



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

Prishtina, on 24 October 2017
Ref. no.: RK 1145/17

DECISION TO REJECT THE REFERRAL

in

Case no. KI121/16

Applicant

Vera Otešević

**Constitutional review of Judgment Rev. no. 123/16 of the Supreme Court
of the Republic of Kosovo of 6 June 2016**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Referral was submitted by Vera Otešević (hereinafter: the Applicant), currently residing in Danilovgrad, Republic of Montenegro.

Challenged decision

2. The Applicant challenges decision Rev. No. 123/16, of the Supreme Court of Kosovo, of 6 June 2016, Decision Ca. no. 1251/2015 of the Court of Appeal of the Republic of Kosovo, of 20 April 2015, and Judgment P. no. 26/13 of the Basic Court in Gjakova, of 5 September 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decisions, which allegedly violated the rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 31 [Right to Fair and Impartial Trial], 53 [Interpretation of the Human Rights Provisions] and 58 [Responsibilities of the State] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 1 of Protocol 1 of the European Convention of Human Rights.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 22 and 47 of the Law no. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Constitution), and Rule 29 of the Rules of Procedure of the Constitutional Court (hereinafter: Rules of Procedure).

Proceedings before the Constitutional Court

5. On 20 October 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 November 2016, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges Almiro Rodrigues (presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 23 December 2016, the Court notified the Applicant of the registration of the Referral and requested to complete the Referral with relevant documentation.
8. On 3 February 2017, the Applicant submitted to the Court additional documentations. However, the hard copies of the challenged decisions have not been attached to the additional documentation.
9. On 4 April 2017, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court to summarily reject the Referral.

Summary of facts

10. The Applicant only mentions the challenged decisions, by which she alleges that her rights guaranteed by the Constitution and international conventions have been violated. However, the above decisions which are mentioned by the Applicant have not been attached to the Referral.

Applicant's allegations

11. The Applicant alleges that her representative by power of attorney, against her will and without her knowledge, has acted contrary to her interests in relation to the defendant R.M. As a result of this action she alleges that *“the first instance court rendered an unlawful judgment, which is challenged by this appeal”*.
12. Moreover, the Applicant alleges:

“The first instance court should serve on me in a formal and lawful manner the challenged judgment, and allow me the right of appeal.

(...)

The first instance judgment was unlawful, which action my authorized representative should have not taken, and the first instance court should have not have allowed such an UNAUTHORIZED AVAILABILITY OF MY REPRESENTATIVE, who misused me. When the court notes that an authorized representative works at the expense of the authorizer, it is obliged to meet the authorizer. By this, my constitutional rights have also been violated, violation of the right to property, ownership, because my authorized representative acted contrary to my interest. The Court of Appeal has neither dealt with these allegations.

(...)

The Decision of the Court of Appeal of Kosovo is unlawful and completely absurd. In all procedural laws and in the Law on Contested Procedure of Kosovo there are provisions which provide the manner how the judgments and other decisions in writing are served, which are related to deadlines.

(...)

Written decisions were not served on me in my language. I am the main subject of the proceedings. It is not my authorized representative, and that violation renders the proceeding and the trial unconstitutional, violates my right to fair and impartial trial, i.e. Right to a fair trial. I request the Court to recognize this constitutional complaint as grounded”.

Admissibility of the Referral

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

14. Thus, the Court refers to the following provisions of Law:

Article 22.4 [Processing Referral]

“4. If the referral ... is not ... complete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for supplementing the respective referral(...).”

15. In addition, the Court refers to Rule 29 (2) [Filing of Referrals and Replies] and Rule 32 (5) [Withdrawal, Dismissal and Rejection of the Referrals] of the Rules of Procedure, which provides:

29 (2) “the referral shall also include:

[...]

(h) the supporting documentation and information.

[...].”

32 (5) “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 (...).”

16. The Court recalls that the Applicant alleges that regular courts violated her rights guaranteed by the Constitution and international conventions, for the reasons mentioned above.

17. Based on Article 22.4 of the Law, the Court requested the Applicant to submit the challenged decision and other decisions of the regular courts.

18. However, after the provided deadline, the Court received only some documents but not the hard copies of the challenged decisions of the regular courts, whose constitutionality the Court would be able to assess only after meeting the requirements laid down by the Constitution, Law and Rules of Procedure.

19. The Court considers that it cannot take into account the Applicant's allegations without supporting documentation and material evidence, pursuant to Article 22.4 of the Law and Rules 29 (2) (h) and 32 (5) of the Rules of Procedure (see Decision of the Constitutional Court in case KIO3/15, Applicant *Hasan Beqiri*, of 13 May 2015, paragraphs 14, 15, 17, 19, 20 and 21).

20. The Court further considers that the Applicant has not shown a prima facie case in order for the Court to assess the fulfillment of all procedural admissibility requirements.
21. In addition, the Court notes that it is not a fact finding court and the burden of responsibility falls on the Applicant who failed to meet the procedural requirements laid down by the Constitution, the Law and the Rules of Procedure.
22. In sum, the Court considers that the Applicant's Referral does not meet the procedural requirements for further review, because the referral has not been completed with relevant documentation, as required by Article 22.4 of the Law and regulated 29 (2) (h), 32 (5) of the Rules of Procedure.
23. Therefore, the Court concludes that the Referral is to be summarily rejected.

FOR THESE REASONS

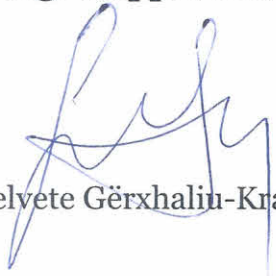
The Constitutional Court, in accordance with Article 113 (7) of the Constitution, Article 20 of the Law, and Rule 32 (5) of the Rules of Procedure, on 4 April 2017, unanimously

DECIDES

- I. TO SUMMARILY 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;
- IV. This Decision is effective immediately;

Judge Rapporteur

Selvete Gërxhalin-Krasniqi



President of the Constitutional Court

Arta Rama-Hajrizi

