



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 27 September 2021  
Ref. no.: RK 1852/21

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

**DECISION TO REJECT THE REFERRAL**

in

**Case No. KI135/21**

Applicant

**Isuf Musliu**

**Request for constitutional review of an unspecified act  
of public authority**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërxhaliu-Krasniqi, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

**Applicant**

1. The Referral was submitted by Isuf Musliu (hereinafter: the Applicant), residing in Prishtina.

## **Challenged decision**

2. The Applicant does not challenge any concrete act of the public authorities but states that *“Concrete Act that the land of 5.27 hectares, is mine paid in 1980, documented by notaries, sale and purchase contracts, expertise, etc.”* is challenged.

## **Subject matter**

3. The Applicant has not accurately specified the act of the public authority he is challenging before the Court nor has he specifically stated any right guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), which he considers to have been violated.

## **Legal basis**

4. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 19 July 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 26 July 2021, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Nexhmi Rexhepi.
7. On 5 August 2021, the Court notified the Applicant about the registration of the Referral and requested him to complete the Referral with the following documents and information:
  1. to accurately specify the concrete act of the public authority which you are challenging before the Constitutional Court of the Republic of Kosovo;
  2. to clarify your complaints under the Constitution;
  3. to submit to the Court copies of all decisions related to your case. This, because in the case file as submitted to the Court, it turns out that on 13 September 2019 you filed an appeal against Judgment C. No. 296/16 of 18 June 2019 and that on 5 November 2020, the Court of Appeals decided regarding this appeal by Decision CA. No. 4938/2019, but which have not been submitted to the Court;

4. to notify the Court whether in connection with the Decision of the Court of Appeals, CA. No. 4938/2019, of 5 November 2020, you have filed any legal remedy.
8. On 10 August 2021, the Applicant submitted to the Court a letter stating that his case *"Today holds this number C. No. 296/16 without being adjudicated and it is not known in which Court it is, in the Basic Court or Appeal Court, any of them does not give me information"*. In response to the Court's questions through the letter dated 5 August 2021, he states that the *"Concrete Act that the land 5.27 hectares is mine paid in 1980, documented by notaries, sale and purchase contracts, expertise, etc"* is challenged. He also states that his complaints are *"in all institutions of Kosovo, including your court, but it has fallen on deaf ear and I have no answer"* and that *"so far I have submitted all decisions taken by these 2 courts [ ...] but I have no answer [ ...]"*. He also submitted some documents which had been submitted to the Court before.
9. On 24 August 2021, the Applicant submitted to the Court the Decision of the Basic Court [C. No. 296/16] of 18 June 2019, and the Decision of the Basic Court [C. No. 405/19] of 9 July 2019.
10. On 8 September 2021, the Applicant submitted to the Court some additional documents, including the Decision [GJA. No. 2020/2021] of the Basic Court approving the request of Judge A.G. for recusal from the proceedings and deciding of the case in the contested matter C. No. 931/2020.
11. On 10 September 2021, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court to summarily reject the Referral.

### **Summary of facts**

12. The Applicant regarding this case submits Referral to the Court for the third time.
13. In the following, the Court will summarize the facts related to the current Referral KI135/21, as well as of the first Referral KI18/18 and KI110/18 insofar as they are related to the current Referral.
14. On 2 August 2011, the Applicant filed a claim with the Basic Court for annulment of the contract on gift concluded between F.M., on the one hand, and H. M., A.M. and A.M. on the other, regarding a number of cadastral parcels in the village of Petrashtica, Municipality of Shtime (hereinafter: the contested parcels) and requested that the Basic Court in Prishtina –Branch in Lipjan (hereinafter: the Basic Court) confirms to the Applicant the property right over the disputed parcels.
15. On 9 September 2013, the Basic Court by Judgment C. No. 210/11 rejected as ungrounded the Applicant's claim.

16. On an unspecified date, the Applicant filed an appeal with the Court of Appeals in Prishtina (hereinafter: the Court of Appeals) against Judgment C. No. 210/11 of the Basic Court.
17. On 15 July 2016, the Court of Appeals by Decision CA. No. 3781/2013 annulled Judgment C. No. 210/11 of the Basic Court, and remanded the case for retrial to the Basic Court, where the case was registered under number C. No. 296/16. The Court of Appeals found that the Basic Court committed an essential violation of the provisions of the contested procedure under Article 197 of the Law on Contested Procedure because it did not open a full review for the determination of the contested fact if the Applicant gave his contribution for the challenged parcels which were the subject of the contract on gift.
18. On 13 February 2018, the Applicant submitted the Referral to the Constitutional Court registered with number KI18/18, challenging the length of the proceedings related to his case before the Basic Court.
19. On 30 May 2018, the Court considered the Applicant's Referral and rendered the Resolution on Inadmissibility in case KI18/18. In the Resolution on Inadmissibility, the Court found that the general duration of the proceedings before the regular courts, of 6 (six) years and six months, cannot be regarded as unreasonable taking into account the complexity of the case and the conduct of all parties to the proceedings.
20. On 3 August 2018, the Applicant submitted Referral KI110/18 to the Court.
21. On 27 November 2018, the Court reviewed the Applicant's Referral and decided that Referral KI110/18 of the Applicant is a repetition of a previous Referral about the issue which has already been decided by the Court. Therefore, pursuant to Rule 35 (5) of the Rules of Procedure, this Referral was summarily rejected.
22. From the case file it appears that on 18 June 2019, in relation to the Applicant's case, the Basic Court rendered the Decision [C. No. 296/16], by which it had separated the procedure according to the counterclaimant H.M., against whom the Applicant had filed appeal to the Court of Appeals. In addition, according to the case file, it turns out that the Court of Appeals has also rendered a decision regarding the Applicant's case. The Applicant has not submitted the decision of the Court of Appeals to the Court.

### **Applicant's allegations**

23. The Applicant does not clarify which of his rights have been violated but states that his case related to the disputed property *"has been moving from a basic court to the Court of Appeals for 11 years, it has not been retried or tried"*. In this regard, he complains that Judge A.G. contrary to his legal competencies, does not adjudicate his case, claiming that there were threats related to this case and that due to these threats, his family was forced to go to Switzerland.

24. He also requests that *“the case is resolved and not merged with other non-existent disputes”* and that the *“Basic Court – Branch in Lipjan e. no. 296/16 of 18.06.2019, mixes disputes”* contrary to the provisions of the contested procedure. He proposes that in connection with his case, *“The second instance court, the Court of Appeals of Kosovo modifies the challenged judgment e. no. 296/16 of 18.06.2019 and to adjudicate and decide the statement of claim, because there is no possibility for the first instance court to complete it in a fair manner”*.

### **Admissibility of the Referral**

25. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.
26. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 of the Constitution, which establish:

*“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.”*

27. The Court also refers to Article 22 [Processing Referrals] of the Law, which stipulates:

#### Article 22 [Processing Referrals]

*“[...]*

*4. If the referral [...] is [...] incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for [...] supplementing the respective referral [...]*

*[...].”*

28. In addition, the Court refers to Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure, which specifies:

*[...]*

*“(2) The referral shall also include:*

*[...]*

*(e) a statement of the relief sought;*

*[...]*

*(g) the procedural and substantive justification of the referral; and*

*(h) the supporting documentation and information;*

*(3) If a party is represented, the representative shall submit with the referral a valid power of attorney for the referral to the Court. [...].”*

29. In addition, the Court also refers to Article 48 [Accuracy of the Referral] of the Law, which stipulates:

Article 48  
[Accuracy of the Referral]

*“In his /her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”*

30. In assessing whether the Applicant meets the constitutional and legal criteria for constitutional review of his Referral, the Court recalls that Article 48 of the Law specifically obliges the Applicants to accurately clarify the concrete act of the public authority they are challenging and to accurately clarify what rights and freedoms they claim to have been violated. Whereas, Rule 32 (2) (e), (q) and (h) of the Rules of Procedure provides that the Applicants' Referral should also contain the requested legal protection, procedural and substantive reasoning of the Referral as well as supporting information and documentation.
31. In this regard, the Court recalls that the Applicant's Referral was served on him on 19 July 2021. Considering that the Referral was not complete, as: i) he did not accurately specify the act of the public authority which he challenges before the Court; ii) he did not state what constitutional rights he claimed to have been violated; as well as iii) not all decisions related to the Applicant's case were submitted. The Court, on 5 August 2021, requested the Applicant: i) to accurately specify the concrete act of the public authority which he is challenging before the Court; ii) to clarify the complaints under the Constitution; iii) to submit to the Court copies of all decisions related to his case; and iv) to notify the Court whether in connection with the Decision of the Court of Appeals, CA. No. 4938/2019, of 5 November 2020, he had filed any legal remedy.
32. On 10 August 2021, the Applicant submitted to the Court a letter in which he stated that his case *“Today holds this number C. No. 296/16 without being adjudicated and it is not known in which Court it is, in the Basic Court or Court of Appeals or any of them does not give me information”*. In response to the Court's questions through the letter of 5 August 2021, he states that *“Concrete Act that the land of 5.27 hectares, is mine paid in 1980, documented by notaries, sale and purchase contracts, expertise, etc.”* is challenged. He also states that his complaints are *“in all institutions of Kosovo, including your court, but it fell on deaf ears and I have no answer”* and that *“so far I have submitted all decisions taken by these 2 courts [...] but I have no answer [...]”*. He also submitted some documents which are not related to the additional documents, some of which were previously submitted to the Court. On 24 August 2021, the Applicant submitted to the Court the Decision of the Basic



Court [C. No. 296/16 ] of 18 June 2019, and Decision [C. No. 405/19]. Whereas on 8 September 2021, the Applicant submitted to the Court some additional documents, including the Decision [GJA. No. 2020/2021] of the Basic Court approving the request of Judge A.G. for recusal from the proceedings and deciding the case in the contested issue C. No. 931/2020.

33. In this regard, the Court considers that despite the specific request of the Court, the Applicant: *i)* has not specified the act of the public authority he is challenging; *ii)* has not specified his rights under the Constitution; and *iii)* had not submitted all the decisions related to his case, in the present case, the decision of the Court of Appeals, of 5 November 2020.
34. Therefore, according to its Rules of Procedure, the Court, if it finds that the Referral is incomplete or unclear, may summarily reject the Referral. In this regard, the Court refers to Rule 35 of the Rules of Procedure, which sets out as follows:

Rule 35  
[Withdrawal, Dismissal and Rejection of Referrals]

*“35 (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, [...]”.*

35. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on the Applicants, who have direct interest, so that their claims and allegations are effectively addressed by the Court. In cases when the Applicants fail to respond to the Court’s request for clarification and supplementation of the Referral, the Court declares these Referrals as unclear and incomplete and, as a result, does not examine the Applicant’s allegations (see the cases of the Constitutional Court: KI137/20, Applicant *Ali Latifi as the alleged representative of M.S.*, Decision to reject the Referral, of 11 November 2020, paragraph 24; KI89/18 *Agim Jashari*, Decision to reject the Referral, of 27 November 2018, paragraph 29; and KI48/17, *Sladana Radojković-Marinković*, the Constitutional Court, Decision to reject the Referral, of 4 December 2017, paragraph 21).
36. Therefore, the Court considers that the Applicant’s Referral does not meet the procedural criteria for further review, because it is not completed with supporting documentation, as requested by the Court, based on Articles 21, 22.4 and 48 of the Law and Rule 32 (2) (e) and (h) of the Rules of Procedure.
37. Therefore, the Court concludes that the Referral is to be summarily rejected.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 22.4 and 48 of the Law and in accordance with Rules 32 (2) (e) and (h) and 35 (5) of the Rules of Procedure, on 10 September 2021, 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**

Selvete Gërxhaliu-Krasniqi

Gresa Caka-Nimani



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