



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

Prishtina, on 24 May 2021
Ref. no.: RK1785/21

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DECISION TO REJECT THE REFERRAL

in

Case No. KI43/21

Applicant

N.T. P. Arta- Impex

**Constitutional review of Judgment E. Rev. No. 7/2019
of the Supreme Court of Kosovo, of 2 April 2019**

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 N.T.P. Arta-Impex, owned by Besim Çallaku from Kaçanik (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [E. Rev. Nr. 7/2019] of 2 April 2019 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Articles 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 paragraph 4 of Article 21 and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on 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 (hereinafter: the Rules of Procedure).

Proceedings before the Court

5. On 25 February 2021, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Referral of the Applicant.
6. On 26 February 2021, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 4 March 2021, the Court notified the Applicant of the registration of the Referral.
8. On 5 May 2021, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court to summarily reject the Referral.

Summary of facts

9. On 20 May 2019, the Applicant had submitted a referral to the Court, registered under number KI79/19, whereby he had challenged the Judgment [E. Rev. nr. 7/2019] of 2 April 2019 of the Supreme Court. In its Referral, the Applicant had alleged that the challenged Judgment of the Supreme Court was rendered in violation of its right, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR because, according to him, the Supreme Court (i) had erroneously interpreted the law; (ii) had not reasoned its judgment; (iii) the proceedings in their entirety were not in accordance with the right to an effective resolution of the case within a reasonable time, and (iv)

that in its case there was also a decision-making contrary to a decision “*res judicata*”.

10. On 1 July 2020, after examining all the allegations raised by the Applicant in its Referral KI79/19, through the Resolution on Inadmissibility, the Court declared the Referral of the Applicant inadmissible as manifestly ill-founded on constitutional grounds as defined in Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.
11. The summary of the facts of the case was reflected in the above-mentioned Resolution on Inadmissibility of the Court regarding its first Referral No. KI79/19.
12. On 25 February 2021, the Applicant submitted a Referral to the Court, whereby he again challenges the Judgment [E. Rev. Nr. 7/2019] of 2 April 2019 of the Supreme Court, which was the subject matter of the constitutional review in its previous Referral KI79/19.

Applicant's allegations

13. The Applicant, as in its previous Referral KI79/19, alleges that the challenged Judgment of the Supreme Court was rendered in violation of its fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR.
14. The Applicant in its current Referral adds the following: “*Dear Judges, we are convinced that our basic human rights as citizens of the Republic of Kosovo have been violated by not addressing our claim for SHARRBETEILIGUNGS for 3000 t opal and 280000 paper bags and by not giving a court verdict for our claim by not addressing and administering with objectivity the time and the case and the facts, therefore we ask you, the Judges of the Constitutional Court to devote time and attention to this judicial scandal and possibly to provide a complete and specific reasoning to the judiciary of our country to address it with due objective care and professionalism once again*”.
15. The Applicant further states that “*a claim has been filed against SHARRBETEILIGUNGS but still the case has not been reviewed. Therefore, please provide us this basic right as a citizen of this Republic of Kosovo to have at least a verdict in this case, even if it is negative*”.
16. Regarding Referral KI79/19, the Applicant states that “*on 12.08.2020, we received the Constitutional Court's Resolution on Inadmissibility and in our opinion the Constitutional Court was put into erroneous belief by the courts of lower instances with imaginary reasoning, not based on facts and expertise*”.
17. Furthermore, the Applicant specifies that: “*Unable to remand the case for reconsideration, we inform you that based on external consultancy we have ensured related to case, we will send all decisions, facts, expert reports, minutes and communication letters, to:*

1. *The European Court of Human Rights*
2. *European Court of Justice*
3. *European Court of Auditors*
4. *European Court of Arbitration in Strasbourg*
5. *European Court of Arbitration in Brussels*

Several arbitration courts in several friendly western countries, which will voluntarily review the manner of decision-making in the judiciary of Kosovo”.

Assessment of the admissibility of the Referral

18. Based on the documents submitted by the Applicant, the Court recalls that the subject matter of the present Referral is the same as in Referral No. KI79/19, whereby the Applicant had requested constitutional review of the Judgment [E. Rev. Nr. 7/2019] of 2 April 2019 of the Supreme Court.
19. The Court recalls that the Applicant requests the Court to address its Referral submitted on 20 May 2019 once again, alleging that *“the Constitutional Court was put into erroneous belief by the courts of lower instances with imaginary reasoning, not based on facts and expertise”*. Furthermore, the Court notes that the Applicant in its present Referral has raised the same allegations and has submitted the same decisions and facts as in its previous Referral KI79/19.
20. In this context, the Court refers to paragraph 1 of Article 116 [Jurisdiction and Authorized Parties] 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”.
21. The Court also refers to Rule 35 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which specifies:

“(5) The Court may decide to summarily reject a referral [...] if the referral is repetitive of a previous referral decided by the Court, [...]”.
22. Based on the above-mentioned rule, the Court finds that the present Referral is repetitive of the previous Referral No. KI79/19, which was declared by the Court inadmissible as manifestly ill-founded on constitutional grounds as provided in Article 47 of the Law and Rule 39 (2) of the Rules of Procedure.
23. Based on its consolidated case law in similar cases, the Court has emphasized that its decisions are final and binding on the judiciary, all persons and all institutions of the Republic of Kosovo (see Court cases KI26/14, Applicant *Bajrush Gashi*, Decision to Reject the Referral, of 26 March 2015, paragraphs 26-27; KI179/14, *Bejtullah Sogojeva*, Decision to Reject the Referral, of 13 August 2015, and also see cases KI105/16, cited above, paragraph 22; KI08/18, Applicant *Naser Berisha*, Decision to Reject the Referral, paragraph 23; and KI102/19, Applicant *Bedri Gashi*, Decision to Reject the Referral, of 7 November 2019, paragraph 19).

24. In this regard, the Court recalls that individual complaints within the meaning of paragraph 7 of Article 113 of the Constitution should not be viewed by the applicants as an opportunity to repeatedly request the Court to reopen its decisions and reconsider the same case again (see similar cases of the Court: KI105/16, Applicant *Feti Gashi*, Decision to Reject the Referral, of 10 May 2017, paragraph 21, KI102/19, Applicant *Bedri Gashi*, cited above, paragraph 19; KI08/18, Applicant *Naser Berisha*, cited above, paragraph 22).
25. Based on the foregoing, the Court notes that the Applicant raises the same allegations and submits the same facts and evidence as in its previous Referral, registered in the Court under No. KI79/19. The Court has already decided in case KI79/19 for all the issues and allegations raised in this Referral.
26. In light of the above, the Court concludes that the Referral of the Applicant is repetitive of Referral KI79/19, already decided by the Court, and consequently pursuant to Rule 35 (5) of the Rules of Procedure, it must be summarily rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 116.1 of the Constitution, and Rules 35 (5) and 59 (3) of the Rules of Procedure, in its session held on 5 May 2021, unanimously:

DECIDES

- I. TO REJECT the Referral summarily;
- 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

Bajram Ljatifi



Arta Rama-Hajrizi

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