



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

Prishtina, on 29 November 2019  
Ref. no.:RK 1469/19

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

## DECISION ON WITHDRAWAL OF REFERRAL

in

Case No. KI82/19

Applicant

Izet Ahmetxhekaj

**Assessment of the Applicant's request for withdrawal of the Referral for constitutional review of Judgment A.no.664/2010 of the Supreme Court of Kosovo, of 29 March 2011 and Decision C.no.96/016 of the Basic Court in Peja-branch in Istog, of 15 April 2019**

### 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 Izet Ahmetxhekaj, residing in Rudica, Municipality of Klina (hereinafter: the Applicant), represented by Sefer Desku, a lawyer in Klina.

## **Challenged decision**

2. The challenged decision is Judgment A.no.664/2010 of the Supreme Court of Kosovo [hereinafter: the Supreme Court] of 29 March 2011 and Decision C.nr.96/016 of the Basic Court in Peja, branch in Istog (hereinafter: the Basic Court) of 15 April 2019.
3. The Applicant has requested from the Court to withdraw his Referral.

## **Subject matter**

4. The subject matter is the assessment of the Applicant's request for withdrawal of the Referral for constitutional review of the challenged decisions which, as alleged by the Applicant, have violated his rights guaranteed by Articles 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: 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 22 [Processing Referrals], 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo No. 03/L-121 (hereinafter: the Law) and Rules 32 [Filing of Referrals and Replies] and 35 [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 23 May 2019, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral.
7. On 28 May 2019, the President of the Court appointed Judge Selvete Gërzhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (presiding), Remzije Istrefi Peci and Nexhmi Rexhepi.
8. On 18 June 2019, the Court notified the Applicant about the registration of the Referral and requested from him to inform the Court if he has used any legal remedy in respect of Decision C.no.96/016 of the Basic Court, of 15 April 2019, as well as to submit to the Court all decisions regarding his case which he did not attach to the initial Referral.
9. On 7 July 2019, the Court received a letter from the Applicant whereby he informed the Court regarding the appeal which he had filed against the Decision C.no.96/016 of the Basic Court, of 15 April 2019. This letter he had submitted at the Kosovo Post Office, on 3<sup>rd</sup> of July 2019.
10. On 12 July 2019, the Court notified the Supreme Court and the Basic Court about registration of the Referral.

11. On 23 August 2019, the Applicant submitted to the Court a request for withdrawal of the Referral KI82/19, stating that the Court of Appeals by Decision [AC.no.2392/19] of 17 July 2019, *has "approved the appeal of [the Applicant], as grounded and quashed the Decision [C.no.96/016] of the Basic Court [...]"* and the case is remanded for retrial [...]" to the Basic Court.
12. On 7 November 2010, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court to grant the request for withdrawal of the Referral.

### **Summary of facts in relation to Referral KI82/19**

13. The Applicant had been employed as a correctional officer at the Correctional Center in Dubrava since 2001.
14. The Court notes that there have been three (3) procedures conducted against the Applicant:
  - i) The criminal procedure by which the Applicant was acquitted of the criminal charge, related to the offence provided for in Article 314 [Facilitating the Escape of Persons Deprived of Liberty] in conjunction with Article 23 [Co-perpetration] of the Provisional Criminal Code of Kosovo (hereinafter: PCCK), since he was suspected that on 15 July 2007, together with some other persons, had enabled the escape of several prisoners from prison. This procedure was completed with Judgment [PA1.no.135/ 15] of the Court of Appeals of 23 February 2015.
  - ii) The procedure with regard to the termination of the Applicant's employment relationship on the ground that upon his release from detention on remand related to the aforementioned criminal procedure, the Applicant failed to appear in the workplace and this conduct had resulted in a disregard of duty according to the Law on the Civil Service of Kosovo. Regarding this procedure, the Applicant challenged the Judgment of the Supreme Court [A.no.664/2010] of 29 March 2011, which upheld the claim of the Government of Kosovo and quashed the decision of the IOBK [no. 1409/2010]; and
  - iii) The procedure concerning the Applicant's claim for reinstatement to work and payment of personal income, in respect of which the Basic Court, by Decision [C.no.96/016] of 15 April 2019, dismissed the Applicant's claim as inadmissible. The Applicant submitted an appeal to the Court of Appeals against this Decision.

### **Request for withdrawal of the Referral KI82/19**

15. The Applicant justifies his request for withdrawal of Referral KI82/19 by the fact that the Court of Appeals by Decision [AC.no.2392/19] of 17 July 2019 approved his appeal against Decision [C.no.96/016] of the Basic Court and remanded his case for retrial.



## **Assessment of the request for withdrawal of Referral KI82/19**

16. When assessing the admissibility of the referrals, the Court first examines whether a referral has fulfilled the admissibility requirements established by the Constitution and further specified by the Law and Rules of Procedure.
17. However, in the circumstances of the present case, taking into consideration the Applicant's request to withdraw his Referral, the Court will first examine this request for withdrawal and in this respect, it will initially refer to the relevant legal provisions and the Rules of Procedure, as follows:

### *Article 23 [Withdrawal of a party]*

*"The Constitutional Court shall decide on matters referred to it in a legal manner by authorized parties notwithstanding the withdrawal of a party from the proceedings."*

### *Rule 35 [Withdrawal, Dismissal and Rejection of Referrals]*

*"(1) A party may withdraw a filed referral or a reply at any time before the beginning of a hearing on the referral or at any time before the Court decision is made without a hearing.*

*(2) Notwithstanding a withdrawal of a referral, the Court may determine to decide the referral."*

18. The Court notes that paragraph (1) of Rule 35 of the Rules of Procedure, enables the Applicants to withdraw their referral a) before the beginning of the hearing, or b) before the Court decision is made. The Court, pursuant to Article 23 of the Law and paragraph (2) of Rule 35 of the Rules of Procedure, decides whether to grant this request or not.
19. In the circumstances of the present case, the Court considers that there is no compelling reason to continue examining the Referral for constitutional review of the aforementioned decision, despite the Applicant's request to withdraw his Referral (see, also, the Case No.KI04/17, Applicant Z.K., Decision on Withdrawal of Referral of 28 July 2017, paragraph 19 and Case No. KI110/17, Applicant *Sekule Stanković*, Decision on Withdrawal of Referral of 13 June 2018, paragraph 18).
20. Consequently, the Court, pursuant to Article 23 of the Law and Rule 35 of the Rules of Procedure, granted the Applicant's request to withdraw the Referral.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 23 of the Law and Rule 35 of the Rules of Procedure, on 7 November 2019, unanimously

## **DECIDES**

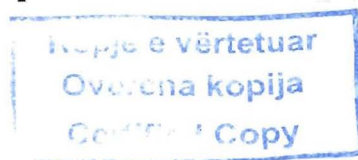
- I. TO GRANT the request for withdrawal of Referral no. KI82/19;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi



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