



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

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Prishtina, on 26 March 2015  
Ref. No: VHPK 784/15

## DECISION TO REJECT THE REFERRAL

in

Case no. KI26/14

Applicant

**Bajrush Gashi**

**Request for reconsideration of Resolution on Inadmissibility KI75/13 of  
the Constitutional Court of the Republic of Kosovo,  
of 29 January 2013**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

#### **Applicant**

1. The Applicant is Mr. Bajrush Gashi, from village Hoçë e Vogël, Municipality of Rahovec.

## **Challenged decision**

2. The Applicant expresses dissatisfaction with the Resolution on Inadmissibility (KI75/13) of the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), and with decisions of regular courts in general.
3. The Applicant has attached to the Referral the following decisions: Decision Pzd. no. 67/2011 of the Supreme Court, of 12 December 2011; Decision Kp. no. 265/2008 of the District Court in Prizren, of 4 November 2011; Judgment P. no. 26/2009 of the District Court in Prizren, of 19 May 2009; Decision Ka. no. 231/2008 of the District Court in Prizren, of 22 January 2009; and Decision Kp. no. 309/2008 of the District Court in Prizren, of 26 December 2008.

## **Subject matter**

4. The subject matter of the Referral is the reconsideration of the abovementioned decisions with respect to alleged violations of the rights, as guaranteed by the Constitution and the applicable laws in the Republic of Kosovo.

## **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution (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 10 February 2014 the Applicant submitted the Referral to the Court.
7. On 6 March 2014 the President of the Court, by Decision no. GJR. KI26/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, by Decision No. KSH. KI26/14, the President appointed the Review Panel, composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 14 January 2015 the Court notified the Applicant of the registration of Referral.
9. On 11 February 2015, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of Referral.

## **Summary of the facts**

10. Regarding the same allegations raised by the Applicant, the Court has already decided in these cases: Case KI06/12 of 19 May 2012; KI123/12 of 29 January 2013; and KI75/13 of 29 January 2013.

### **Summary of facts related to Resolution on Inadmissibility of the Constitutional Court in Case KI123/12 of 29 January 2013**

11. On 4 December 2012, the Applicant filed a Referral with the Court, requesting constitutional review of Decision Pzd. no. 65/2012 of the Supreme Court of 10 September 2012.
12. In case KI123/12, the Applicant alleged that Decision (Pzd. no. 65/2012) of the Supreme Court had violated his rights guaranteed by Article 31 [Right to a Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR.
13. In case KI123/12, the Court considered that the Supreme Court, by Decision Pzd. no. 65/2012, of 10 September 2012, had remedied the violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR, which the Court found in Decision Pzd. no. 67/11 of the Supreme Court of 12 December 2011, when it dealt with the Applicant's Referral KI 06/12, of 9 May 2012.
14. The Applicant had not submitted to the Court any new facts or evidence that would present a ground for a new decision.
15. Consequently, in Decision Pzd. no. 65/2012 of the Supreme Court of 10 September 2012, the Court had not found any violation of the Applicant's rights, as guaranteed by Constitution and the ECHR.
16. Based on all facts and circumstances submitted with Referral KI123/12, on 29 January 2013 the Court concluded that the Applicant's Referral was inadmissible.

### **Summary of facts related to Resolution on Inadmissibility of the Constitutional Court in Case KI75/13 of 29 January 2013**

17. On 28 May 2013, the Applicant again filed a new Referral which was registered with the Court under no. KI75/13. By that Referral, the Applicant requested clarification of the decisions of the Constitutional Court, specifically the Judgment no. KI06/12 of 9 May 2012 and the Court's Resolution on Inadmissibility of 29 January 2013.
18. In Case KI75/13, the Applicant alleged that the Court, in its Judgment KI06/12, had found that there were various violations, which the Supreme Court was to consider in future proceedings and should meritoriously remedy. The Applicant further stated in the Referral that *"the Court later rendered another decision, by which his referral was rejected as unfounded, without any reasoning."*
19. With respect to the allegations raised in case KI75/13 the Court considered: *"with a view of clarifying the decision, the Court reminds that in the Judgment KI 06/12 of 9 May 2012, the Court found procedural violations of Article 31 [Right to a Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR, while as a ground of violation of rights guaranteed by the Constitution, the Court found that "the same judge who presided the*

*Trial Panel of the District Court in Prizren took part in a trial panel in the Supreme Court in adjudicating the request for mitigation of sentence".*

20. Taking into account all the elaborated facts, in Case KI75/13 the Court concluded that the Applicant's referral was manifestly ill-founded and consequently inadmissible.

### **Applicant's allegations**

21. In the present Referral, the Applicant did not specify any violation of the Constitution, but in fact he requests from the Court to reconsider and reassess the violations which, according to him, are evident in the decisions attached to this Referral.

### **Admissibility of the Referral**

22. Before adjudicating the Applicant's Referral, the Constitutional Court has to examine whether the Applicant has met the admissibility requirements, laid down in the Constitution and further specified in the Law and in the Rules of Procedure.
23. In this respect, the Court refers to Rule 32 (5) of the Rules of Procedure, which provides:

*"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. (Amended 28 October 2014)"*

24. The Court notes that the Applicant in his present Referral has not submitted any new fact or evidence, based on which, matters that were not considered or that were evaded in the Court's previous proceedings would be considered now. On all the issues raised in the present Referral, the Court has already decided.
25. Therefore, the present referral is a request for repetition of proceedings which have already been considered by the Court. The Court has no jurisdiction to decide on the same legal matters it has already decided on. The jurisdiction of the Constitutional Court regarding individual Referrals is clearly defined by Article 113.7 of the Constitution. By individual acts of the public authorities within the meaning of Article 113.7, it should be understood all individual acts of public authorities of the Republic of Kosovo that present a subject of constitutional review within the meaning of this Article, except for acts of the Constitutional Court itself. Therefore, it should be clearly and rightly understood that the Constitutional Court does not have jurisdiction to reopen and adjudicate its own decisions on which it has already decided.
26. In addition, the Constitutional Court wishes to recall that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo.

27. In this regard, Article 116.1 [Legal Effect of Decisions] of the Constitution provides: *"Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*
28. 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 to be rejected as inadmissible.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Articles 113.7, 116.1 of the Constitution and Rules 32 (5) and 56 of the Rules of Procedure, on 26 March 2015, unanimously

### **DECIDES**

- I. TO REJECT 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; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**



Ivan Čukalović



**President of the Constitutional Court**



Prof. Dr. Enver Hasani