



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

Prishtina, 16 January 2015  
Ref. No.: VTK 745/15

## DECISION TO STRIKE OUT THE REFERRAL

in

Case No. KI70/14

Applicant

**Ahmet Arifaj**

**Constitutional Review of the Decision of the Municipal Assembly Klina,  
No 351-3187/08, dated 22 September 2008**

### 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 Referral is submitted by Mr. Ahmet Arifaj, residing in Zaberxhe/Stapanice, municipality of Klina (hereinafter, the Applicant).

## **Challenged decision**

2. The Applicant challenges the Decision of the Municipal Assembly of Klina, No 351-3187/08, dated 22 September 2008, which was served on him in an unspecified date.

## **Subject matter**

3. The subject matter is the constitutional review of the Decision of the Municipal Assembly Klina, No 351-3187/08, dated 22 September 2008, by which the Applicant's request for support to rebuild the house destroyed during the war was rejected.
4. The Applicant does not refer specifically to the articles of the Constitution which were allegedly violated, instead he asked the Court *"to review the documents and if possible exert ... influence on the Municipal Assembly of Klina in order to solve the matter of reconstructing my home..."*
5. Furthermore, the Applicant asks the Court not to disclose identity, because he *"... is afraid I might damage my case at the Municipal Assembly in Klina."*

## **Legal basis**

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

## **Proceedings before the Constitutional Court**

7. On 14 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
8. On 6 May 2014, the President of the Court by Decision No. GJR. KI70/14, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court, by Decision No. KSH. KI70/14, appointed the Review Panel consisting of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
9. On 26 May 2014, the Court notified the Applicant about the registration of the referral and sent a copy to Municipal Assembly of Klina.
10. On 23 September 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

11. On 30 June 2009, the Applicant filed his referral with the Court, which was registered under number KI23/09, thereby also challenging the Decision of the Municipal Assembly of Klina, No 351-3187/08, dated 22 September 2008.

12. In the referral KI23/09 the Applicant complained that his right to compensation for the property destroyed during the war has been violated without specifying any particular provision of the Constitution. In the same referral the Mayor of Klina noted that ... *"We as a municipality had no access or the possibility of preparing priority list for the beneficiaries."*
13. On 18 February 2010, the Court declared the Applicant's referral inadmissible in accordance with Article 113.7 of the Constitution (Case no. KI23/09, Resolution on Inadmissibility). The Court stated, *inter alia*: *"the Applicant has not substantiated in whatever manner why he considers that the legal remedies, mentioned in Law No 02/L-28 on the Administrative procedure, including an appeal to regular courts, would not be available, would not be effective, therefore not need to be exhausted"*.
14. On 14 April 2014, the Applicant filed a new Referral with the Court that was registered under number KI70/14. In his referral the Applicant stated the following *"I applied to the Ombudsperson in Pristina and Peja. I have not appealed anywhere else because Klina Municipality has continuously promised to me that they will reconstruct my house as soon as they acquired the necessary funds for the reconstruction of burned houses, but until today they have not reconstructed my home, this is the reason why I did not go the court to submit a claim."*

### **Applicant's allegations**

15. In substance the Applicant complains that his right to compensation for the property destroyed during the war has been violated without specifying any particular provision of the Constitution.

### **Admissibility of the Referral**

16. The Court observes that, in order to be able to adjudicate the Applicant's complaint, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
17. In this regard, the Court refers to Article 116.1 of the Constitution [Legal Effect of Decisions], which provides that:

*"1. Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*
18. Furthermore, the Court also takes note of the Rule 63 (1) of the Rules of Procedure, which provides that:

*"(1) The decisions of the Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo."*
19. Moreover, the Rule 36 (3) e) of the Rules of Procedure provides that:

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

*(...)*

*e) the Court has already issued a Decision on the matter concerned and the Referral does not provide sufficient grounds for a new Decision“.*

20. The Court considers that the facts and allegations raised by the Applicant in his new Referral do not provide any sufficient or relevant grounds or reasons for a new decision.
21. In fact, the Court reiterates that it has already dealt with the above-mentioned question in case no. KI23/09. In its Resolution, the Court noted that the Applicant had not exhausted all legal remedies provided by law.
22. The Court finds that it has already rendered a decision on the matter at hand while the Referral in case KI70/14 does not contain sufficient grounds for rendering a new decision.
23. Therefore, the Referral must be declared inadmissible in compliance with Rule 36 (3) e) of the Rules of Procedure.
24. As regards the Applicant’s request not to disclose identity, the Court recalls that pursuant to Article 22 2. of the Law *“The Secretariat shall send copies of the referral to the opposing party and other party (ies) or participants in the procedure.”*
25. The Court also recalls that pursuant to the Court’s Guidelines to assist a party or parties in submitting a referral to the Constitutional Court provide *“the Court may authorize anonymity in exceptional and duly justified cases. Of course, in anonymity is granted, your name has to be disclosed to the responding party...”*
26. Consequently, the Court considers that the Applicant’s request not to disclose must be rejected on the grounds that it is not duly justified.


## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (3) e) of the Rules of Procedure, on 23 September 2014, unanimously

## DECIDES

- I. TO STRIKE OUT 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;
- IV. TO DECLARE this Decision effective immediately;

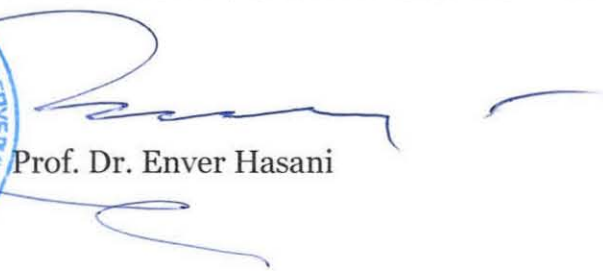
**Judge Rapporteur**



Arta Rama-Hajrizi



**President of the Constitutional Court**



Prof. Dr. Enver Hasani