



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

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Pristine, 17 October 2012  
Ref. No.: RK313/12

## **RESOLUTION ON INADMISSIBILITY**

**Case No. KI 74/11**

Applicant

**Rasim Nikoqi**

**Constitutional Review of the failure of the District Court of Peja to issue  
Judgment in a claim**

### **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

#### **The Applicant**

1. The Applicant is Rasim Nikoqi from the village of Gegehysenaj in the Republic of Albania.

## **Challenged decision**

2. The Applicant challenges the refusal of the District Court in Peja to consider a claim.

## **Subject matter**

3. Subject matter of the Referral is the refusal by the District Court in Peja to consider the Applicant's claim. The Applicant alleges that he has been discriminated against on the basis that he is an Albanian national because the District Court in Peja has failed to issue a decision in the claim brought by him. Initially the claim was brought in the Municipal Court in Gjakova in 2003.

## **Legal Basis**

4. The Referral is based on Art. 113.7 of the Constitution; Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as "the Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

## **Procedure before the court**

5. On 10 May 2011 the Applicants filed a Referral with the Constitutional Court.
6. On 27 June 2011 the Constitutional Court requested the Municipal Court in Gjakova to furnish information in relation to the Referral. On the same date the Court requested the Kosovo Judicial Council to respond to the Referral.
7. The Kosovo Judicial Council responded to the Court by letter dated 29 July 2011 stating that the Judge on the issue at stake was under investigation as the case had not assigned for five years.
8. The Municipal Court in Gjakova replied to the Constitutional Court on 1 August 2011 and subsequently on 23 February 2012. The Municipal Court referred the Constitutional Court to request further information related to the case from the District Court in Peja.
9. On 17 August 2011 the President of the Constitutional Court appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date the President appointed a Review Panel composed of Judges Almiro Rodrigues (presiding), Prof. dr. Enver Hasani (member) and Iliriana Islami (member).
10. On 19 September 2012, the President by Decision KSH. 74/11, appointed the new Review Panel composed of Judges: Altay Suroy (presiding) replacing Judge Iliriana Islami, whose mandate as a Judge of the Constitutional Court ended on 26 June 2012, Almiro Rodrigues (member) and Prof. dr. Enver Hasani (member).
11. On 20 September 2012, the Review Panel after having considered the report of the Judge Rapporteur, made a recommendation to the Court on the inadmissibility of the Referral.

## **The facts of the case as alleged by the documents furnished by the Applicants**

12. On 26 April 2002 the Applicant was sentenced by the Municipal Court in Gjakova to detention for thirty days following a trial for charges of "illegal trade" under Article

116.1 of the PLK. Goods (435 cases of beer) amounting to Euro 5,972.50 were seized. On 16 May 2002 the Applicant was convicted, released from detention and sentenced to six months imprisonment - which was suspended.

13. The Applicant appealed this Decision to the District Court in Peja and that Court in turn remitted the case to the Municipal Court in Gjakova which subsequently retried the case and on 1 January 2003, dropped the criminal charges, issued a decision on expenses and ordered the goods to be returned to the Applicant.
14. On 24 March 2003 the Applicant submitted a civil complaint to the Municipal Court in Gjakova regarding expenses and compensation, through his lawyers. According to the documents submitted by the Applicant, the hearing regarding this complaint was first scheduled for 17 December 2010 and subsequently delayed until 24 March 2011 at which time the judge assigned to the case recused himself because he was a judge in the original criminal case.

### **Alleged violations of the Constitution**

15. The Applicant alleges that, in general, there was serious violation of rights guaranteed by Articles: 7 [Values], 31 [Right to a fair and impartial trial], 53 [Interpretation of human rights provisions] and 102 [General principles of the Judicial system] of the Constitution, and Article 41 of the ECHR.

### **Assessment of the admissibility of the referral**

16. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.

17. Article 113 Section 1 and 7 of the Constitution establish the general legal frame required for admissibility. It provides:

*"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."*

18. Even if the Applicant would have exhausted all available effective legal remedies under the laws in force, the Court emphasizes that, in order for a Referral to be dealt with by the Constitutional Court, the Applicant should first and foremost substantiate his allegations of violation of rights guaranteed by the Constitution of the Republic of Kosovo and the ECHR.

19. In this respect, Article 48 of the Law states:

*"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."*

20. Finally, Rule 36 of the Rules of Procedure states:

*"1. The Court may only deal with Referrals if:  
c) the Referral is not manifestly ill-founded.*

2. *The Court may reject a Referral as being manifestly ill-founded when it is satisfied that:*
- a) *the Referral is not prima facie justified, or*
  - b) *when the presented facts do not in any way justify the allegation of the violation of constitutional rights, or*
  - c) *when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*
  - d) *when the Applicant does not sufficiently substantiate the claim;”*

21. In the proceedings initiated by the Applicant before the local courts he was represented by a lawyer. However, the Applicant has not demonstrated or offered any evidence at all to substantiate that the delay arises from discrimination on the grounds of his nationality. No comparison has been made by the Applicant to show how he, as a national of the Republic of Albania, has been treated differently to any other persons appearing before the Courts of the Republic of Kosovo. It is not possible to deduct from his bald statement of discrimination that such discrimination has occurred.
22. Neither has the Applicant demonstrated or furnished evidence that he took steps to request the regular courts to expedite his claim (other than the making of a complaint to the Kosovo Judicial Council). The original claim remains pending for decision in the regular Courts. The party has not in any way shown to have raised the above-mentioned issues in his first claim, concerning the violation of his rights guaranteed by Laws and the Constitution of the Republic of Kosovo, as well as the ECHR.
23. Therefore, pursuant to Article 113.7 of the Constitution, Articles 47.2, 46 and 48 of the Law and Rule 36.2. a), b), c) and d) of the Rules, the Referral is inadmissible as manifestly ill-founded because it has not been *prima facie* justified or sufficiently substantiated.
24. Therefore, pursuant to Article 113.7 of the Constitution, Article 20 Law and Rule 56.2 of the Rules of Procedure, the Referral is inadmissible.

### FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2, 46 and 48 of the Law on the Constitutional Court, Rule 36.2 (a, b, c and d) of the Rules of Procedure, on 20 September 2012, unanimously:

### DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

Snezhana Botusharova



**President of the Constitutional Court**

Prof. Dr. Enver Hasani