



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

Prishtina, on 25 october 2016  
Ref. No.:RK979/16

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI16/16**

Applicant

**Abdullah Cenkciler**

**Request for constitutional review of Judgment AA. no. 229/2015, of the  
Court of Appeal of Kosovo, of 24 November 2015**

### 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 and  
Gresa Caka-Nimani, Judge

#### **Applicant**

1. The Applicant is Mr. Abdullah Cenkciler, a citizen of the Republic of Turkey, represented before the Constitutional Court by Mr. Ibrahim Ibrahimimi, a lawyer from Prishtina.

### **Challenged decision**

2. The challenged decision is Judgment AA. no. 229/2015 of the Court of Appeal of Kosovo, of 24 November 2015.

### **Subject matter**

3. The subject matter is the constitutional review of Judgment AA. no. 229/2015, of the Court of Appeal of Kosovo of 24 November 2015. The Applicant does not specify what constitutional rights have been violated, but he expresses his complaint regarding the refusal of his application for the citizenship of the Republic of Kosovo.

### **Legal basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Rule 29 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 26 January 2016, the Applicant submitted by mail the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 22 February 2016, the President of the Court appointed Judge Gresa Cakanimani as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Almiro Rodrigues and Ivan Čukalović.
7. On 12 April 2016, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeal.
8. On 12 April 2016, the Court sent a copy of the Referral to the Basic Court in Prishtina and requested to submit to the Constitutional Court the complete case file.
9. On 15 April 2016, the Court received the requested file from the Basic Court in Prishtina.
10. On 15 September 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

11. On 26 December 2012, the Applicant filed an application with the Ministry of Internal Affairs (MIA) - Commission for Citizenship, by requesting the acquisition of the right to citizenship based on naturalization of a member of Diaspora, as provided by the Law on Citizenship of the Republic of Kosovo (Law no. 03/L-034).

12. On 28 January 2013, the Commission for Citizenship of MIA, by decision rejected the Applicant's application with the justification that he has not fulfilled all the requirements provided by the Law on Citizenship.
13. On 3 March 2013, the Applicant filed a complaint with the Commission for Complaints for Citizenship (hereinafter: Commission for Complaints) of MIA, objecting the decision of the first instance, which rejected his application for citizenship.
14. On 22 November 2013, the Commission for Complaints rendered Decision no. 429, which rejected the Applicant's complaint as ungrounded, and upheld the decision of the Commission of the first instance.
15. On an unspecified date, the Applicant through his representative filed a statement of claim with the Basic Court in Prishtina – Department for Administrative Matters, requesting that in the procedure of administrative conflict, the Basic Court annuls Decision of MIA, no. 429, of 22 November 2013, and that, after the administration of evidence, the Applicant is recognized the right to citizenship of the Republic of Kosovo.
16. On 2 September 2015, the Basic Court in Prishtina - the Department of Administrative Affairs, rendered Judgment A. no. 1676/2013, which rejected as ungrounded the Applicant's statement of claim.
17. The Basic Court in its reasoning stated among others that *"by the administered evidence in the main hearing of 02.09.2015, the court notes that the claimant did not prove by any evidence the fact that the latter maintains family links in the Republic of Kosovo, a requirement provided by Article 13.3 of the Law on Citizenship of Kosovo no. 03/L-034."*
18. On 12 October 2015, the Applicant filed an appeal against the Judgment of the Basic Court with the Court of Appeal in Prishtina, referring to substantial violation of the procedural provisions, erroneous determination of the factual situation and erroneous application of the substantive law.
19. On 24 November 2015, the Court of Appeal rendered Judgment AA. no. 299/2015, which rejected as ungrounded the Applicant's appeal and upheld Judgment A. no. 1676 of the Basic Court in Prishtina, of 2 September 2015.

### **Applicant's allegations**

20. The Applicant alleges that MIA decisions and the judgments of the regular courts unjustly rejected him the right to acquisition of the citizenship of Kosovo, because he presented numerous facts proving that he fulfills the requirements for citizenship of the Republic of Kosovo. The Applicant did not specify what constitutional provisions were violated by the decisions of the Basic Court and the Court of Appeal.



## Admissibility of Referral

21. In order to adjudicate the Applicant's Referral, the Court first examines whether the Applicant fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and Rules of Procedure.

22. In this respect, the Court refers to Article 113 of the Constitution, which establishes:

*"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."*

23. In addition, the Court takes into account Article 48 [Accuracy of the Referral] of the Law, which provides that:

*"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."*

24. The Court also takes into account Rule 36 [Admissibility Criteria] of the Rules of Procedure which foresees:

*"(1) The Court may consider a referral if:*

*[...]*

*(d) the referral is prima facie justified or not manifestly ill-founded.*

*(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

*(d) the Applicant does not sufficiently substantiate his claim."*

25. Having considered the allegations raised by the Applicant, the Court notes that he challenges Judgment AA. no. 299/2015 of the Court of Appeal of 24 November 2015, by which it decided on his appeal against the Judgment of the Basic Court in Prishtina regarding the acquisition of the right to citizenship of the Republic of Kosovo.

26. The Court also finds that although under Article 48 of the Law on the Constitutional Court, the Applicant is obliged to specify his Referral, he did not mention any provision of the Constitution or the European Convention of Human Rights (ECHR), which could eventually be violated by the challenged decisions, but from the content of the Referral and the evidence presented in

the Referral, it results that he alleges that he did not have a fair and impartial trial, and, in particular he challenges the final outcome of the trial.

27. Assessing the constitutionality of the challenged Judgment regarding the Applicant's Referral and the facts presented by him, the Court recalls that the right to citizenship, which is the basis of the Applicant's Referral, is provided by Article 14, in Chapter I of Basic Provisions of the Constitution, which explicitly provides that:

*"The acquisition and termination of the right of citizenship of the Republic of Kosovo are provided by law".*

28. Accordingly, citizenship as a right is regulated by law, including the forms of its acquisition or termination, and in this regard it is clear that in establishing the requirements related to citizenship, the administrative authorities as well as courts apply the provisions of the law which regulates this legal matter.
29. In the present case, the Court finds that MIA, when deciding on the application for citizenship in two instances in the administrative procedure, and the regular courts, the Basic Court and Court of Appeal respectively, have applied the applicable provisions of the Law on Citizenship of the Republic of Kosovo.
30. The Law on Citizenship of the Republic of Kosovo clearly defines the criteria for acquisition of citizenship by naturalization for members of the Diaspora. MIA and the regular courts, in particular the Court of Appeal, had reasoned why the Applicant does not meet the requirements for acquiring citizenship of the Republic of Kosovo by naturalization. In its reasoning, the Court of Appeal reiterates that requirements set in paragraphs 13.2 and 13.3 of the Law on Citizenship of the Republic of Kosovo, in terms of evidence that the applicant holds family links with the Republic of Kosovo, were not met.
31. The Court of Appeal, reasoned in its Judgment inter alia that *"from the above and based on this factual situation, this court considers that the factual situation was correctly and completely determined...and that we do not deal with substantial violations of the Law on Administrative Conflict".* The Court of Appeal reiterated that *"the claimant failed to prove by any evidence the fact that he maintains family links in the Republic of Kosovo, which criteria to acquire the citizenship by naturalization are clearly provided by Article 10 and 13 of the Law No. 03/L-34 on Citizenship of Kosovo, which by Article 13.3 provides that a member of the Republic of Kosovo Diaspora shall be also every person who is a descendant within one generation of a person referred to in paragraph 2 of this Article and who can prove that he/she maintains family links in Republic of Kosovo, while, paragraph 13.4 provides that the criteria for determining the close family and economic link referred to in paragraphs 2 and 3 of this Article shall be determined by the competent body in sub-legal acts, which means that he did not meet the basic criterion because based on the evidence provided, the Commission did not find any evidence that the claimant, by any single evidence, does not prove his allegations, whereas the evidence provided are not influential on deciding differently in this legal administrative matter."*



32. Furthermore, the Court further reiterates that the Applicant's allegations are focused on the issues of legality and not on the basis of possible violations of the constitutional provisions.
33. The Court reiterates that it is not its task to deal with errors of factual findings or applicable law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
34. The Court has consistently reiterated that one of the fundamental principles of the constitutional review is the principle of subsidiarity, which in the special context of the Constitutional Court, implies that the duty to ensure respect for the rights provided by the Constitution pertains originally to the domestic administrative or judicial authorities, and not directly or immediately to the Constitutional Court (see *Scordino vs. Italy*, no. 1, [GC], § 140).
35. The Court also reiterates that it does not act as a court of fourth instance, in respect of the decisions taken by the regular courts or other public authorities. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, *Garcia Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28).
36. The Constitutional Court can only consider whether the proceedings in general have been conducted in such a way that the Applicant had a fair trial (See, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of European Commission of Human Rights of 10 July 1991).
37. In this regard, the Court notes that the Applicant had ample opportunities to present his claims before MIA, the Basic Court and the Court of Appeal where he was active in all stages of the proceeding having the opportunity, through his representatives, to present evidence and to challenge decisions taken at higher instances, so it cannot be concluded in any way that the proceedings in its entirety have been arbitrary or unfair.
38. The Court further holds that the proceedings before the regular courts have been fair and reasoned (See case *Shub vs. Lithuania*, no. 17064/06, ECHR, Decision of 30 June 2009).
39. The mere fact that the Applicants are dissatisfied with the outcome of the proceedings cannot of itself raise an arguable claim for breach of the constitutional rights, in particular of the right to fair and impartial trial under Article 31 of the Constitution (See *mutatis mutandis* case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No.5503/02, ECtHR, Judgment of 26 July 2005, see also case KI101/11, Resolution on Inadmissibility of CCK, of 12 January 2012, *Constitutional review of Judgment PPA no. 4/2009 of the Supreme Court*).
40. In these circumstances, the Court finds that the facts presented by the Applicant do not prove in any way that the Applicant is the subject of a violation of rights guaranteed by the Constitution and do not justify the

allegation of a violation of any constitutional rights or of any rights guaranteed by the ECHR.

41. Accordingly, for the foregoing reasons, the Court notes that the Applicant did not fulfill the requirements of Article 48 of the Law on accuracy of the Referral, and did not substantiate that his Referral is based on the aspect of constitutional violations, and therefore, based on Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, the Referral is to be declared inadmissible as manifestly ill-founded on a constitutional basis.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 48 of the Law and Rule 36 (2) (b) and (d) of the Rules of Procedure, on 15 September 2016, unanimously

### DECIDES

- I. TO DECLARE the Referral inadmissible;
- 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**

*Gresa Caka-Nimani*  
Gresa Caka-Nimani



**President of the Constitutional Court**

*Arta Rama-Hajrizi*  
Arta Rama-Hajrizi