



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

Prishtina, on 13 May 2020
Ref. no.: RK 1568/20

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DECISION TO REJECT THE REFERRAL

in

Case No. KI103/19

Applicant

Ilmi Sopa

**Constitutional review of Resolution on Inadmissibility no.KI 49/18,
of 14 December 2018, of the Constitutional Court**

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 Ilmi Sopa (hereinafter: the Applicant), who is represented by Berat Tmava, a lawyer from Prishtina.

Challenged Decision

2. The Applicant seeks a “*new review*” of the Resolution on Inadmissibility no. KI 49/18, of the Constitutional Court of the Republic of Kosovo, of 14 December 2018, in conjunction with the judgment PML. no. 316/2016 of the Supreme Court of Kosovo, of 15 March 2017.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the Resolution on Inadmissibility KI 49/18 of the Constitutional Court of the Republic of Kosovo, of 14 December 2018, in conjunction with the Judgment PML no. 316/2016 of the Supreme Court of Kosovo, of 15 March 2017, which as alleged by the Applicant, have violated his constitutional rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR).

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] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (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

5. On 19 June 2019 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 21 June 2019, the President of the Court appointed Judge Remzije Istrefi Peci as Judge Reporter and the Review Panel, composed of judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 1 August 2019, the Applicant was notified about the registration of the Referral and a copy of the Referral was sent to the Supreme Court of Kosovo.
8. On 14 February 2020 the Court requested from the Applicant to clarify his Referral, by taking into account the fact that the Court had already decided on an identical claim, when by Decision KI 49/18 of 14 December 2018, it declared the Applicant’s Referral inadmissible as it was out of time.
9. On 18 February 2020, the Applicant submitted a letter to the Court stating that his authorized representative before the Supreme Court had not notified him of the receipt of the Judgment PML. no. 316/2016, of the Supreme Court of Kosovo, of 15 March 2017 and that he learned about this judgment on 15 December 2017.

10. On 29 April 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court to summarily reject the Referral.

Summary of facts

11. On 20 March 2018, the Applicant had submitted the Referral no. KI49/18. In that request, the Applicant had sought the constitutional review of the Judgment PML. no. 316/2016 of the Supreme Court of Kosovo, of 15 March 2017.
12. On 22 November 2018, the Court unanimously declared the Referral no. KI 49/18 inadmissible since it was not filed within the legal deadline.
13. On 19 June 2019, the Applicant submitted the Referral no. KI103/19, which is in fact a repetition of the Referral no. KI49/18, and which concerns the judgment PML. no. 316/2016 of the Supreme Court.

Applicant's allegations

14. The Applicant, same as in Referral no. KI103/19, states: *"(1) In relation to the judgment of the Supreme Court of Kosovo, the party Ilmi Sopa was never informed by his authorized lawyer that she had ever received the judgment in question; (2) For this reason, the judgment of the Supreme Court has not been submitted by the responsible persons of the Court to the party Ilmi Sopa, with the address as in the case file; (3) Therefore, on the basis of the foregoing, please pay attention to this matter, as the constitutional right to fair and impartial trial from Article 31, paragraphs 1, 2 and 4, has been violated"*.

Admissibility of the Referral

15. On the basis of the documents submitted by the Applicant, the Court notes that the subject matter of the present Referral with no. KI103/19, is the same as that of Referral no. KI49/18, in which the applicant had requested a constitutional review of the Judgment PML. no. 316/2016, of 15 March 2017.
16. The Court considers that the Applicant's Referral under review with number KI103/19 does not present any new important fact for rendering a new decision, but is merely another attempt by the Applicant to request from the Court the same constitutional review which he had already requested in the Referral no. KI 49/18.
17. In this regard, the Court refers to Article 116 (1) (Legal Effect of Decisions] of the Constitution, which provides:

"Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo"
18. The Court also refers to Rule 35 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provides that:

“(5) The Court may decide to summarily reject a referral if the referral is incomplete or not clearly stated despite request by the Court to the party to supplement or clarify the referral, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous”.

19. Relying on the above rule, the Court considers that the present Referral no. KI103/19 is only a repetition of the same previous Referral no. KI49/18, which the Court had declared inadmissible on the grounds that it had not been filed within the legal deadline.
20. The Court recalls that an individual complaint within the meaning of Article 113 (7) of the Constitution should not be viewed by the Applicants as an opportunity to repeatedly request from the Court to reopen its decisions and retry the same matter (see the case of the Constitutional Court, No. KI105/16, Applicant *Feti Gashi*, Decision to Reject the Referral of 10 May 2017, paragraph 21).
21. In order for the Court to consider a Referral which relates to the same facts as a previous referral, the Applicant must indeed provide new information which have not previously been considered by the Court (see *mutatis mutandis*, ECtHR, *Kafkaris v. Cyprus*, application no. 9644/09, Decision on Inadmissibility of 21 June 2011, paragraph 68).
22. In this respect, the Court recalls that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo (see the case of the Constitutional Court No. KI102/19, Applicant *Bedri Gashi*, Decision to Reject the Referral of 5 December 2019, paragraph 21 and 22, and see also the case No. KI105/16, Applicant *Feti Gashi*, cited above, paragraph 22).
23. Based on the foregoing, the Court concludes that the Applicant's Referral is, in fact, a request for repetition of an earlier procedure for which the Court has already decided. Therefore, pursuant to Rule 35 (5) of the Rules of Procedure, the Referral no. KI103/19 is summarily rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 116 of the Constitution, Article 20 of the Law and Rule 35 (5) of the Rules of Procedure, on 29 April 2020, 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

President of the Constitutional Court

Remzije Istrefi Peci

Arta Rama-Hajrizi



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