



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

Prishtina, on 24 July 2017  
Ref. no.:RK 1109/17

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. KI23/17**

Applicant

**Besim Krasniqi**

**Constitutional review of Decision PML. No. 246/2016 of the Supreme  
Court of Kosovo, of 31 October 2016**

### **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 Besim Krasniqi, residing in Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Decision PML. No. 246/2016 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 31 October 2016, which rejected the Applicant's request for protection of legality as out of time. The Applicant alleges that the challenged decision was served on him on 1 December 2016.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly has violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), 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 1 March 2017, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral submitted through mail service on 27 February 2017.
6. On 7 April 2017, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 14 April 2017, the Court tried to notify the Applicant about the registration of the Referral and requested him to clarify the Referral and his allegations, to sign the referral form and to submit the valid power of attorney for representation of another person (namely, person B.P).
8. On 18 April 2017, the Post of Kosovo notified the Court that the letter could not be served on the Applicant.
9. On 20 April 2017, the Court again made an attempt to notify the Applicant about the registration of the Referral.
10. On 21 April 2017, the Post of Kosovo notified the Court that the letter could not be served on the Applicant, because the address given by the Applicant is incomplete.
11. On 4 July 2017, after considering the report of the Judge Rapporteur, the Review Panel recommended to the Court to summarily reject the Referral.

## Summary of facts

12. On 15 June 2015, the Basic Court in Gjilan, branch in Kamenica (Judgment P. No. 340/2006) found the Applicant guilty of committing the criminal offense of fraud and sentenced him to a suspended sentence of one (1) year, from the day the judgment becomes final if he does not commit another criminal offense within a period of one (1) year.
13. Against the Judgment of the Basic Court in Gjilan, the Applicant and Prosecutor of the Basic Prosecution in Gjilan filed an appeal with the Court of Appeal.
14. On 3 August 2015, the Court of Appeal (Judgment PA1. No. 826/15) rejected the appeal of the Applicant and of the Prosecutor of the Basic Prosecution in Gjilan as ungrounded and upheld the Judgment of the Basic Court in Gjilan.
15. On 13 June 2016, the Applicant submitted a request for protection of legality to the Supreme Court.
16. On 31 October 2016, the Supreme Court (Decision Pml. No. 246/2016) rejected the request for protection of legality as out of time.
17. The Court notes that in the same proceedings before the regular courts, the party to the proceedings, in addition to the Applicant was also B.P. In his Referral submitted to the Constitutional Court, the Applicant requested the inclusion of B.P as an Applicant, but did not attach the valid power of attorney given by B.P.

## Applicant's allegations

18. The Applicant alleges a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution.
19. The Applicant alleges that *"at the period when the criminal offence was committed the previous Criminal Code was applicable [...] the Court was obliged to decide based on merits, in accordance with applicable Criminal Code."*
20. The Applicant further emphasizes that *"It is worth mentioning that the case (circumstances) of the criminal offence the accused are charged with is subject to statute of limitation."*
21. The Court notes that the part relating to the statement of the relief sought in the referral form is unreadable.

## Assessment of the Referral

22. The Court first examines whether the Applicant has met the admissibility requirements laid down in the Constitution, and, as further specified in the Law and the Rules of Procedure.

23. In this respect, the Court refers to Article 22, paragraph 4 [Processing Referrals] of the Law, which establishes that:

*“4. If the referral or reply to the referral is not clear or is incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for clarifying or supplementing the respective referral or reply to the claim.”*

24. The Court further refers to Rule 29 [Filing of Referrals and Replies] subparagraphs (1) and (2) (c) of the Rules of Procedure, which stipulate:

*“(1) A referral shall be filed in writing [...] shall include the date of filing, and the signature of the person filing the referral.*

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

*[...]*

*(c) a power of Attorney for representative.”*

25. The Court also refers to Rule 32 [Withdrawal, Dismissal and Rejection of Referrals], subparagraph (5) of the Rules of Procedure, which provides that:

*[...]*

*“(5) 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 [...]”.*

26. The Court recalls that the Applicant alleges that the regular courts violated his right to a fair trial.
27. The Court notes that the Applicant did not sign the referral form. In addition, in his referral, the Applicant also requested the inclusion of B.P as an Applicant, but did not attach the power of attorney given by B.P. Finally, the Applicant filled in the Referral by hand, but his handwriting in the main parts of the Referral was unreadable.
28. Pursuant to the abovementioned provisions of the Law and Rules of Procedure, the Court cannot take into account the Applicant's allegations, as the Referral is incomplete and unclear (see: Decision to reject the Referral of the Constitutional Court, in Case KIO3/15, Applicant *Hasan Beqiri*, of 13 May 2015, paragraphs 14, 15, 17, 19, 20 and 21, and Case KIO7/16, Applicant *Rifat Abdullahi*, 14 July 2016, paragraph 22).
29. The Court, through regular post service, tried to communicate with the Applicant for the purpose of completing the Referral, namely signing the form; clarify Referral and submit the valid power of attorney. However, the communication with him was impossible since the address of the Applicant, as stated in the case file, was incomplete.
30. The Court notes that the Applicant has not provided another address or a contact number as an alternative to be contacted. In this context, the Court

notes that the burden of liability for the failure to complete and clarify the Referral with the supporting documentation falls on the Applicant.

31. In sum, the Court considers that the Applicant's Referral does not meet the formal requirements for further consideration, because the Referral is incomplete and unclear.
32. Therefore, in accordance with Article 22.4 of the Law, Rules 29 (1) and (2) (c) and 32 (5) of the Rules of Procedure, the Court concludes that the Applicant's Referral is to be summarily rejected.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 22.4 of the Law, Rules 29 (1) and (2) (c) and 32 (5) of the Rules of Procedure, in its session held on 4 July 2017, 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.

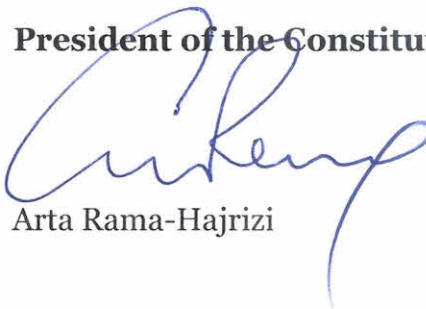
**Judge Rapporteur**



Bekim Sejdiu



**President of the Constitutional Court**



Arta Rama-Hajrizi