



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

Prishtina, on 24 August 2020  
Ref. No.:RK 1611/20

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

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. 199/19**

Applicant

**Fehmi Hasani**

**Constitutional review of Judgment Rev. no. 118/2017 of the Supreme  
Court of Kosovo, of 10 October 2017**

### **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 Fehmi Hasani, residing in Fushë-Kosovë (hereinafter: the Applicant) represented by the lawyer Ekrem S. Agushi.

## **Challenged decision**

2. The Applicant challenges the Judgment [Rev. no. 118/2017] of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 10 October 2017.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly has violated the rights guaranteed by Article, 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial), Article 13 ( Right to an effective remedy) of the European Convention on Human Rights (hereinafter: the ECHR), and Article 7 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7, of Article 113 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 31 October 2019, the Applicant submitted the Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 November 2019, the President of the Court appointed Judge Remzije Istrefi Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Gresa Caka-Nimani and Safet Hoxha (members).
7. On 19 November 2019, the Court notified the Applicant about the registration of the Referral and sent a copy thereof to the Supreme Court.
8. On 18 May 2020, the Court requested from the Applicant to clarify exactly which decision of the regular courts he is challenging before the Constitutional Court. On 20 May 2020, the Applicant received the Court's letter, but did not act in accordance with the Court's request.
9. On 15 July 2020, 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

10. On 31 January 2018, the Applicant submitted the Referral No. KI15/18 to the Court. In that Referral, the Applicant had requested the constitutional review of Judgment [Rev. no. 118/2017] of the Supreme Court, of 10 October 2017.
11. On 22 July 2019, the Court declared the Referral No. KI15/18 inadmissible.
12. On 31 October 2019, the Applicant submitted the Referral no. KI199/19, on which occasion he repeated the allegations which he had made in the Referral no. KI15/18 seeking the constitutional review of Judgment [Rev.no.118/2017] of the Supreme Court, of 10 October 2017.

## Applicant's allegations

13. The Applicant, same as in the Referral no. KI15/18, alleges a violation of Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to a Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo in conjunction with Article 6 (Right to a fair trial), Article 13 (Right to an effective remedy) of the ECHR, and Article 7 of the UDHR).
14. The Applicant requests from the Court to approve his Referral as founded; *“to find that there has been a violation of Article 31(Right to Fair and Impartial Trial) of the Constitution in conjunction with paragraph 1 of Article 6(Right to a fair trial) of the European Convention on Human Rights; that there has been a violation of Article 54 (Judicial Protection of Rights) of the Constitution in conjunction with Article 13 (Right to an effective remedy) of the ECHR.”* Finally, the Applicant requests from the Court *“to declare invalid the Judgment AC.no.3431/2014 of the Court of Appeals of Kosovo of 13.02.2017 and the Judgment Rev.no. 118/2017 of the Supreme Court of Kosovo.”*

## 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 No. KI199/19 is the same as of the Referral No. KI15/18 on which occasion the Applicant had requested the constitutional review of the Judgment [Rev. no. 118/2017] of the Supreme Court, of 10 October 2017.
16. The Court considers that the Applicant's Referral under review no. KI199/19 does not present any important fact for the issuance of a new decision; it is rather simply a repeated attempt by the Applicant to request from the Court the same constitutional review which he had requested by the Referral No. KI15/18.
17. In this respect, the Court refers to Article 116.1 [Legal Effect of Decisions] of the Constitution which stipulates:

*“Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo”*

18. In addition, the Court refers to Rule 35 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure , which stipulates:

*“[...] (5) The Court may decide to summarily reject a referral if the referral is incomplete or not clearly stated despite requests 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. Having relied on the above rule, the Court assesses that the present Referral No. KI199/19 is simply a repetition of the previous Referral No. KI15/18, which the Court had declared inadmissible because it was manifestly ill-founded on constitutional basis.
20. The Court recalls that the 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 Constitutional Court case No.KI105/16, Applicant *Feti Gashi*, Decision to Reject the Referral, of 10 May 2017, paragraph 21; case No.KI201/19, Applicant *Tush Kolgjeraj*, Decision to Reject the Referral, of 22 April 2020, paragraph 20; and case No.KI103/19, Applicant *Ilmi Sopa*, Decision to Reject the Referral, of 29 April 2020, paragraph 20.
21. In order for the Court to consider a Referral which relates to the same facts as a previous Referral, the Applicant must genuinely submit new information which has not been previously considered by the Court (See, *mutatis mutandis*, ECtHR, *Kafkaris v. Cyprus*, Application No.9644, Decision on Inadmissibility, of 21 June 2011, paragraph 68).
22. In this regard, the Court recalls that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo (See the Constitutional Court case No. KI26/14, Applicant *Bajrush Gashi*, Decision to Reject the Referral, of 26 March 2015, paragraphs 26-27, and see also, the case No. KI105 / 16, Applicant *Feti Gashi*, cited above, paragraph 22).

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 116.1 of the Constitution, Article 20 of the Law and Rule 35 (5) of the Rules of Procedure, on 15 July 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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