



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

Prishtina, on 29 May 2018
Ref. No.: RK 1237/18

DECISION TO REJECT THE REFERRAL

in

Case No. KI08/18

Applicant

Naser Berisha

**Request for reconsideration of the allegations raised in the Resolution
on Inadmissibility of the Constitutional Court in case KI104/17,
of 14 November, 2017**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Naser Berisha, residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), in case KI104/17 of 14 November 2017, which rejected his Referral as manifestly ill-founded.

Subject matter

3. The subject matter of this Referral in fact relates to the Applicant's request for reconsideration of his allegations raised in the previous Referral KI104/17.

Legal basis

4. 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], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Court

5. On 15 January 2018, the Applicant submitted the Referral to the Court.
6. On 16 January 2018, the President of the Court appointed Judge Altay as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Gresa Caka-Nimani.
7. On 23 January 2018, the Court notified the Applicant about the registration of the Referral.
8. On 19 April 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court to summarily reject the Referral.

Summary of facts

9. On 14 February 2007, the Applicant filed a claim against R. C. and Socially-Owned Enterprise KBI "Kosova Export", Municipality of Fushë Kosovë for the return of several land plots which were allegedly confiscated from Mr. Z. Z., the predecessor of the Applicant's father. On 6 February 2009, the Basic Court in Prishtina by Decision C. No. 231/2007 declared itself incompetent to decide the case and the claim was sent to the Specialized Panel of the Special Chamber on Privatization Agency of Kosovo Related Matters, which on 12 April 2011, rejected the statement of claim regarding the claimant R. C. as inadmissible.
10. On 26 April 2011, the Privatization Agency of Kosovo (PAK), as a representative of the socially owned enterprise filed a request for suspension of proceedings in this case as the socially-owned enterprise was subject to the

liquidation procedure. On 21 November 2011, the Specialized Panel by Decision No. SCC-09-0217 rejected the request of the PAK to suspend the proceedings regarding the Applicant's claim. On 18 December 2014, the Appellate Panel (Decision ASC-11-0108) rejected as ungrounded the PAK appeal against the Decision (No. SCC-09-2017) of the Specialized Panel.

11. On 26 October 2015, the Specialized Panel (Decision SCC-09-0217) rejected the Applicant's claim as inadmissible "*as the claimant failed to provide the Decision on inheritance of heirs of Z.Z.*" to prove their active legitimacy in the present case. On 24 November 2015, the Applicant filed an appeal with the Appellate Panel "*on the grounds of violation of the substantive law*". On 6 April 2017, the Appellate Panel (Decision AC-I-15-0265) rejected as ungrounded the Applicant's appeal, upholding the Decision of the Specialized Panel.
12. On 25 August 2017, the Applicant submitted to the Court the Referral KI104/17, requesting the constitutional review of the Decision [AC-I-15-0265 of 6 April 2017] of the Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters. The Applicant alleged the violation of his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial] and 46 [Protection of Property] of the Constitution, as well as Article 1 [Protection of Property] of Protocol No. 1 of the European Convention on Human Rights.
13. On 14 November 2017, the Court, after assessing the Applicant's allegations, concluded that the Applicant's Referral had to be declared inadmissible, as manifestly ill-founded, on constitutional basis, reasoning:

"that the Applicant did not present any evidence, facts or arguments that indicate that the proceedings before the Appellate Panel constituted in any way a constitutional violation of his rights guaranteed by the Constitution, namely, the right to fair and impartial trial and the right to protection of property. Consequently, the Court concludes that the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure".

Applicant's allegations

14. The Applicant alleges that the Court, by declaring his previous Referral KI104/17 inadmissible, manifestly ill-founded, "upheld the violations" that were caused to him by the decisions of the regular courts, alleging that the rejection of his Referral by the Court is in contradiction to the right "*to impartial trial, as provided by Article 6 of the ECHR (European Convention on Human Rights)*".
15. Finally, the Applicant reiterated his allegations as raised filed in Referral KI104/17, requesting the Court to recognize him as the successor of his predecessor, and that his predecessor be recognized as the legitimate owner of several immovable properties (parcels) confiscated by the then regime prior

before the '90-ies, claiming that they were taken from his family for use, according to a regulatory plan of parcels (land consolidation) in the various cadastral zones”.

Admissibility of the Referral

16. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and as further specified by the Law and the Rules of Procedure.
17. In this respect, the Court refers to Rule 32 (5) of the Rules of Procedure, which establishes:

“The Court may summarily reject a referral, ... if the referral is repetitive of a previous referral decided by the Court, or...”
18. The Court notes that the Applicant, in fact, through his current Referral, requests the Court to reconsider his allegations raised in the previous Referral KI104/17.
19. The Court in the previous Referral KI104/17 of the Applicant, addressed all the allegations raised by him, by replying separately to each of them and then concluded that the Referral was to be declared manifestly ill-founded on constitutional basis and, thus inadmissible, for the reasons referred to in paragraph 13 of this decision.
20. In this respect, the Court considers that the present Referral does not present any new circumstances to be reconsidered by the Court. For all the issues raised in this Referral, the Court has already decided in case KI104/17.
21. Therefore, the Court considers that the present Referral does not present any new evidence or circumstance to review the Applicant's allegations raised in the previous Referral KI104/17, for which the Court decided by Resolution on Inadmissibility on 14 November 2017 (see: in a similar situation, the Decision to reject the referral of the Constitutional Court in case KI26/14, Applicant *Bajrush Gashi*, 26 March 2015, paragraph 24).
22. The Court recalls that the individual complaint under Article 113.7 of the Constitution should not be viewed by the Applicants as an opportunity to request repeatedly from the Court the review of allegations or the reopening of decisions on matters for which the Court has once decided.
23. In addition, the Court recalls that its decisions are final and binding on the judiciary, on all individuals and on all institutions of the Republic of Kosovo (see, among other, Decision of the Constitutional Court in case KI26/14, Applicant *Bajrush Gashi*, 26 March 2015, paragraphs 26 and 27).
24. In conclusion, the Court considers that the Applicant's Referral is, in fact, the repetition of a previous Referral decided by the Court. Therefore, in accordance

with Rule 32 (5) of the Rules of Procedure, this Referral is to be summarily rejected.

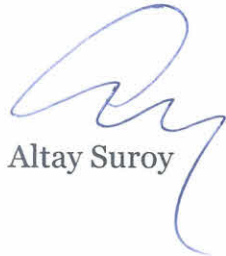
FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law, and Rule 32 (5) of the Rules of Procedure, on 19 April 2018, unanimously

DECIDES

- I. TO SUMMARILY REJECT the Referral;
- 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



Altay Suroy



President of the Constitutional Court



Arta Rama-Hajrizi