



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

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Pristina, on 02 May 2019  
Ref. no.:RK 1354/19

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI174/18**

Applicant

**Bedri Gashi**

**Request for interpretation and constitutional review of three documents  
of the Office of the Disciplinary Counsel**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

### **Applicant**

1. The Referral was submitted by Bedri Gashi, a lawyer from the municipality of Klina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the constitutionality of the “three documents” of the Office of the Disciplinary Counsel (hereinafter: the ODC) regarding the disciplinary investigations which it initiated against Judge H.G. because of “unprofessional” conduct of Judge H.G.
3. Challenged documents of the ODC are:
  - (i) ZPD/14/zp/437, of 28 April 2014;
  - (ii) ZPD/18/kb/223, of 5 June 2018; and,
  - (iii) ZPD/17/zp/425, of 9 August 2017.

## **Subject matter**

4. The subject matter is the constitutional review of the three ODC documents, which, according to the Applicant's allegations, due to “unprofessional” conduct of Judge H.G., intentionally violated the constitutional rights of his clients, guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution.

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution Articles 47 and 48 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 6 November 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 13 November 2018, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
8. On 14 January 2019, the Court notified the Applicant about the registration of the Referral and in accordance with Rule 32 of the Rules of Procedure requested him to complete and clarify the Referral. On the same date, the Applicant personally completed the referral form for the submission of the Referral to the Court.
9. On 20 March 2019, a copy of the Referral was sent to the ODC.

10. On 10 April 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.
11. On the same date, the Court, by a majority of the votes, declared the Referral inadmissible because it is incompatible *ratione materiae* with the Constitution.

### **Summary of facts**

12. On 14 March 2014, the Applicant filed a submission with the ODC for the opening a disciplinary investigation against Judge H.G.
13. On 28 April 2014, the ODC notified the Applicant (document ZPD/14/zp/437) that based on the aforementioned submission a disciplinary investigation was opened against Judge H.G. The Applicant was also informed by the DPO that he could refer to the identification number of the “investigative case” for the future correspondence regarding the disciplinary investigation.
14. On 23 March 2017, the Applicant submitted a document to the Kosovo Judicial Council (hereinafter: the KJC), in which case he expressed concern about the unprofessionalism of Judge H.G.
15. On 28 March 2017, the KJC notified the Applicant that, based on the relevant provisions of the Law on the KJC, the allegations of “misconduct” of the judges should be addressed to the ODC because the KJC has no competence to initiate the disciplinary investigation for such allegations.
16. On 7 April 2017 and 4 May 2017, the Applicant filed again a submission with the ODC against Judge H.G. The Applicant alleged that the Judge in question delayed the trial and that he was biased. The Applicant also expressed his dissatisfaction regarding the content of the decisions on the issues adjudicated by Judge H.G.
17. On 9 August 2017, the ODC (document no. ZPD/17/zp/425) notified the Applicant that, *inter alia*, it found: (i) that there have been delays in the proceedings, but they were caused by objective circumstances which are not sufficient to open a disciplinary investigation; (ii) regarding the content of the court decisions, the ODC responded that it has no mandate and that based on the law in force they may be challenged at the higher court instance; and, (iii) that the Applicants' allegations of partiality of Judge H.G., “for the time being”, there are no sufficient grounds to prove them.
18. On 8 September 2017, the Applicant reiterated his request to the ODC for the opening of disciplinary investigation against Judge H.G., alleging “misconduct”.
19. On 5 June 2018, the ODC (document ZPD/18/kb/223) notified the Applicant that “it did not find any evidence that the Judge committed misconduct alleged by you”.

20. From the documents filed in the Referral, it results that the Basic Court in Peja (Decision No. 164/17 of 17 November 2017) approved the Applicant's request for the dismissal of Judge H.G. in civil-contested cases, and the latter will be assigned to another judge, according to the order of the Basic Court in Peja-Branch in Klina.

### **Applicant's allegations**

21. The Applicant alleges that Judge H.G. deliberately violated the constitutional rights of his clients guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution.
22. The Applicant considers that the ODC rendered three "rehabilitation decisions" and he requests the Court: *"... an interpretation and confirmation of legality and constitutionality of the 3 rehabilitation documents of the 3 disciplinary counsels of the ODC [...] we want to explain us how these three gentlemen were able to unanimously prove the innocence of Judge H.G., only by one 5-6-line document without any procedure and without a written decision on the guilt or innocence of the judge [...]"*.

### **Admissibility of the Referral**

23. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and in the Rules of Procedure.
24. The Court refers to paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

*"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

*[...]*

*7. 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".*

25. The Court refers to Article 48 [Accuracy of the Referral] of the Law, which foresees:

Article 48 [Accuracy of the Referral]

*"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".*

26. The Court also refers to Rule 39 (3) (b) [Admissibility Criteria] of the Rules of Procedure relating to the substantive jurisdiction of the Court, which specifies:

*“(3) The Court may also consider a referral inadmissible if any of the following conditions are present:*

*(b) the Referral is incompatible ratione materiae with the Constitution”.*

27. As a fundamental issue in this Referral and in all the Referrals submitted to this Court, first it must be established whether the rights claimed by the Applicants are in accordance with the substantive (*ratione materiae*) jurisdiction of the Court. Thus, it must be established whether the alleged rights are guaranteed and protected by the Constitution and the ECHR.
28. In this regard, the Court notes that the Applicant requests an interpretation of legality and constitutionality of the three ODC documents, which the Applicant considers to be “*rehabilitation decisions*” for Judge H.G. The Applicant complains how it is possible that the ODC “*can prove unanimously the innocence of Judge H.G. only by a 5-6 line document without any procedure and without a written decision on the guilt or innocence of the judge*”.
29. The Court notes that the ODC decisions on the guilt or innocence of Judge H.G., do not affect the civil rights and obligations of the Applicant and his clients within the meaning of Article 31 of the Constitution in conjunction with Article 6 of the ECHR. The Applicant’s complaints essentially relate to the “*unprofessional*” conduct of Judge H.G.; which implies that the rights and personal obligations of the Applicant and his clients were not subject of review by the ODC.
30. The compatibility *ratione materiae* of a Referral with the Constitution and the ECHR derives from the Court’s substantive jurisdiction. The right referred by the Applicant must be guaranteed and protected by the Constitution and the ECHR in order for a constitutional complaint to be compatible *ratione materiae* with the Constitution and ECHR.
31. In this regard, the Court notes that the Constitution and the ECHR do not recognize the right to prosecution or punishment of third parties (see *Perez v. France*, paragraph 70); which in fact represents the substance of the Applicant’s request because he is dissatisfied that the ODC “*proved the innocence of Judge H.G. by decisions of only 5-6 lines*”. However, as to the content of the judgments rendered by Judge H.G., the ODC advised the Applicant that those issues may be addressed to a higher court instance in accordance with the applicable law.
32. As in the present case, the ODC decisions do not define or affect in any way the Applicant’s personal rights and obligations, his Referral is incompatible with the substantive (*ratione materiae*) jurisdiction of the Court.
33. In addition, the Court notes that the Basic Court in Peja approved the Applicant’s request for the dismissal of Judge H.G., and that the “*case*” of the Applicant’s clients was assigned to another Judge according to the order in that court (see paragraph no. 20).

34. Therefore, the Applicant's Referral is to be declared inadmissible because it is incompatible *ratione materiae* with the Constitution, as established by Article 113.7 of the Constitution, foreseen by Article 48 of the Law and further specified by Rule 39 (3) (b) of the Rules of Procedure.

### FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rules 39 (3) (b) and 59 (2) of the Rules of Procedure, on 10 April 2019, unanimously

### DECIDES

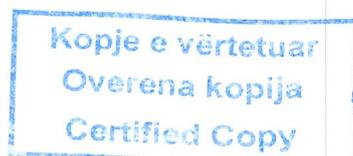
- I. TO DECLARE the Referral inadmissible;
- II. TO DECLARE, by majority, the Referral inadmissible *ratione materiae* with the Constitution;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately

**Judge Rapporteur**

Radomir Laban

**President of the Constitutional Court**

Arta Rama-Hajrizi



*This translation is unofficial and serves for informational purposes only.*