



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

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Prishtina, on 13 August 2019  
Ref. no.:RK 1407/19

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

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. KI195/18**

Applicant

**Afrim Haxha**

**Constitutional Review of Judgment PAKR. nr. 468/18  
of the Court of Appeal of the Republic of Kosovo, of 14 November 2018**

### **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 Afrim Haxha, from Municipality of Mitrovica (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Judgment [PAKR.nr.468/18] of 14 November 2018 of the Court of Appeal of the Republic of Kosovo (hereinafter: the Court of Appeal) in conjunction with Judgment [P.nr.120/2015] of 26 July 2018 of the Basic Court in Mitrovica (hereinafter: the Basic Court).

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Judgment of the Court of Appeal in conjunction with Judgment of the Basic Court.
4. The Applicant has not clarified precisely which fundamental rights and freedoms have allegedly been violated by the challenged Judgment.

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), on Article 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law), as well as Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

6. On 10 December 2018, the Applicant submitted to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) a one-page document which he named as *"Appeal for the Protection of Legality and Constitutionality"*. The Applicant did not attach any supporting documentation or act of the public authorities.
7. On 11 December 2018, the Court informed the Applicant that if he wishes to file a case with the Court for review, he must complete the Court form or its equivalent as set out in Article 22 of the Law and paragraphs (1) and (2) of the Rules of Procedure, and clarify what fundamental rights or freedoms he alleges to have been violated and by which public authority, as defined by Article 48 of the Law. The Court also requested from him, pursuant to paragraph 4 of Article 22 of the Law and item (h) of paragraph (2) of Rule 32 of the Rules of Procedure, to attach the relevant documents.
8. On 14 December 2018, through the postal services, the Applicant submitted the completed form to the Court together with the supporting documents.
9. On 20 December 2018, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and a Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.

10. On 17 January 2019, the Court notified the Applicant about the registration of the Referral and a copy of the Referral was sent to the Court of Appeal.

11. On 13 February 2019, the Applicant submitted an additional document to the Court informing the Court as follows:

*"[...] by a decision of the Supreme Court the case was remanded for retrial to the Court of Appeal, the hearing being held on 26.02.2019. In an earlier letter received by you, your honour, you asked to be notified. Until a final decision is made, I request the Constitutional Court to keep the case active."*

12. On 26 April 2019, the Applicant submitted an additional document to the Court which he addressed to the President of the Court. He also submitted the same letter to some other heads of public institutions in the Republic of Kosovo. Through this letter, he complained that he had received a summons to a hearing in the Serbian language and not in his mother tongue, respectively the Albanian language.

13. On 23 July 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of Facts**

14. On 26 July 2018, the Basic Court through Judgment [P. nr. 120/2015], found the Applicant guilty of the criminal offense of Falsifying Documents and sentenced him to imprisonment for the term of 1 (one) year.

15. The Applicant filed an appeal with the Court of Appeal against the abovementioned Judgment of the Basic Court alleging substantial violations of the criminal procedure provisions, erroneous and incomplete determination of the factual situation and the sentence decision, proposing that the Court of Appeal, amend the appealed Judgment and the accused respectively the Applicant be acquitted from charges in the absence of evidence.

16. On 14 November 2018, the Court of Appeal, through Judgment [PAKR. nr. 468/18] rejected the Applicant's appeal as ungrounded and upheld the Judgment of the Basic Court.

17. On an unspecified date, according to the information submitted by the Applicant himself, the Supreme Court quashed the challenged Judgment before this Court, namely Judgment [PAKR. nr. 468/18] of the Court of Appeal of 14 November 2018 and remanded the case for retrial.

### **Applicant's allegations**

18. The Applicant, in his Referral, has not clarified precisely which fundamental rights and freedoms have allegedly been violated by the act of public authority,

namely challenged Judgment [PAKR. nr. 468/18] of 14 November 2018 of the Court of Appeal.

19. The Applicant alleges in essence that *“his evidence was not taken into account”* and requests the Court to establish *“whether the old or the new law was used or whether the case statutory limitation had expired”*.
20. The Applicant initially requested the Court to quash the challenged Judgment of the Court of Appeal in conjunction with that of the Basic Court and to declare him innocent. However, by letter of 13 February 2019, by which the Applicant informed the Court that his case had been remanded to the Court of Appeal, he requested the Court to keep his referral *“active”* until the next decision of the Court of Appeal.

### **Admissibility of the Referral**

21. The Court first will examine whether the Applicant has fulfilled the admissibility criteria laid down in the Constitution, as further specified in the Law and provided for in the Rules of Procedure.
22. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provide:

*“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”.*

23. In assessing the fulfilment of these admissibility criteria, the Court notes firstly that based on the documents submitted by the Applicant to the Court, Judgment [PAKR.nr.468/18] of 14 November 2018 of the Court of Appeal and which the Applicant of the Referral challenges before the Court, is annulled by the Supreme Court and the Applicant's case is remanded for retrial to the Court of Appeal.
24. In such circumstances, the Court must first assess whether the case before the Court is an active and controversial claim.
25. In this respect, the Court refers to paragraph (4) of Rule 35 of the Rules of Procedure, which provides:

Rule 35 of the Rules of Procedure  
[Withdrawal, Dismissal and Rejection of Referrals]

*“[...] (4) The Court may dismiss a referral when the Court determines that a claim is no longer an active controversy [...]”.*

26. The Court recalls that the Applicant filed his Referral with the Court challenging the Judgment [PAKR. nr. 468/18] of 14 November 2018 of the Court of Appeal, which had affirmed his sentence of imprisonment of 1 (one) year as determined by the Basic Court through Judgment [P.nr.120/2015] of 26 July 2018. Later, and as stated above, according to the information submitted to the Court by the Applicant himself, the Supreme Court quashed the challenged Judgment of the Court of Appeal and remanded the case for retrial to the latter. Consequently, the challenged Judgment before this Court is no longer in force and, as such, has no legal effect on the Applicant.
27. That being so, the Court concluded that the Applicant's allegations concerning the challenged Judgment of the Court of Appeal constitute claims which are no longer "*an active controversy*". Therefore, in accordance with paragraph (4) of Rule 35 of the Rules of Procedure, the Applicant's Referral must be rejected as inadmissible for further review.
28. The Court also recalls that the Applicant has requested the Court to keep his Referral "*active*" until a "*final decision*" regarding his case is reached.
29. In this respect, the Court notes that the Referrals to the Court cannot be kept active, as the Applicant requests, as there is no legal basis on which such a thing may be requested from the Court or based on which the Court is allowed to approve such requests.
30. However, it is important to note that the conclusion given here does not prevent the Applicant from addressing the Court at a later stage again challenging an act of a public authority which he claims violates his fundamental rights and freedoms guaranteed by the Constitution, in accordance with the relevant provisions of the Constitution, the Law and the Rules of Procedure.
31. In conclusion, the Court concludes that the Applicant's Referral must be rejected pursuant to paragraph (4) of Rule 35 of the Rules of Procedure.

## **FOR THESE REASONS**

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113, paragraphs 1 and 7 of the Constitution, Article 47 of the Law and Rule 35 (4) of the Rules of Procedure, on 23 July 2019, unanimously

## **DECIDES**

- I. TO 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**

**President of the Constitutional Court**

Gresa Caka-Nimani

Kopje e vërtetuar  
Ovçena kopija  
Certified Copy

Arta Rama-Hajrizi

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