



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

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Prishtina, 20 January 2014  
Ref.no.:RK541/14

## RESOLUTION ON INADMISSIBILITY

in

**Case no. KI 75/13**

Applicant

**Bajrush Gashi**

**Request for clarification of the Judgment of the Constitutional Court KI 06/12 of 9 May 2012 and Resolution on Inadmissibility of the Constitutional Court KI 123/12, 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 the village of Hoçë e Vogël Municipality of Rahovec, (hereinafter: Applicant), duly represented by Mr. Nexhat Elshani, a practicing lawyer.

## **Challenged decision**

2. The Applicant in his Referral does not challenge decisions of public authorities, but requests clarification of the Judgment of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") of 9 May 2012, and Resolution on Inadmissibility of the Court of 29 January 2013.

## **Subject matter**

3. The subject matter of the Referral filed with the Court, of 28 May 2013, is the request for clarification of the decisions of the Court.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter: Law), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

## **Proceedings before the Court**

5. On 28 May 2013, the Applicant filed his Referral with the Court.
6. On 28 May 2013, the President of the Constitutional Court, by decision No. GJR. KI. 75/12, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by decision No. KSH. 75/12, appointed a Review Panel, composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 11 September 2013, the Court notified the Applicant on the registration of referral.
8. On 5 December 2013 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**

9. On 28 May 2013, the Applicant filed his Referral with the Court, thereby requesting that the Court clarify the Judgment of 9 May 2012, and Resolution on Inadmissibility of 29 January 2013, in which he appears as Applicant in the Referral.

## **Summary of facts related to Judgment of the Constitutional Court KI 06/12, of 9 May 2012**

10. The Applicant filed a referral with the Court, on 27 January 2012, thereby challenging the Decision of the Supreme Court, [Pzd. no. 67/2001], of 12

December 2011, by which his request for extraordinary mitigation of sentence was rejected as ungrounded.

11. The Applicant stated in his Referral that the challenged decision violated his rights guaranteed by Article 31 [Right to a Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: Constitution), and Article 6 [Right to Fair Process] of the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR), because according to the Applicant, *“the court procedures were conducted with a lot of irregularities”*.
12. On 9 May 2012, the Court considering the facts and proofs in the case file, declared the Referral of the Applicant admissible, thereby finding that there was: *„a violation of Article 31 [Right to a Fair and Impartial Trial] of the Constitution and Article 6 [Right to due process] of the ECHR, thereby reasoning that „[...] in circumstances of this case, the impartiality of the Supreme Court may be put to question, and that the concerns of the Applicant in this sense may be considered subjectively and objectively reasoned „since [...] the same Judge, who was the Presiding Judge at the District Court in Prizren, was the member of the Trial Panel of the Supreme Court when it decided upon extraordinary mitigation of sentence.“*
13. Further, the Court *„DECLARED”* invalid the Decision of the Supreme Court [Pzd. no. 67/2011] of 12 December 2011, due to violation of Article 31 of the Constitution, and Article 6 of the ECHR, and *“RETURNED”* the Decision [Pzd. no. 67/2011] of 12 December 2011, to the Supreme Court for reconsideration in accordance with the Judgment of this Court, pursuant to Rule 74 (1) of the Rules of Procedure.”
14. On 17 October 2012, the Supreme Court notified the Court that it has reconsidered its decision in accordance with the Judgment of the Court, namely, a ruling has been rendered by a different composition of judges (Decision Pzd. no. 65/2012 of 10 September 2012).

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

15. On 4 December 2012, the Applicant filed a Referral with the Court, thereby requesting constitutional review of the Decision of the Supreme Court [Pzd.no. 65/2012] of 10 September 2012.
16. The Applicant claimed in his referral that the challenged decision violated his rights guaranteed by Article 31 [Right to a Fair and Impartial Trial] of the Constitution of the Republic of Kosovo and Article 6 [Right to Due Process] of the ECHR.
17. The Court noted that it had already dealt with the Applicant’s referral in the case KI 06/12, when by Judgment KI 06-12 of 9 May 2012, it had found that the Supreme Court, by Judgment Pzd.no.67/2011 of 12 December 2011, had violated the rights of the Applicant as per Article 31 [Right to a Fair and

Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR.

18. The Court further noted that the Supreme Court, with the new Judgment Pzd.no.65/2012, of 10 September 2012, had remedied the violation of Article 31 [Right to a Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR, found by the Constitutional Court in the Judgment of 9 May 2012.
19. The Applicant had not submitted to the Court any new facts or evidence that would represent a good basis for a new decision.
20. Consequently, the Court had not found, in this case, any violation of rights as guaranteed by the Law, Constitution of the Republic of Kosovo or the European Convention on Human Rights and Fundamental Freedoms by regular courts, or more specifically, the Judgment of the Supreme Court [Pzd.no. 65/2012], of 10 September 2012.
21. Based on all facts and circumstances submitted with the Referral, the Court, on 29 January 2013, concluded that the Referral of the Applicant is inadmissible, in accordance with Rule 36.3.e of the Rules of Procedure.

### **Applicant's allegations**

22. The Applicant in his referral claims that the Court, in its Judgment KI 06/12, had found that there are violations of different kinds, and therefore, the Applicant had recommended to the Supreme Court to consider all violations, which in future proceedings would meritoriously remedied.
23. The Applicant further states that "*the Court later rendered another decision, by which his referral was rejected as unfounded, without any reasoning.*"
24. The Applicant requests from the Court:

*„That the Court clarifies the decisions, respectively, which decision is authentic.“*

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

25. In order to be able to adjudicate the Referral of the Applicant, the Court must first examine whether the Applicant has met the admissibility criteria, as provided by the Constitution, and further specified by Law and Rules of Procedure.
26. In this case, the Court refers to Article 48 of the Law on the Constitutional Court, which provides that:

*“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.”*

27. In addition, the Court refers to Rule 36 (Admissibility criteria) of the Rules of Procedure, which provides:

*“(1) The Court may only deal with Referrals if:*

*c) the referral is not manifestly ill-founded.”*

*(2) The Court shall reject a Referral as manifestly ill-founded, if it is satisfied that:*

*a) the Referral is not justified prima facie“ ...*

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

28. However, 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 diminishing sentence”*.
29. The Court also notes that the Supreme Court, on 10 September 2012, in a repeated proceeding, rendered another decision [Pzd. no. 65/2012], in the trial panel composition, which was the basis that caused the procedural violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR, which the Court had found in its Judgment KI 06/12, of 9 May 2012.
30. Therefore, the Court notes that the Supreme Court, by decision [Pzd.no.65/2012], remedied the abovementioned procedural violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to Due Process] of the ECHR.
31. In the concrete case, the Court concludes that the Applicant’s Referral is not based and built on constitutional grounds and taking into account that the Court previously dealt and issued decision on the Applicant’s referral, as such the Court considers that the Applicant’s referral is *res judicata*. Therefore, in accordance with Rule 36.1.c, 36.2.a and 36.2.e of the Rules of Procedure, the referral is manifestly ill-founded and consequently inadmissible.

## FOR THESE REASONS

Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36.1, 36.2 and Rule 56.2 of the Rules of Procedure, on 5 December 2013, by majority:

### DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO NOTIFY this decision to the Parties
- III. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Ivan Čukalović

Prof. Dr. Enver Hasani

