



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 15 February 2016
Ref.No.:RK890/16

DECISION TO REJECT THE REFERRAL

in

Case no. KI55/15

Applicant

Elife Murseli

**Request for reconsideration of Resolution on Inadmissibility KI159/14 of
the Constitutional Court of the Republic of Kosovo, of 14 April 2015**

CONSTITUTIONAL COURT OF THE REPUBLIC KOSOVO

Composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge

The Applicant

1. The Referral was submitted by Mrs. Elife Murseli (hereinafter: the Applicant), from village Doganaj, Municipality of Kaçanik, who is represented by Mr. Rifat Abdullahi, a lawyer from Ferizaj.

Challenged decision

2. The Applicant challenges the Resolution on Inadmissibility of the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) in Case KI159/14, of 14 April 2015.

Subject matter

3. The subject matter is the reconsideration of the Court's Resolution on Inadmissibility in Case KI159/14 regarding alleged violations of Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo.
4. The Applicant requests from the Court to hold a hearing.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo, (hereinafter: Law).

Proceedings before the Court

6. On 30 April 2015 the Applicant submitted the Referral to the Court.
7. On 5 May 2015 the Applicant submitted an additional document the Court.
8. On 1 June 2015 the Applicant submitted an additional document to the Court.
9. On 29 June 2015 the President of the Court by Decision no. GJR. KI55/15 appointed Judge Bekim Sejdiu as Judge Rapporteur. On the same date, the President by Decision no. KSH. KI55/15 appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues dhe Ivan Čukalović.
10. On 22 July 2015 the Court informed the Applicant about the registration of the Referral and requested from her to submit a power of attorney for Mr. Rifat Abdullahi.
11. On 5 August 2015 the Applicant submitted the power of attorney as requested by the Court.
12. On 18 December 2015, after considering the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court to summarily reject the Referral.

Summary of the facts

13. The Court notes that the facts in the present Referral are the same as in the summary of facts established in Case KI159/14.

Summary of facts regarding Resolution on Inadmissibility in Case KI159/14 of the Constitutional Court, of 14 April 2015

14. On 24 October 2014 the Applicant, Mrs. Elife Murseli, submitted a Referral to the Court, requesting constitutional review of Decision Ac. no. 1235/2014 of the Court of Appeals of Kosovo, dated 5 May 2014.
15. The Applicant in Case KI159/14 had alleged that by the Decision (Ac. No. 1235/2014) of the Court of Appeals of Kosovo her rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 49 [Right to Work and Exercise Profession] of the Constitution of the Republic of Kosovo were violated.
16. The Court in Case KI159/14 assessed that Decision AC. no. 1235/2014 of the Court of Appeals of Kosovo of 5 May 2014, and Decision E. no. 269/13 of the Basic Court in Ferizaj - Branch in Kaçanik of 4 March 2014, in their detailed reasoning, had responded to the Applicant's allegations with respect to the request for reinstatement to work and the property claim in the amount of €9.351,30, and on the reasons for the application of the pertinent provisions of the procedural and substantive law.
17. Consequently, the Court did not find any violation of the Applicant's constitutionally guaranteed rights, in Decision Ac. no. 1235/2014 of the Court of Appeals of Kosovo, of 5 May 2014.
18. Based on the facts and circumstances presented in Referral no. KI159/14, on 14 April 2015, the Court decided to declare the Applicant's Referral inadmissible as manifestly ill-founded.

Applicant's allegations

19. In the present Referral, the Applicant alleges that the Constitutional Court with its Resolution on Inadmissibility (Case KI159/14) *"[...] makes the referred court decisions lawful, thus making the unlawful and unconstitutional proceedings, which have been lasting for more than 5 years and are still continuing, lawful [...]"*
20. The Applicant thus alleges that the said Resolution has violated her constitutional rights as stated in paragraph 3 of this document.

Assessment of the Admissibility of Referral

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

23. In addition, 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 [...] repetitive of a previous referral decided by the Court, or if the referral is frivolous.”

24. The Court also refers to Rule 36.3 (d) of the Rules of Procedure which provides:

“(3) A referral may also be deemed inadmissible in any of the following cases:

[...] (d) the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision;”
[...]

25. The Court notes that in the present Referral the Applicant has not presented any new fact or evidence, on the basis of which an issue that had not been considered or that was neglected in the previous proceedings before the Court would now be considered. The Court has already decided on all matters raised in this Referral.

26. Therefore, the current Referral is in essence a repetition of a Referral previously considered by the Court. The Court has no jurisdiction to decide on the same legal issues for which it has already decided. The jurisdiction of the Constitutional Court with respect to individual Referrals is clearly established in 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 (See, Naser Dragusha and 4 other employees of the Kosovo Energy Corporation, KI28/15, Decision to Reject the Referral, of 11 November 2015; Bajrush Gashi, KI26/14, Decision to Reject the Referral, of 26 March 2015; Mentor Paqak, KI166/14, Decision to Reject the Referral, of 22 May 2015, and Bejtullah Sogojeva, KI179/14, Decision to Reject the Referral, of 13 August 2015).

27. The Court wishes to recall that its decisions are final and binding on the judiciary, all persons and institutions of the Republic of Kosovo.

28. With regard to the Applicant’s request to hold a hearing, the Court refers to Article 20 of the Law:

“1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.

2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files.”

29. The Court considers that the case files of this Referral are sufficient to decide this case as per the wording of paragraph 2 of Article 20 of the Law.
30. Therefore, the Applicant's request to hold a hearing is rejected as inadmissible.
31. In conclusion, the Court considers that the Applicant's Referral is a repetition of a previous Referral on matters already decided by the Court.
32. Consequently, in accordance with Article 116.1 of the Constitution and Rule 32 (5) of the Rules, the Referral is to be rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 116.1 of the Constitution and Rule 32 (5) of the Rules of Procedure, in its session held on 18 December 2015, 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; and
- IV. This Decision is effective immediately.


Judge Rapporteur
Bekim Sejdiu



President of the Constitutional Court


Arta Rama-Hajrizi