



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

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Prishtina, on 27 September 2021  
Ref. no.:RK1855/21

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

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. KI161/20**

Applicant

**Bedri Gashi**

**Constitutional review of Decision AC. no. 5487/2019,  
of the Court of Appeals, of 20 August 2020**

### **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 Bedri Gashi, residing in the village of Sferke, Municipality of Klina, a lawyer by profession (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant requests the constitutional review of the Decision [AC. no. 5487/2019] of the Court of Appeals, of 20 August 2020 in conjunction with the Decision [CN. no. 59/2019] of 16 September 2019, of the Court of Appeals (hereinafter: the challenged Decisions).

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged Decisions, which allegedly have violated the Applicant's rights guaranteed by Article 24 [ Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of 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] 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 10 October 2020, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 2 November 2020, the President appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
7. On 11 November 2020, the Court notified the Applicant about the registration of the Referral. On the same day, the Court sent a copy of the Referral to the Court of Appeals.
8. On 11 May 2021, as a result of a letter addressed to the Court, by the Applicants in case KI91/20, where also Mr. Bedri Gashi was the representative of the Applicants, in the capacity of lawyer, the Court understood that the Applicant had passed away after submitting his Referral to the Court. Consequently, the Court sent a letter to the Gashi family with a request for clarification on whether the family members/heirs who have a direct interest, wish to continue the procedure of reviewing the Referral. The Court also notified the Kosovo Bar Association and asked them to confirm the abovementioned situation.
9. The Court has not received a response from the Applicant's family, for the continuation of the procedure for reviewing the Referral.
10. The Kosovo Bar Association has not responded to the Court's request, within the time limit set by the Court.

11. On 17 May 2021, on the basis of paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the President and Deputy-President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Pursuant to paragraph (4) of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, it was determined that Judge Gresa Caka-Nimani, shall assume the duty of President of the Court after the conclusion of the mandate of the current President of the Court, Arta Rama-Hajrizi, on 26 June 2021.
12. On 25 May 2021, based on point 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu submitted his resignation from the position of a judge at the Constitutional Court.
13. On 27 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision No. K.SH KI 161/20 determined that Judge Bajram Ljatifi be appointed Presiding Judge of the Review Panel instead of Judge Bekim Sejdiu, after his resignation.
14. On 26 June 2021, based on paragraph (4) of Rule 12 of the Rules of Procedure and the Decision of the Court KK-SP 71-2/21, Judge Gresa Caka-Nimani assumed the duty of President of the Court, while based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.
15. On 2 August 2021, the Court again repeated a request to the Kosovo Bar Association, requesting confirmation whether the Applicant had passed away.
16. On 5 August 2021, the Kosovo Bar Association notified the Court with a letter that the Applicant, lawyer Bedri Gashi, had passed away on 9 December 2020.
17. On 10 September 2021, 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**

18. From the case file, it results that the Applicant in his capacity as a lawyer had represented the client V.M., who had initiated a procedure for reinstatement to his work position at the Centre for Social Work in Klina. Within the legal representation, the Applicant and V.M. had verbally agreed that if the case ends successfully, then V.M. was obliged to compensate the Applicant with the amount determined pursuant to Article 5 of the Tariff of the Kosovo Bar Association.
19. On 12 March 2012, as a result of non-compliance with the payment of compensation as alleged by the Applicant, the latter filed a claim with the Basic Court in Peja, by which he requested that V.M. shall pay him compensation for his work provided and the success achieved in the procedure for reinstatement of his client to his work position.

20. On 3 April 2015, V.M., by his response to the claim had opposed the claim in its entirety as ungrounded, stating that he had compensated the Applicant according to the verbal agreement, for the work he had provided and moreover he had stated that the Applicant was never his authorized representative and that he had not represented him before any institution.
21. On 18 April 2016, the Basic Court in Peja, Branch in Klina (hereinafter: the Basic Court) by Judgment [C. no. 67/13] rejected the Applicant's statement of claim as ungrounded stating that *"Finally from the evidence submitted by the claimant the litigant to this court in the case file already administered, but also on the basis of submissions stated directly through the minutes in all hearings held, moreover in the closing statements of the claimant as well as statement of the respondent's authorized representative, the Court of the contentious cases as in the present case found that there was no obligatory contractual relationship between the litigant parties as in the present case, respectively that the obligatory contractual relationship is a consequence of the existence of the contract for the work provided and on the basis of the same it resulted that the claimant has no such evidence proving such an issue, therefore, the Court has concluded that the claimant's claim and the statement of claim should be rejected as ungrounded and unsubstantiated, as the respondent objected to this and proposed to the court to reject the claim as ungrounded, and based on the evidence and statements of the litigant parties, the court did not find any basis to confirm the legal ground of the statement of claim and therefore it decided to reject the same"*.
22. On 5 December 2016, the Applicant filed an appeal with the Court of Appeals against the aforementioned Judgment of the Basic Court, alleging essential violations of the provisions of the contested procedure, erroneous determination of the factual situation and erroneous application of the substantive law.
23. On 6 March 2019, the Court of Appeals by Judgment [Ac. no. 3299/16] rejected the Applicant's appeal as ungrounded, finding that the Judgment of the Basic Court is fair and lawful, it does not contain substantial violation of the provisions of the contested procedure, and that the substantive law has been applied correctly. The Court of Appeals further added that the Applicant had not provided evidence that he had any written contract concluded with V.M.
24. On 17 April 2019, the Applicant filed a proposal for repeating the procedure at the Court of Appeals, against the aforementioned Judgment of the Court of Appeals, alleging violation of the provisions of the contested procedure, with a proposal to permit the repetition of the procedure.
25. On 16 September 2019, the Court of Appeals, by Decision [CN. no. 59/2019], rejected the proposal for repeating the procedure as ungrounded, stating that the conditions required by the Law on Contested Procedure, for permitting the repetition of the procedure have not been met.
26. On 21 October 2019, the Applicant filed an appeal with the Court of Appeals against the aforementioned Decision of the Court of Appeals.

27. On 20 August 2020, the Court of Appeals, by Decision [AC. no. 5487/2019] rejected the Applicant's appeal as ungrounded and upheld the Decision [CN. no. 59/2019] of the Court of Appeals of 16 September 2019.

### **Applicant's allegations**

28. The Court recalls that the Applicant alleges that the challenged Decisions have violated his rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution.
29. The Applicant alleges that he had represented V.M. in the procedure for his reinstatement to his previous work position, but subsequently V.M. had not compensated the Applicant for the work provided on the basis of their verbal agreement.
30. Specifically, the Applicant before the Court states *"Hence, since there was no need for the authorization, and if I did not have an agreement, or a written contract with the respondent as a client, on the method of payment, I consider to apply the provision of Article 58 of the Law No. 04/L-007 on Obligational Relationships of Kosovo of 2012 [...] From this interpretation, I understand that I as a claimant - as a lawyer, have fulfilled my written work obligations towards the respondent - as a client, and I have succeeded in the reinstatement of the respondent to his work position, but he with the support of the courts, from the first instance to those of the second instance, thus supporting the dishonesty of the respondent, who avoided the obligations, while violating my constitutional, legal rights, and the Tariff of the KBA"*.
31. Finally, the Applicant requests from the Court to find out *"whether it was correctly acted or not, if there is violation of substantive and procedural provisions regarding the legal rights of the claimant's correct work performance as a lawyer"*.

### **Assessment of the Admissibility of the Referral**

32. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
33. In this respect, the Court initially refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] 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."*

34. The Court, further refers to Article 47 [Individual Requests] Article 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law, which stipulate:

Article 47  
[Individual Requests]

1. *Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
2. *The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.*

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.”*

Article 49  
[Deadlines]

*“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...”*

35. With regard to the fulfilment of these criteria, the Court finds that at the time of submitting the Referral the Applicant was an authorized party; challenged an act of a public authority, namely the Decision [AC. no. 5487/2019] of 20 August 2020, of the Court of Appeals, in conjunction with the Decision [CN. no. 59/2019] of 16 September 2019, of the Court of Appeals, and that he had submitted the Referral after the exhaustion of all legal remedies.
36. As a result of the information that the Applicant had passed away after submitting his Referral to the Court, the Court has requested the Kosovo Bar Association to confirm the change of circumstances for the Applicant.
37. The Court, on 5 August 2021, received the response from the Kosovo Bar Association that the Applicant had passed away.
38. Further, the Court sent a letter to the Applicant’s family with the following content: *“For the Court in order to continue the procedure of reviewing the Referral, submitted by Mr. Gashi, please confirm if the family members/heirs who have a direct interest want to continue the procedure of reviewing the Referral”*.
39. The Court has not received a response from the Applicant’s family for the continuation of the procedure for reviewing the Referral.

40. In relation to the new circumstances presented in the case before us, the Court also refers to Rule 35 [Admissibility Criteria] of the Rules of Procedure. Specifically, Rule 35 (4) stipulates that:

Rule 35  
(Withdrawal, Dismissal and Rejection of Referrals)

[...]

*(4) The Court may dismiss a referral when the Court determines that a claim is no longer an active controversy, does not present a justiciable case, and there are no special human rights issues present in the case.*

41. The Court notes that the abovementioned rule of the Rules of Procedure enables the Court to summarily reject a Referral if, inter alia, a claim is no longer an active controversy, does not present a justiciable case, and there are no special human rights issues present in the case.
42. The Court recalls that the substance of the case and that is relating to an verbal contract agreed between the Applicant and his client V.M., where the Applicant in his capacity as a lawyer had compiled documents at the relevant institutions in order to represent the client for the latter's reinstatement to his work position at the Centre for Social Work in Klina. According to the Applicant, they had a verbal agreement with V.M. that if the case ends successfully, then pursuant to Article 5 of the Tariff of the Kosovo Bar Association, V.M., was obliged to compensate the Applicant for the work provided. The Applicant had filed a statement of claim at the Basic Court in Peja, for compensation and remuneration for the work provided, by V.M., for the success achieved in the procedure for his reinstatement to his work position. The Basic Court rejected the Applicant's claim as ungrounded, with the reasoning that his allegations were unsubstantiated and that the Applicant had not provided evidence in support of his allegations. Following the Applicant's appeal to the Court of Appeals, the latter rejected the appeal as ungrounded. The Applicant had submitted a request for repetition of the procedure to the Court of Appeals, and the latter rejected the proposal for repetition of the procedure as ungrounded. Following the Applicant's appeal against the Decision of the Court of Appeals, the Court of Appeals finally by its Decision [AC. no. 5487/2019] of 20 August 2020, rejected his appeal as ungrounded. The Court recalls that the Applicant alleges that the challenged Decisions have violated his rights protected by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution.
43. The Court recalls that the Applicant submitted his Referral to the Court, on 10 October 2020. In addition, the Court also recalls that as a result of the notification that the Applicant had passed away, and consequently that the Applicant was not represented by a legal representative in the proceedings before the Court, on 11 May 2021, the Court sent a letter to Gashi family, with the request to clarify whether the family members/heirs who have a direct interest want to continue with the procedure of reviewing the Referral.

44. Within the time limit set by the Court, none of the Applicant's family members/heirs responded to the Court's letter of 11 May 2021, and consequently did not clarify before the Court whether the family members/heirs who have a direct interest want to continue the procedure of reviewing the Referral.
45. Based on the confirmation received on 5 August 2021, from the Kosovo Bar Association that the Applicant has passed away after submitting the Referral to the Court, and the lack of clarification from the family members/heirs who have a direct interest if they want to continue with the procedure of reviewing the Referral, in respective circumstances, the Court determines that the claim is no longer an active controversy, respectively there is no case before the Court.
46. The Court finds that the Applicant's Referral does not meet the procedural criteria for further consideration, as the claim is no longer an active controversy, as set out in paragraph (4) of Rule 35 of the Rules of Procedure.

### **FOR THESE REASONS**

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 35 (4) 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

**Kopje e vërtetuar  
Overena kopija  
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