



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

Prishtina 09 November 2020  
Ref. no.:RK1640/20

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

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. KI93/20**

Applicant

**Tush Kolgjeraj**

**Constitutional review of Decision PN. No. 825/17 of the Court of Appeals  
of 6 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 Tush Kolgjeraj, from village Zum, Municipality of Prizren (hereinafter: the Applicant).



## **Challenged decision**

2. The Applicant challenges the constitutionality of Decision PN. No. 825/17 of the Court of Appeals of 6 October 2017.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violates all the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] and Article 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rules 32 [Filing of Referrals and Replies] and 35 [Withdrawal, Dismissal and Rejection of Referrals] 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 1 June 2020, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 15 June 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Selvete Gërxhaliu-Krasniqi and Bajram Ljatifi.
7. On 16 June 2020, the Court notified the Applicant about the registration of the Referral. By this notification, the Court also requested the Applicant to fill in the standard application form and specify the Referral, stating accurately what decision of the public authority he is challenging and what rights guaranteed by the Constitution have been violated.
8. On 10 August 2020, due to the fact that the Applicant did not respond to the first letter, the Court sent again a second letter of notification to the Applicant about the registration of the Referral and requested him to fill in the referral form of the Constitutional Court of Kosovo, clarify the Referral and submit other necessary supporting documents.
9. On 24 August 2020, the Applicant submitted to the Court the completed standard referral form and supporting documents.
10. On 14 October 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. The Applicant addresses the Court for the third time, namely in cases KI127/18, KI201/19 and KI93/20 with the same request for constitutional review of Decision PN. No. 825/17 of the Court of Appeals of 6 October 2017.
12. On 31 August 2018, the Applicant submitted Referral KI127/18. In that Referral, the Applicant requested the constitutional review of Decision PN. No. 825/17 of the Court of Appeals of 6 October 2017.
13. On 21 October 2019, the Court declared Referral No. KI 127/18 inadmissible.
14. On 11 November 2019, the Applicant submitted Referral KI 201/19, in which he requested “*reconsideration*” of the Resolution on Inadmissibility KI127/18.
15. On 22 April 2020, the Court summarily rejected Referral KI201/19.
16. On 1 June 2020, the Applicant filed Referral KI 93/20, in which he repeated the allegations as in Referral KI127/18, requesting constitutional review of Decision PN. No. 825/17 of the Court of Appeals of 6 October 2017.

## **Applicant’s allegations**

17. The Applicant alleges that the challenged decision violated all his rights guaranteed by the Constitution, without mentioning specific articles and without explaining how the violations occurred.
18. The Applicant reiterated his allegations, which he had already mentioned once in Referrals KI127/18 and KI 201/19, requesting the Court to annul the decisions of the regular courts and remand the case for retrial.

## **Admissibility of the Referral**

19. On the basis of the documents submitted by the Applicant, the Court notes that the subject matter of the present Referral KI 93/20 is the same as that of Referrals KI127/18 and KI 201/19 in which the Applicant had requested a constitutional review of Decision PN. No. 825/17 of the Court of Appeals of 6 October 2017.
20. The Court considers that the Referral under review KI93/20 of the Applicant 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 Referrals KI127/18 and KI 201/19.
21. 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”*



22. 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 [...]”.*

23. Based on the abovementioned rule, the Court considers that the present Referral KI193/20 is only a repetition of the same previous Referrals KI127/18 and KI 201/19, which the Court had declared inadmissible on the grounds that they were manifestly ill-founded in accordance with the Constitution.
24. 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 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 and case No. KI103/19 *Applicant Ilmi Sopa*, Decision to Reject the Referral of 29 April 2020, paragraph 20).
25. 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).
26. 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 Constitutional Court in case No. KI26/14, Applicant *Bajrush Gashi*, Decision to Reject the Referral of 26 March 2015, paragraphs 26 and 27, and also, case No. KI105/16, Applicant *Feti Gashi*, cited above, paragraph 22).



## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 116.1 of the Constitution, Article 20 of the Law and Rule 35 (5) of the Rules of Procedure, on 14 October 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**

Radomir Laban

Arta Rama-Hajrizi



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