five years from the day when the alleged crime was committed). Therefore, as a matter of law, any criminal prosecution would now probably be time barred by the applicable statute of limitations law.
12. *Article 49 of the Law on the Constitutional Court of the Republic of Kosovo* requires that the referral be filed with the Constitutional Court within four months of the act or omission creating a violation of the Applicant's constitutional rights. In this case, if there was a constitutional violation by the appropriate authorities refusing to prosecute, that violation occurred when the statute of limitations expired on or about 21 or 22 March, 2001. The Applicant first attempted to file his referral with this Court on or about 5 October, 2009, well beyond the four month period allowed by Article 49.
13. 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. In this connection, the Court refers to Article 113.7 of the Constitution, which provides: "Individuals 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."
14. The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (see, *mutatis mutandis*, ECHR, *Selmouni v. France*, no. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, *mutatis mutandis*, ECHR, *Azinas v. Cyprus*, no. 56679/00, decision of 28 April 2004).
15. This Court applied this same reasoning when it issued a Decision on 27 January 2010 on inadmissibility on the grounds of non exhaustion of remedies in the case of *AAB-RIINVEST University L.L.c., Pristina vs. Government of the Republic of Kosovo*, Case No. KI. 41109.
16. The Applicant has not addressed whether he attempted to recover damages from the alleged perpetrators in a civil proceeding. He has also not alleged whether he was precluded from making such a claim. Therefore, he has not established whether he has exhausted all of his legal remedies as required by *Article 113, Section 7 of the Constitution of the Republic of Kosovo*.
17. It does not appear that the Applicant has exhausted all legal remedies provided by law either as a private prosecutor as an injured party or as a civil litigant in a civil proceedings to recover damages.
18. Article 48 of the Law on the Constitutional Court of the Republic of Kosovo provides:

*"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."*

19. The Applicant has not clarified what rights or freedoms he feels have been violated.

### **FOR THESE REASONS**

20. 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, in its session of 13 June 2010:

### **DECIDES**

I. TO REJECT the Referral as inadmissible.

II. This Decision shall be notified to the Parties, the President of the Supreme Court and the Minister of Justice 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**

Robert Carolan, signed



**President of the Constitutional Court**

Prof. Dr. Enver Hasani, signed