



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

GUIDELINES

to assist a party or parties in submitting a referral to the Constitutional Court of the Republic of Kosovo under Article 113.7 of the Constitution of the Republic of Kosovo and Articles 46, 47, 48, 49 and 50 of the Law on the Constitutional Court of the Republic of Kosovo

Preliminary observations

1. The present Guidelines have been drafted to assist you in submitting a referral to the Constitutional Court of the Republic of Kosovo. However, before deciding to refer a constitutional complaint to the Constitutional Court you should be particularly aware of Article 113.7 of the Constitution and Articles 22 and 46 to 50 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo as well as Rules 28 to 32 of the Rules of Procedure of the Constitutional Court which set out the legal requirements you must fulfill in order to enable the Constitutional Court to adjudicate your referral.
2. If you think that you have met all legal requirements mentioned in those provisions, you should fill in the Referral Form according to the Guidelines set out hereafter.

Matters that can be submitted to the Constitutional Court

3. The Constitutional Court is the final authority for the interpretation of the Constitution and the conformity of laws with the Constitution.
4. Thus, the Constitutional Court may examine referrals submitted by individuals or legal persons claiming that their human rights and fundamental freedoms guaranteed by the Constitution of the Republic of Kosovo have been violated by public authorities. You should read Chapter II (Fundamental Rights and Freedoms) of the Constitution which contains these human rights and fundamental freedoms.
5. If you consider that you are, personally and directly, a victim of a violation of one or more of these constitutional rights by public authorities in the Republic of Kosovo, you may refer the matter to the Constitutional Court.
6. However, the Constitutional Court can only deal with referrals relating to violations of one or more of the rights set out in the Constitution. It cannot act as a court of further appeal (a fourth instance court) in respect of the decisions taken by the courts whose role it is to interpret and apply the rules of both procedural and substantive law.
7. The Constitutional Court can only examine referrals that are directed against public authorities of the Republic of Kosovo (state organs, administrative authorities, courts, etc.) which have allegedly violated your fundamental rights and freedoms guaranteed by the Constitution, as mentioned in Article 113.7 of the Constitution. The Constitutional Court cannot deal with complaints directed against private individuals or private organizations.
8. The Constitutional Court is not competent to examine referrals in which you complain of events and proceedings which occurred before the entry into force of the Constitution, i.e. before 15 June 2008.
9. Under Article 113.7 of the Constitution, the Constitutional Court can admit a referral only after all legal remedies provided by law have been exhausted. This means that, before referring a constitutional complaint to the Constitutional Court, you must first have tried to obtain from the courts a decision on the issues raised in your referral, including a final decision from the highest competent court. If you have not used such a remedy, you must show that it would have been ineffective or that no legal remedy existed. Moreover, you must also show that you have raised with the public authorities and the courts the same violation of your constitutional rights as you are now raising before the Constitutional Court.

10. When initiating proceedings before the courts, you must comply with the applicable court rules, including the rule for observing time-limits. If, for instance, a court has dismissed your request or appeal, because you submitted it too late or to the wrong court or you did not use the correct procedure, the Constitutional Court will not be able to examine your referral.
11. Furthermore, if you are complaining that a court, in administrative, criminal or civil proceedings, has violated your right to a fair trial, you should not seek to reopen your case after you have exhausted the normal appeal procedures before the courts. Nor do you have to make use of remedies outside the courts or seek a pardon or an amnesty. Petitions (to the Assembly, the Head of State or the Government, a minister or the ombudsperson) are not regarded as legal remedies that you need to have used in order to comply with the above exhaustion requirement.

Filling in the Referral Form

12. Before you fill in the Referral Form, you should carefully read Rules 28 and 29 of the Rules of Procedure and pay attention to the remarks that follow.
13. If you consider that your complaints concern one of the rights and freedoms guaranteed by the Constitution and that the requirements described above are satisfied, you should fill in the Referral Form carefully and legibly and send it to the Constitutional Court as soon as possible, together with all relevant documents required for its examination.
14. Your referral should be submitted within a period of four (4) months, from the day upon which you or your lawyer were served with a final court decision. In all other cases, the deadline shall be counted from the day when the decision or act was publicly announced. Thus, the four-months period does not start on the day of any later refusal of a request to reopen your case or of a petition for pardon or amnesty or of any other request to a public authority. The date on which you send your completed Referral Form to the Constitutional Court determines whether you have complied with the four-months time-limit set out in Article 49 of the Law on the Constitutional Court.
15. You must choose and use one of the official languages in Kosovo, which are Albanian and Serbian.
16. Your referral must be filed in person at the office of the Secretariat of the Constitutional Court during regular working hours, or by mail or by means of electronic communication. If you send your referral by e-mail or fax, you must confirm it by post. You cannot submit a complaint to the Constitutional Court by telephone.
17. You cannot expect any legal advice from the Secretariat, as it is not allowed to give do so either concerning your referral or the interpretation of the law.

Content of the Referral

18. When filling in the Referral Form, you should make sure that it includes the following items:
 - (a) Your name and address, written in a legible manner;
 - (b) The name and address of the representative, if any;

- (c) For the purpose of lodging the referral, you do not need to be represented by a lawyer, nor does your representative need to be a lawyer. If you are represented, the Referral Form must be accompanied by a Power of Attorney duly signed by you and the lawyer or other representative to act on your behalf (see, example attached hereto). A representative of a legal entity (company, association, etc.) or group of individuals must provide proof of the authorization by the authorized person of the legal entity or group of individuals to represent it;
 - (d) Name and address of the responding party or parties, if known, and relevant information about such a party or parties (Section I of the Referral Form), with a separate sheet for each party, if necessary. The Constitutional Court will send a copy of your referral to the replying party, enabling it to submit comments on the referral;
 - (e) A statement of the relief sought, pointing out briefly what you want to achieve through your referral to the Constitutional Court (Section VI of the Referral Form);
 - (f) A succinct description of the facts, giving clear and concise details of the facts you are complaining about (Section II of the Referral Form). Give exact dates and describe the events in the order in which they occurred. If your complaints relate to a number of different matters, for example different sets of court proceedings, please, deal with each matter separately;
 - (g) The justification of the referral, explaining as precisely as you can what your complaint(s) under the Constitution is (are) (Section III of the Referral Form). Indicate which Articles of the Constitution have allegedly been violated in your case and explain why the facts that you have set out in Section II of the Referral involve a violation of the rights guaranteed by these Articles;
 - (h) Supporting documentation and information, showing that you have complied with the time-limits and the rule on the exhaustion of remedies (Section V of the Referral Form).
19. Indicate also whether you have used other legal remedies. If you have done so, you should give details, including the name of the body to which you submitted your complaints, dates and details of any proceedings which took place and details of any decisions taken. Enclose a list of all judgments and decisions referred to in Section IV of the Referral Form as well as any other documents you wish the Constitutional Court to take into consideration as evidence (transcripts, witness statements, your own submissions to the different authorities and courts) as referred to in Section V of the Referral Form. If you have not already done so, you should also enclose copies of the documents themselves.
20. Copies of any relevant documents submitted in support of the referral must be attached to the referral when submitted to the Constitutional Court. If only parts of a document are relevant, only the relevant parts are necessary to be attached. Documents may be submitted in one of the official languages of Kosovo or in one of the languages in official use in Kosovo.
21. When a document is not in one of the official languages or in one of the other languages in official use in Kosovo, the document must be accompanied by a certified translation into one of the official languages or into one of the other languages in official use in Kosovo.
22. Only relevant parts of a document may be translated, but, in such a case, they must be accompanied by an explanation indicating why only parts of the document have been translated.

23. The Constitutional Court may require a more extensive or complete translation of such documents to be provided by the party.
24. No documents will be returned to you. It is thus in your interest to submit copies, not originals.
25. Your referral form must include the date of filing and your signature. Remember that, if the referral is submitted by your representative, a proper power of attorney duly signed by you and the representative must accompany the referral form (see, example attached hereto).

Publicity and Confidentiality

26. As a general rule, any information contained in the documents which you lodged with the Secretariat, including information about you, the responding party or interested persons, will be accessible to the public according to Law No.03/L-215 on Access to Public Documents. Accordingly, you should only provide details concerning your private life or that of other parties which are essential for the comprehension of the referral.
27. In addition, if you do not wish your identity to be disclosed to the public, you must say so and set out the reasons for such a departure from the normal rule of public access to information about the proceedings. The Constitutional Court may authorize anonymity in exceptional and duly justified cases. Of course, if anonymity is granted, your name has to be disclosed to the responding party, when the Referral is communicated to that party for comments.

Final Observations and Recommendations

28. Please, do not staple, seal with adhesive tape or otherwise bind any correspondence or documents you send to the Constitutional Court. All pages should be numbered consecutively.
29. Your referral, and further correspondence, must be sent to the following address:

Constitutional Court of the Republic of Kosovo
Secretary General of the Constitutional Court
Perandori Justinian 44., 10000 Pristina, Kosovo
Tel: +381 (0)38 606 162; Fax: +381 (0)38 606 170; info@gjk-ks.org

30. On receipt of your first letter or the duly completed Referral Form, the Secretariat of the Constitutional Court will reply, informing you that a file has been opened and that the referral has been registered under a specific number. That number must be mentioned in all subsequent correspondence with the Constitutional Court. Subsequently, you may be asked to provide further information or clarification, documents or particulars regarding your referral.
31. It is in your interest to promptly reply to any correspondence from the Secretariat.
32. Any delay or failure to reply or provide further information or documents at the Secretariat's request may be taken to mean that you no longer wish to pursue the examination of your referral and may result in the referral not being examined by the Constitutional Court or being declared inadmissible by it or struck out of its list of cases.
33. You will be informed of any decision taken by the Constitutional Court.

Power of Attorney
(example)

I,

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.....
.....

(Name and address of the party filing the referral)

Hereby authorize

.....
.....
.....

(Name, address and occupation of the representative)

to represent me in the proceedings before the Constitutional Court of the Republic of Kosovo concerning my referral submitted to the Constitutional Court under Article 47 [Individual Requests] of the Law on the Constitutional Court for the constitutional review of Decision(s) No(s).
issued by

(Place and date)

(Signature of the party filing the referral)

I hereby accept the above appointment

(Place and date)

(Signature of representative)