



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 27 December 2018
Ref. no.: RK 1309/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI110/18

Applicant

Isuf Musliu

**Request for constitutional review of the proceedings in the Basic Court in
Prishtina - Branch in Lipjan, regarding the case C. No. 296/16**

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 Isuf Musliu (hereinafter: the Applicant), residing in Prishtina.

Challenged decision

2. The Applicant does not challenge any specific act of public authorities. He challenges the length of the proceedings in relation to the adjudication of case C. No. 296/16, which is being conducted in the Basic Court in Prishtina - Branch in Lipjan (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the length of the proceedings regarding the adjudication of the case C. No. 296/16.
4. The Applicant did not specifically state any right guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), which he considers to have been violated.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] 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 3 August 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 15 August 2018, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
8. On 27 August 2018, the Court notified the Applicant about the registration of the Referral and asked him to complete the referral form of the Court.
9. On 28 August 2018, the Applicant submitted the additional documents in the referral form, which he addressed to the President of the Court.
10. On 4 September 2018, the Applicant submitted the completed referral form with same documents, which he had already submitted on 3 August 2018.
11. On 7 September 2018, the Applicant submitted again a letter to the Court addressed to the President of the Court.
12. On 27 November 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

13. On 2 August 2011, the Applicant filed a claim with the Basic Court for annulment of the contract on gift concluded between F.M., on one hand, and H. M., A.M. and A.M. on the other, regarding a number of cadastral parcels in the village of Petrashtica, Municipality of Shtime (hereinafter: the contested parcels) and requested that the Basic Court confirms to the Applicant the property right over the disputed plots parcels.
14. On 9 September 2013, the Basic Court by Judgment C. No. 210/11 rejected as ungrounded the Applicant's claim.
15. On an unspecified date, the Applicant filed an appeal with the Court of Appeals in Prishtina (hereinafter: the Court of Appeals) against Judgment C. No. 210/11.
16. On 15 July 2016, the Court of Appeals by Decision CA. No. 3781/2013 annulled Judgment C. No. 210/11 of the Basic Court, and remanded the case for retrial to the Basic Court, where the case was registered under number C. No. 296/16. The Court of Appeals found that the Basic Court committed an essential violation of the provisions of the contested procedure under Article 197 of the Law on Contested Procedure because it did not open a full review for the determination of the contested fact if the Applicant gave his contribution for the challenged parcels which were the subject of the contract on gift.
17. On 10 August 2017, the Applicant sent a letter to the Basic Court complaining on the parties' absence at the hearing of 4 August 2017 and the failure of the Basic Court to ensure that the invitations were sent to the parties. The Applicant also proposed to the Basic Court that the invitations to the parties to the proceedings be sent in the similar way, and not by mail *"in order for the next session to take the normal course without further delay"*.
18. On 11 September 2017, the Applicant sent a letter to the Basic Court requesting that the parties to the proceedings be assigned temporary representative, as they do not appear at the hearing in order to delay the proceedings and that the next hearing be scheduled within the shortest possible time limit.
19. On 23 October 2017, upon the Applicant's request, the President of the Basic Court in Prishtina excluded of the trial, regarding the case of the Applicant, Judge Z.T., and replaced him with Judge A.G.
20. On an unspecified date, the Applicant filed a criminal report against Judge Z.T. for the criminal offense of misuse of official position or authority, regarding case C. No. 296/16.
21. On 16 January 2018, the Applicant was interviewed by the Prosecutor of the Basic Prosecutor's Office in Prishtina, regarding the criminal report filed against Judge Z.T.
22. On 13 February 2018, the Applicant submitted the Referral to the Constitutional Court registered with number KI18/18.

23. On 30 May 2018, the Court considered the Applicant's Referral and rendered the Resolution on Inadmissibility in case KI18/18.
24. In the Resolution on Inadmissibility in case KI18/18, the Court found that the general duration of the proceedings before the regular courts, of 6 (six) years and six months, cannot be regarded as unreasonable taking into account the complexity of the case and the conduct of all parties to the proceedings .

Applicant's allegations

25. The Applicant in the new Referral KI110/18 did not specifically mention any right established in the Constitution, which he alleges to have been violated by the regular courts, however, he repeats the same arguments, which he filed in the Referral KI18/18, which the Court has already reviewed. Those allegations were:
 - a) That despite the fact that the Court of Appeals, by remanding the case for retrial presented specific proposals for remedying the violations that have been committed by the Basic Court, it does not render decision on his case, despite the fact that the necessary legal requirements have been met to decide on the matter.
 - b) That he and his lawyers are facing the threat of the Basic Court that *"it has the right to keep the case in the drawer and never [...] consider it"*. According to the Applicant, Judge A.G. in the session of 9 February 2018 postponed the session on this case without any legal basis.
 - c) That the Basic Court *"has stopped the case for 12 years"* and is not holding retrial, nor it enables us to transfer this case to another court.
26. In the end, the Applicant requests again to be allowed that his case be decided and the disputed parcels *"be returned to his possession"*.

Admissibility of the Referral

27. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and foreseen in the Rules of Procedure.
28. In this respect, the Court refers to paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized parties] of the Constitution which foresee:
 - "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".*

29. Accordingly, the Court notes that the Applicant has met the requirements established in Article 113.7 of the Constitution.
30. However, the Court refers to Rule 35 (5) of the Rules of Procedure, which stipulates:

“The Court may decide to summarily reject a referral ... if the referral is repetitive of a previous referral decided by the Court ...”.
31. The Court notes that the Applicant, in fact, in this Referral (KI110/18) requests the Court to reconsider and review the allegations he raised in the previous Referral KI18/18.
32. The Court recalls that, in the Applicant's previous Referral (KI18/18), it considered all the allegations he had raised and answered specifically each of them, taking into account the relevant case law of the European Court of Human Rights (hereinafter: the ECtHR) (see: ECtHR Judgment of 7 February 2002, *Mikulić v. Croatia*, No. 53176/99, paragraph 38), as well as its up-to-date case law regarding the length of the proceedings (see: Resolution on Inadmissibility of the Constitutional Court in case KI23/16, Applicant: *Qazim Bytyqi and others*, of 5 May 2017, paragraph 58).
33. As regards this Referral (KI110/18), the Applicant, in addition to the referral he submitted on 3 August 2018, provided the Court with additional documents on 28 August 2018 and on 7 September 2018.
34. However, the Court, having analyzed their content and allegations, concluded that, in essence, by their content, they represent the same submissions that he had already submitted to the Court in the case of KI18/18.
35. In this respect, the Court considers that this Referral does not present a new circumstance that the Court would consider it again. To all the questions raised in this Referral (KI110/18), the Court has already decided in the Resolution on Inadmissibility in case KI18/18.
36. Therefore, the Court considers that in the present Referral the Applicant has not submitted or presented any evidence or any new circumstance, which would influence and contribute that the Court reviews again the Applicant's allegations raised by him in the previous Referral KI18/18, for which the Court decided with Resolution on Inadmissibility of 30 May 2018 (see, similar to this situation, Decision to reject the referral of the Constitutional Court, in case KI26/14, Applicant: *Bajrush Gashi*, of 26 March 2015, paragraph 24).
37. The Court recalls that an individual complaint under Article 113.7 of the Constitution should not be seen by the Applicants as an opportunity to request again the Court to reconsider allegations or to reopen the decisions on the issues that the Court has already decided.
38. In addition, the Court recalls that its decisions are final and binding on the judiciary, on all individuals and all institutions of the Republic of Kosovo (see,

inter alia, decision of the Constitutional Court, in case KI26/14, Applicant: *Bajrush Gashi*, of 26 March 2015, paragraphs 26 and 27).

39. In conclusion, the Court considers that the Applicant's Referral is, in fact, the repetition of a previous referral on the issues already decided by the Court. Therefore, in accordance with Rule 35 (5) of the Rules of Procedure, this Referral is to be summarily rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Article 47 of the Law, and Rule 35 (5) of the Rules of Procedure, in the session held on 27 November 2018, unanimously

DECIDES

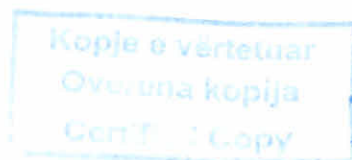
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Safet Hoxha

Arta Rama-Hajrizi



This translation is unofficial and serves for informational purposes only.