



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

Prishtina, 4 May 2017
Ref. no.: RK1058/17

DECISION TO REJECT THE REFERRAL

in

Case No. KI105/16

Applicant

Feti Gashi

**Request for constitutional review of Judgment Rev. No. 184/2008 of the
Supreme Court of the Republic of Kosovo, of 27 January 2009**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Feti Gashi (hereinafter: the Applicant), residing in village Mramor, municipality of Prishtina. The Applicant is represented by Skënder Musa, a practicing lawyer.

Challenged decision

2. The Applicant challenges Judgment Rev. No. 184/2008 of the Supreme Court, of 27 January 2009 (hereinafter: the challenged decision).
3. The Applicant had previously filed with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) Referrals KI74/09 and KI64/11 on the same matter.

Subject matter

4. The subject matter of the present referral is the constitutional review of the challenged decision, which allegedly violated Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Court

6. On 11 August 2016, the Applicant submitted the Referral to the Court.
7. On 19 August 2016, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
8. On 13 December 2016, the Court notified the Applicant about registration of the Referral.
9. On 4 April 2017, 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

10. On 19 December 2009, the Applicant filed Referral KI74/09. By that Referral, the Applicant requested a constitutional review of Judgment Rev. No. 184/2008 of the Supreme Court, of 27 January 2009, which allegedly violated his right to work.
11. On 15 December 2010, the Court, based on the proposal of the Judge Rapporteur and the recommendations of the Review Panel, declared Referral KI74/09 as out of time and, accordingly, inadmissible.
12. On 12 May 2011, the Applicant submitted Referral KI64/11, claiming that he had submitted Referral KI74/09 within the time limit, due to the fact that on

16 March 2009 he had submitted a letter to the President of the Assembly of EULEX Judges, and he was waiting for the response to that letter. According to the Applicant, the document in question presents a fact for rendering a new decision by the Court, because, according to him, the proceedings had not been completed yet regarding his legal issue.

13. On 14 February 2012, the Court, based on Rule 36 (3) (e) of the Rules of Procedure of the Court, declared Referral KI64/11 inadmissible because it did not constitute a basis or a new fact, important for rendering a new decision.
14. On 11 August 2016, the Applicant addressed the Court with Referral KI105/16, where the subject matter of the case is the same with Referrals KI74/09 and KI64/11, namely the constitutional review of Judgment Rev. No. 184/2008 of the Supreme Court, of 27 January 2009.

Applicant's allegations

15. In the present Referral, the Applicant alleges that the Supreme Court violated his right to judicial protection of rights guaranteed by Article 54 of the Constitution, and his right to a fair trial guaranteed by Article 6 of the ECHR.
16. In addition, the Applicant requests the Court: *"...to review the referral based on merits and hold the violations of law, and to provide to the Applicant the opportunity to be reinstated to his previous job position, upon the annulment of Judgment Rev. no. 184/2008 of the Supreme Court of Kosovo..."*.

Admissibility of the Referral

17. Based on the case file and documents submitted by the Applicant, the Court notes that the subject matter of Referral KI105/16 is the same as in the cases KI74/09 and KI64/11, in which the Applicant requested the constitutional review of Judgment Rev. No. 184/2008 of the Supreme Court, of 27 January 2009.
18. The Court notes that in the present Referral KI105/16, the Applicant does not present any fact relevant for rendering a new decision, but it is merely a repeated attempt by the Applicant to request from the Court a constitutional review of Judgment Rev. No. 184/2008 of the Supreme Court.
19. In this context, the Court refers to Rule 32 (5) of the Rules of Procedure, which establishes:

"The Court may 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, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous."
20. Based on the abovementioned Rule, the Court considers that the current Referral is a mere repetition of previous referrals, namely Referrals KI74/09 and KI64/11, which the Court had declared inadmissible, because they were submitted out of the deadline of four months.

21. The Court recalls that the individual complaint within the meaning of Article 113.7 of the Constitution should not be viewed by the Applicants as an opportunity to request repeatedly from the Court to reopen its decision and retry the same matter.
22. In addition, the Constitutional Court recalls that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo (see, among others: Decision of the Constitutional Court, in case KI26/14, Applicant *Bajrush Gashi*, of 26 March 2015, paragraphs 26 and 27).
23. As a conclusion, the Court considers that the Applicant's Referral is in fact a request for repetition of previous proceedings which have already been decided by the Court. Therefore, in accordance with Rule 32 (5) of the Rules of Procedure, the Referral is summarily rejected.


FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law, and Rule 32 (5) of the Rules of Procedure, on 4 April 2017, 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



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi