



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

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Prishtina, on 21 December 2018  
Ref. no.:RK 1306/18

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. KI89/18**

Applicant

**Agim Jashari**

**Constitutional review of an unspecified act of public authority**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Arta Rama-Hajrizi, President  
Bajram Ljatifi, Deputy President  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge  
Gresa Caka-Nimani, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

### **Applicant**

1. The Referral was submitted by Agim Jashari, residing in Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant does not challenge any specific act of a public authority.

## **Subject matter**

3. The subject matter is the constitutional review of unspecified acts of public authorities.
4. The Applicant has not accurately clarified what fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have allegedly been violated by an act of a public authority.

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 32 [Filing of Referrals and Replies] and 35 [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).
6. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) adopted in an administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

## **Proceedings before the Court**

7. On 28 June 2018, the Applicant submitted the Referral to the Court.
8. On 29 June 2018, the Applicant submitted an additional document.
9. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.
10. On 16 August 2018, the Judge of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Safet Hoxha and Remzije Istrefi-Peci.
11. On 30 August 2018, the Court notified the Applicant about the registration of the Referral and requested him to: a) specify the acts of the public authorities which he challenges; b) accurately clarify his allegations of violation of the fundamental rights and freedoms guaranteed by the Constitution; and c)

submit the copies of documents and other information supporting his allegations.

12. On 22 October 2018, the Court again sent a letter to the Applicant and requested him to submit to the Court the information and documents required by the letter of 30 August 2018 within 7 (seven) days. The Applicant's letter was served on the Applicant on 25 October 2018. The Applicant did not respond to the request of the Court.
13. On 27 November 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court to summarily reject the Referral.

### **Summary of facts of the case**

14. The Applicant alleges that "*he has been threatened by the KIA [the Court's note: Kosovo Intelligence Agency] and Kosovo Police*". He also claims that he is constantly being followed and threatened by unknown persons. He attached to the Referral a document entitled "*Indictment against KIA and Kosovo Police*".
15. In the additional document submitted to the Court on 29 June 2018, the Applicant states that after submitting "*the indictment against the KIA and the Kosovo Police to the Constitutional Court, when I came out of the Constitutional Court on 28. 06. 2018 around 14.45-15.20 [an] unknown person threatened me with death [...]*".

### **Applicant's allegations**

16. The Applicant has not challenged any act of a public authority and did not accurately clarify what rights and fundamental freedoms guaranteed by the Constitution have allegedly been violated by any act of a public authority.
17. The Applicant addressed the Court with an "*indictment against the KIA and the Kosovo Police*", claiming that he is constantly threatened with death by the officials of the institutions mentioned above.
18. Finally, the Applicant addresses the Court, stating: "*I request to be free as the whole mankind*".

### **Admissibility of the Referral**

19. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, as further specified by the Law and the Rules of Procedure.
20. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 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”.*

21. In addition, the Court also refers to the admissibility criteria as defined by the Law. In this regard, the Court first refers to Article 47 [Individual Requests] and Article 48 [Accuracy of the Referral] of the Law, which establish:

Article 47  
[Individual Requests]

*“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.”*

(...).

Article 48  
[Accuracy of the Referral]

*“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”.*

22. When assessing whether the Applicant meets the constitutional and legal criteria for constitutional review of his Referral, the Court recalls that based on Article 113 of the Constitution, the individuals are authorized to refer alleged violations by “*public authorities*” of their individual rights and freedoms guaranteed by the Constitution, after exhaustion of all legal remedies provided by law. The same requirement is also established in Article 47 of the Law. In the circumstances of the present case, the Court notes that the Applicant does not challenge any act of a public authority that may have resulted in a violation of his fundamental rights and freedoms.
23. In addition, Article 48 of the Law specifically obliges applicants to accurately clarify the concrete act of the public authority that is subject to challenge. The same Article also obliges applicants to accurately clarify what rights and freedoms they claim to have been violated.
24. In the circumstances of the present case, the Applicant a) has not specified the act of the public authority challenged by him, and b) he has not accurately clarified what rights and freedoms have allegedly been violated by such act. Accordingly, the Applicant's Referral does not meet the admissibility requirements established by the Constitution and the Law.
25. In such cases, when the Referrals are incomplete, which as such result in failure to meet the constitutional and legal admissibility requirements, the Law and the Rules of Procedure establish the procedure to be followed by the Court

in order for the Applicant to be given the opportunity to complete and supplement his Referral. In this respect, the Court refers to paragraph 4, of Article 22 [Processing Referrals] of the Law, and items (e) and (h) of paragraph (2) of Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure, which stipulate:

Article 22  
[Processing Referrals]

“[...]

*4. If the referral [...] 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 [...]*”

[...].

Rule 32  
[Filing of Referrals and Replies]

*“32 (2) The referral shall also include:*

*[...]*

*(e) a statement of the relief sought;*

*[...]*

*(h) the supporting documentation and information;*

*[...]*

26. In this respect, the Court recalls that it received the Applicant's Referral on 28 June 2018. Taking into account that the Referral was not complete, on 30 August 2018, in accordance with paragraph 4 of Article 22 of the Law, the Court requested the Applicant to complete his Referral, by a) specifying the acts of the public authorities challenged by him; b) accurately clarifying his allegations of violation of the fundamental rights and freedoms guaranteed by the Constitution; and c) submitting the copies of documents and other information supporting his allegations.
27. On 22 October 2018, the Court again sent a letter to the Applicant and requested him to submit to the Court the information and documents required by the letter of 30 August 2018 within 7 (seven) days. The Applicant received the letter of the Court on 25 October 2018. However, the Court notes that the Applicant did not respond to the Court's request for clarification and supplementation of the Referral.
28. In this respect, and taking into account that the Applicant's Referral as submitted to the Court does not meet the admissibility requirements established in the Constitution and the Law, and also, despite the request of the Court, the Applicant failed to complete or clarify his Referral, the Court, based on its Rules of Procedure, may summarily reject the Referral. In this regard, the Court refers to Rule 35 of the Rules of Procedure, which foresees the following:

Rule 35  
[Withdrawal, Dismissal and Rejection of Referrals]

*“35 (5) The Court may decide to 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, [...]”.*

29. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on the applicants, who have direct interest, so that their claims and allegations are effectively addressed by the Court. In cases when the Applicants fail to respond to the Court's request for clarification and supplementation of the Referral, the Court declares these Referrals as unclear and incomplete and, as a result, does not examine the Applicant's allegations. (See Case KI48/17, *Sladjana Radojković-Marinković*, Constitutional Court, Decision to reject the Referral of 4 December 2017, paragraph 21).
30. Therefore, the Court considers that the Applicant's Referral does not meet the procedural requirements for further review due to non-completion with the respective documentation, as required by Article 22.4 of the Law and Rule 32 (2) (h) of the Rules of Procedure.
31. Accordingly, the Court, pursuant to Article 113.7 of the Constitution, Articles 47 and 48 of the Law and Rule 35 (5) of the Rules of Procedure, concludes that the Referral is to be rejected.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 47 and 48 of the Law, and in accordance with Rule 35 (5) of the Rules of Procedure, on 27 November 2018, unanimously

## **DECIDES**

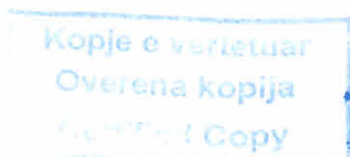
- I. TO REJECT the Referral;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Gresa Caka-Nimani

Arta Rama-Hajrizi



*This translation is unofficial and serves for informational purposes only.*