



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

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Prishtina, 25 May 2015  
Ref. no.:VTK 797/15

## **DECISION TO STRIKE OUT THE REFERRAL**

in

**Case No. KI178/14**

Applicant

**Xufe Racaj**

**Request for correction of the Resolution on Inadmissibility  
of the Constitutional Court of the Republic of Kosovo in  
Case 107/14, of 26 November 2014**

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

composed of

Enver Hasani, President  
Ivan Cukalovic, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge  
Arta Rama-Hajrizi, Judge and  
Bekim Sejdiu, Judge

### **Applicant**

1. The Referral KI178/14 was submitted by Ms. Xufe Racaj, residing in Prishtina (hereinafter, the Applicant).

## **Challenged decision**

2. In the Referral KI178/14, the Applicant refers to the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) in the case No. KI107/14 of 26 November 2014, which was served on the Applicant on 27 November 2014.

## **Subject matter**

3. The subject matter of the Referral KI178/14 is the request for correction, and consequent eventual reconsideration, of the Resolution on Inadmissibility No. KI107/14 of 26 November 2014.

## **Legal basis**

4. The Referral KI178/14 is a continuation of the Referral KI107/14, which was based on Article 113 (7) of the Constitution and Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).
5. The Referral KI178/14 is specifically to be seen as based on Rule 61 (Correction of Judgments and Decisions) of the Rules of Procedure.

## **Proceedings before the Court**

6. On 12 December 2014, the Applicant submitted the Referral to the Court.
7. On 13 January 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel consisting of Judges Snezhana Botusharova (Presiding) Kadri Kryeziu and Arta Rama-Hajrizi.
8. On 12 February 2015, the Court notified the Applicant on the registration of the Referral 178/14.
9. On 15 April 2015, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court to strike out the Referral.

## **Summary of facts**

10. On 23 June 2014, the Applicant submitted in Albanian language the Referral 107/14 to the Court, claiming a violation of "*Articles 5 and 6 of the Convention*". The reference to Article 5 and 6 of the Convention was translated into English language as claiming a violation of "*Articles 5 and 6 of the Constitution*". The English version was the original working basis for the Resolution of 26 November 2014, in Case No. KI107/14.
11. Paragraph 4 of that Resolution reads that "*the subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights, guaranteed by "Article 6 (...) and Article 5 of Constitution*".

12. However, in the reasoning of the abovementioned Resolution (under paragraph 24), the Court noted that *“the Applicant, while justifying her Referral, alleges a breach of Articles 5 and 6 of the Constitution. Those Articles have to do with Languages and Symbols of the Republic of Kosovo; and nothing with the facts of the Referral”*.
13. Meanwhile, the Court considered (under paragraph 25) that *“the subject matter has to do with a violation of the Applicant’s right to fair trial”* and thus decided on the basis of Article 5 and 6 of the Convention.
14. The Court further considered (under paragraph 26) that *“the Applicant has not explained and showed how and why her rights (...) to a fair trial (...) were allegedly violated”*.
15. Finally, the Court concluded (under paragraph 29) that *“pursuant to Rule 36 (1) c) and Rule 36 (2) d) of the Rules of Procedure, the Court finds that the Referral is manifestly ill-founded”*.

### **Applicant’s allegations**

16. The Applicant alleges in the Referral KI178/14 that she *“requested from the Constitutional Court the application of Articles 5 and 6 of the Convention (and not of the Constitution of the Republic of Kosovo), whereas the Constitutional Court of Kosovo erroneously (error in materiae) based its Resolution no. KI107/19 of 25.11.2014 on Articles 5 and 6 of the Constitution”*.
17. The Applicant wants, through the Referral KI178/14, *“to review Decision KI107/14 of 7.11.2014 of the Constitutional Court of Kosovo, which was by error (...) based on inadequate Articles (5 and 6) of the Constitution instead of Articles of the Convention”*.

### **Admissibility of the Referral**

18. In this respect, 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.*

19. The Court also refers to Rule 32 (4) of the Rules of Procedure, which foresees:

*The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.*

20. In addition, the Court takes into account Rule 61 (Correction of Judgments and Decisions), which foresees:

*(1) The Court may, ex officio, or upon application of a party made within two weeks of the service of a Judgment or decision, rectify any clerical and calculation errors in the judgment or decision.*

21. The Court recalls that the Applicant basis her Referral KI178/14 on an alleged technical error of the Court.
22. In fact, the Applicant alleges that the Court, in the Resolution on Inadmissibility in the case No. KI107/14 of 26 November 2014, referred to *“Article 6 (...) and Article 5 of the Constitution”* instead of *“Article 6 (...) and 5 of the Convention”*.
23. However, in the Resolution on Inadmissibility in the case No. KI107/14, the Court considered and decided the Referral on the basis of Articles 5 and 6 of the Convention, as originally alleged by the Applicant. Thus no error is subject to correction, because it has been already corrected in the delivered Resolution.
24. Moreover, the Court observes that the Referral KI178/14 does not present any new allegation or evidence on the violation claimed by the Applicant in the Referral KI107/14; in fact, the Applicant only submitted a request for correction of the Resolution on Inadmissibility.
25. Thus, the Court considers that all Applicant’s allegations were entirely addressed and reasoned in the case KI107/14 as requested by the Applicant and the alleged error was corrected in the previous Decision of the Court.
26. The Court further considers that the resolution taken in the case KI107/14 is final and binding and the alleged correction is without effect on the previous decision.
27. Therefore, the Court concludes that there is no case or controversy pending in relation to the subject above and, in compliance with Article 116 (1) of the Constitution, Rule 32 (4) and 61 (1) of the Rules of Procedure, the "Referral" must be summarily rejected and stricken out.

## FOR THESE REASONS

The Constitutional Court pursuant to Article 113(7) of the Constitution, Article 20 of the Law and Rule 32 (4) of the Rules of Procedure, on 25 May 2015, unanimously

### DECIDES

- I. TO STRIKE OUT the Referral;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Prof. Dr. Enver Hasani