



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

Priština, on 11 June 2018
Br. ref.: RK 1262/18

DECISION TO REJECT THE REFERRAL

in

Case No. KI89/17

Applicant

Afrim Rafuna

Constitutional review of the actions of public authorities

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 Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Afrim Rafuna, residing in Shkabaj, Municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant does not challenge in particular any specific decision of the public authorities or the courts.

Subject matter

3. The subject matter of this Referral relates to the Applicant's allegation of a violation of his rights as a result of the acts and prohibitions, which according to the Applicant, are conducted by the border police of the Republic of Kosovo at the border crossing points of the Republic of Kosovo. With respect to these allegations, the Applicant does not specifically refer to any concrete constitutional provision.
4. In addition, the Applicant requests the Court not to disclose his identity, due to fear that the Finnish authorities may cause future problems because of the requirement to contact his daughter.

Legal basis

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

Proceedings before the Constitutional Court

6. On 2 August 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 4 August 2017, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Ivan Čukalović.
8. On 11 September 2017, the Court notified the Applicant about the registration of the Referral and requested the latter to state and clarify the alleged constitutional violations, as well as to attach all decisions of the public authorities or the regular courts which concerned his case.
9. On 13 September 2017, the Applicant submitted to the Court the document through which he provided some additional information regarding his case, however, he did not submit any decision of the public authorities that would be subject to review by the Court.
10. On 24 May 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

Facts related to the Finnish authorities

11. The Applicant used to live in Finland from 2007 to 2015.
12. On 26 November 2015, the Applicant states that he was deported by the Finnish authorities to the Republic of Kosovo, due to the lack of a residence permit.
13. On 22 December 2015, the Applicant's daughter was born in Finland. According to him, the daughter who was born in Finland remained in the care of her mother. From the moment of his daughter's birth, the Applicant alleges that he was able only once to meet her, on the occasion of her first birthday.
14. On 19 December 2016, the Applicant registered his daughter in the Municipality of Prishtina.
15. On an unspecified date, the Applicant filed with the Finnish authorities a request for a residence permit. However, on 17 January 2017, he received a negative reply from the Finnish authorities.
16. On 21 June 2017, the Applicant and the mother of his daughter with the Finnish nationality agreed to keep the daughter in the custody of her mother and the Applicant to take her at the weekends.
17. According to the Applicant, the Ministry of Justice of the Republic of Kosovo had repeatedly attempted to bring his daughter to Kosovo, but this was not done by the Finnish authorities.

Facts related to the authorities of the Republic of Kosovo

18. On an unspecified date, the Applicant reported some irregularities in the Kosovo Police, however, he did no longer explain what the report or complaint was about.
19. On 13 February 2012, the Basic General Prosecution filed an indictment against the Applicant for the criminal offense "obstructing official persons in performing official duties" under Article 316 paragraph (1) of the former Criminal Code of Kosovo, to the detriment of the injured workers of KEDS.
20. On 5 September 2016, the Basic Court in Prishtina, by Decision P. No. 661/12, approved the agreement of the mediation center QN-1385/2016, by which the litigants (respectively the Applicant and KEDS) agreed on the conflict between them and dismissed the indictment of the Basic General Prosecution PP. II. No. 2563-12/11] of 13 February 2012. This decision became final as no appeal was allowed against it.

Applicant's allegations

21. The Applicant alleges a violation of his rights by the border police of the Republic of Kosovo, for the fact that he is obliged to provide them explanations each time he leaves the territory of the Republic of Kosovo, as a result of the criminal procedure conducted against him, which was completed by the Ruling P.no.661/12 of the Basic Court in Prishtina, of 5 September 2016.
22. The Applicant also alleges that the Finnish Authorities are exerting pressure on the authorities of the Republic of Kosovo, in order to prevent his departure to Finland
23. Moreover, the Applicant alleges that Finnish Authorities have violated his fundamental right as a daughter's parent, namely his right to "private life" because of his "violent" deportation to the Republic of Kosovo, because he was not granted a residence permit, as well as because he was not allowed to contact his daughter born in Finland.
24. In addition, the Applicant complains about Finnish authorities and alleges that they have violated his right to "private life";
25. In addition, the Applicant requests the Court to allow him to contact his daughter, according to the agreement reached with the girl's mother, and to be compensated by the Finnish authorities for the emotional distress he has experienced as a parent. The Applicant also requests the Court to seek a response from the General Prosecutor of Finland regarding the issue of his deportation to Kosovo.

Admissibility of Referral

26. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, the Law and the Rules of Procedure.
27. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7 of the Constitution which establish:

"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."

[...]

28. In addition, the Court further refers to paragraph 4 of Article 22 of the Law:

“If the referral [...] is not [...] is incomplete, 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 [...]”.

29. In addition, the Court takes into account Rule 29 (2) [Filing of Referrals and Replies], Rule 32 (5) [Withdrawal, Dismissal and Rejection of Referrals], and Rule 36 (3) (f) of Rules of Procedure, which determines:

“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, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous

[...].

30. The Court notes that the essence of the Applicant’s allegations concerns his complains that the border authorities of Kosovo have treated him in unjust manner, and that Finnish authorities have violated his “right to private life”.
31. Pursuant to the abovementioned provisions, the Court considers that it cannot take into account the allegations raised by the Applicant against the public authority, namely the border police of the Republic of Kosovo, because the Referral is incomplete.
32. In this regard, the Court notes that, by the letter of 11 September 2017, it requested the Applicant, that within 15 (fifteen) days, after the receipt of the letter, completes and clarifies his Referral, attaching to the Referral the acts or the challenged decisions of the public authorities. However, the Applicant did not submit any “act” or “decision” of public authorities, the constitutionality of which would be subject to constitutional review by the Court. (See the Constitutional Court, *Case KI130/17, with applicant Ndue and Simon Palushaj*, Decision to Reject the Referral, of 14 March 2017, paragraph 26).
33. In this regard, the Court emphasizes that it is not the duty and the responsibility of the Court to explore and build the case of the Applicant. The responsibility for meeting these formal-procedural criteria, as required by the Constitution, the Law and Rules of Procedure, falls on the Applicant if he fails to do such thing. (See, the Constitutional Court, *Case KI130/17, with Applicant Ndue and Simon Palushaj*, Decision to Reject the Referral, of 14 March 2017, paragraph 26).
34. Therefore, in this regard, the Court considers that the Applicant’s Referral does not meet the formal requirements for further review by the Court.

35. Regarding the Applicant's allegations that the Finnish authorities violated his right to a "private life" guaranteed to citizens of the Republic of Kosovo by Article 36 of the Constitution, the Court emphasizes that the actions of the Finnish authorities, as well as the decisions issued by the Finnish authorities cannot be subject to the constitutional review of the Court due to lack of jurisdiction. The Court notes that the acts of the Finnish authorities are not acts of the public authorities of the Republic of Kosovo, as required by Article 113 (7) of the Constitution (see, Constitutional Court, Resolution on Inadmissibility, Case KI108/16, Applicant *Bojan Ivković, Marija Perić and Miro Jaredić*, of 19 December 2016, paragraph 46, and the Resolution on Inadmissibility, in case KI63/09, Applicant *Bajram Santuri*, of 17 August 2011, paragraphs 49 and 50).
36. Regarding the request for non-disclosure of identity, the Court finds that the Applicant has not sufficiently substantiated that the disclosure of his identity would result in consequences for him. In addition, his allegation is prejudicial and unsubstantiated by evidence.
37. In sum, the Court concludes that the Applicant's Referral does not meet the formal and procedural requirements for further consideration, because of the abovementioned reasons.
38. Accordingly, the Applicant's Referral in accordance with Rule 29 (2), 32 (5) of the Rules of Procedure 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 24 May 2018 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Bekim Sejdiu



President of the Constitutional Court



Arta Rama-Hajrizi