



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

Prishtina, 23 April 2019
Ref. no.:RK 1351/19

RESOLUTION ON INADMISSIBILITY

in

Case No. KI196/18

Applicant

Dardan Bunjaku

**Constitutional review of the Criminal Code of the Republic of Kosovo No.
04/L-082**

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 Dardan Bunjaku from Vushtrri (hereinafter: the Applicant).

Challenged law

2. The Applicant challenges the compatibility of the Criminal Code of the Republic of Kosovo No. 04/L -082 with the Constitution. The abovementioned Code was approved by the Assembly on 20 April 2012, and entered into force on 1 January 2013.

Subject matter

3. The subject matter is the Applicant's request for interpretation of Articles 386, 390, 236, 365, 171, 346, 308, 395, 337, 351, 381, 357, 120.8 as well as of chapters XVII and XXIII, of the Criminal Code of the Republic of Kosovo No. 04/L-082 (hereinafter: the CCK) and the compliance of the aforementioned Articles of the CCK with the Constitution.

Legal basis

4. The Referral is based on Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 17 December 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 20 December 2018, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama Hajrizi (Presiding), Gresa Caka Nimani and Safet Hoxha.
7. On 17 January 2019, the Court notified the Applicant about the registration of the Referral.
8. On 21 March 2019, the Court requested the Applicant to accurately specify the Referral by stating the number of the law challenged by him.
9. On 26 March 2019, the Applicant submitted to the Court additional documents stating that he requests the Court to assess the constitutionality of the Criminal Code of the Republic of Kosovo No. 04/L-082 of 1 January 2013.
10. On 3 April 2019, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. On 20 April 2012, the Assembly of Kosovo approved the CCK, which entered into force on 1 January 2013.

12. On 17 December 2018, the Applicant challenged the constitutionality of a number of articles and chapters of this CCK.

Applicant's allegations

13. The Applicant in his Referral requests the Court the constitutional review of *Articles 386, 390, 236, 365, 171, 346, 308, 395, 337, 351, 381, 357, 120.8 and chapters XVII and XXIII of the Criminal Code of the Republic of Kosovo.*
14. The Applicant in his Referral further requests the Court, *„information regarding the constitutional review, applicability and criminal liability of an individual for criminal offenses foreseen“* in the above-mentioned Articles of the CCK.
15. The Applicant also alleges that *„As to the criminal offences for which the Referral is submitted, I consider that there has been a violation of the principle of legality, which is guaranteed by the Constitution of the Republic of Kosovo and other international acts“.*
16. The Applicant explains these allegations by citing Articles 33 [The Principle of Legality and Proportionality in Criminal Cases], 40 [Freedom of Expression], 53 [Interpretation of Human Rights Provisions] and 112 [General Principles] of the Constitution.
17. As regards the obligation to exhaust legal remedies, within the meaning of Article 113.7 of the Constitution, the Applicant states: *„Having submitted a request regarding the right to information, the Constitutional Court is the sole authority having the jurisdiction to make a general interpretation applicable to all cases, in contrast to the first instance courts interpreting only for subjective cases in which persons appear as accused, and not on the basis of the right to information about what is prohibited and what is not“.*
18. The Applicant finally requests the Court: *„I would like to be informed about what actions or failure to act in relation to the articles on the criminal offenses in the Criminal Code of the Republic of Kosovo, elaborated in this referral, constitute a criminal liability.“*

Assessment of admissibility of the Referral

19. The Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and foreseen in the Rules of Procedure.
20. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

„1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

2. The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:

(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;

[...]

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. The Court also refers to Article 29 [Accuracy of the Referral] of the Law, which foresees:

1. A referral pursuant to Article 113, Paragraph 2 of the Constitution, shall be filed by either one fourth (1/4) of the deputies of the Assembly of the Republic of Kosovo, the President of the Republic of Kosovo, the Government or the Ombudsperson.

22. The Court takes into account Rule 39 (1) (a) of the Rules of Procedure, which specifies:

"(1) The Court may consider a referral as admissible if:

(a) the referral is filed by an authorized party."

23. The Court reiterates that Article 113.2 of the Constitution provides that only the Assembly, the President of the Republic of Kosovo, the Prime Minister and the Ombudsperson are authorized to refer to the Constitutional Court the issue of the compatibility of laws with the Constitution.

24. The Court notes that the Applicant as an individual is excluded from the exhaustive list of authorized parties, who are entitled in accordance with the Constitution, to submit to the Court the issue of the compatibility of laws with the Constitution, including the challenged CCK.

25. The Court recalls that the individuals are authorized parties merely to raise the issue of violation by public authorities of their individual rights and freedoms, guaranteed by the Constitution only after the exhaustion of all legal remedies provided by law (see: the case of the Constitutional Court KI38/17, Applicant: *Meleq Ymeri*, Resolution on Inadmissibility of 10 July 2017).

26. Therefore, the Court considers that the Applicant is not an authorized party who can initiate the constitutional review *in abstracto* regarding the constitutional review of the law, requesting *to be informed about it* in the name of the collective interest.

27. In this respect, the Court reiterates that the Constitution does not provide for "*actio popularis*", namely the individuals cannot complain abstractly in

relation to laws that have not been applied against them personally through the enforcement measures (see, *mutatis mutandis*, ECtHR case, *Center for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, No. 47848/08, Judgment of 17 July 2014, paragraph 101. See also, *mutatis mutandis*, the case of the Constitutional Court, KI102/17, Applicant: *Meleq Imeri*, Resolution on Inadmissibility, of 10 January 2018, para. 20).

28. Therefore, in accordance with Article 113.1 and 2 of the Constitution, Article 29.1 of the Law and Rule 39 (1) (a) of the Rules of Procedure, the Court finds that the Referral KI196/18 is inadmissible.

FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113.1 and 2 of the Constitution, Article 29.1 of the Law, and Rule 39 (1) (a) of the Rules of Procedure, in the session held on 3 April 2019, unanimously

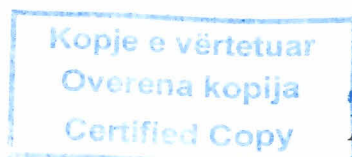
DECIDES

- I. TO DECLARE the Referral inadmissible;
- 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Bajram Ljatifi



Arta Rama-Hajrizi

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