



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

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Prishtina, on 10 October 2019  
Ref. no.:RK 1441/19

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

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. KI72/19**

Applicant

**Amir Hamza**

**Constitutional review of 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 Amir Hamza residing in Prizren (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 did not accurately clarify 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.
5. The Applicant also requested the non-disclosure of his identity.

## **Legal basis**

6. 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).

## **Proceedings before the Court**

7. On 18 April 2019, the Applicant submitted several letters to the Court by mail service.
8. On 19 April 2019, the Court sent a letter to the Applicant requesting that if he wishes to file a referral with the Court, he must accurately specify what rights have been violated, what is the specific act of the public authority which he challenges, as well as to fill out the official form and submit it with the necessary documents to the Court.
9. On 6 May 2019, the Applicant submitted his Referral to the Court.
10. On 10 May 2019, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judges: Gresa Caka Nimani (Presiding), Bajram Ljatifi and Safet Hoxha.
11. On 22 May 2019, the Court sent a letter again to the Applicant notifying him about the registration of the Referral and requested him to: (i) specify the acts of the public authorities which he challenges; (ii) accurately clarify his allegations of a violation of fundamental rights and freedoms guaranteed by the Constitution; and (iii) submit the copies of the documents and other information supporting his allegations.

12. On 30 July 2019, the Applicant submitted several documents to the Court. However, the Court notes that the Applicant submitted the documents after the deadline set by the Court, where he still did not clarify and supplement his Referral.
13. On 25 September 2019, 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 worked in the company Xh. G. He also claims to have been continually insulted by some work colleagues.
15. The Applicant also submitted to the Court the employment contract concluded between him and the abovementioned company.

### **Applicant's allegations**

16. The Applicant did not challenge any specific act of any public authority and did not accurately clarify what fundamental rights and freedoms guaranteed by the Constitution have allegedly been violated by an act of a public authority.
17. The Applicant addressed the Court alleging that he was insulted by his colleagues at the company in which he worked and that the management of the company did not take any action.
18. The Applicant states *inter alia* that “on 05.04.2019 I had health problems and I had a medical check, I submitted the doctor’s report but they threatened me over the phone that if you don’t come after a week you are fired”.
19. Finally, the Applicant addresses the Court, claiming that against those persons (his work colleagues) should “*be taken disciplinary measures according to the the constitution because they put pressure on me and insulted me*”.

### **Admissibility of the Referral**

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.
21. 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”.*

22. In assessing the fulfillment of these admissibility criteria, the Court first notes that the Applicant has not challenged any act of any public authority and has not accurately specified or clarified what constitutional rights and freedoms have been violated.
23. In this regard, the Court recalls that the Applicant's Referral was received on 18 April 2019. Taking into account that the Referral was not completed, on 19 April 2019, pursuant 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, the Court requested the Applicant to complete his Referral, by: (i) specifying acts of public authorities which he challenges; (ii) accurately clarifying his allegations of a violation of the fundamental rights and freedoms guaranteed by the Constitution; and (iii) submitting copies of the documents and other information supporting his allegations.
24. On 6 May 2019 the Applicant submitted the Referral Form and some other documents. However, the Court notes that the Applicant did not respond to the Court's request for clarification and supplementation of the Referral in accordance with the requirements of the Law and the Rules of Procedure.
25. On 22 May 2019, the Court, in accordance with paragraph (5) of Rule 35 of the Rules of Procedure, sent a repeated request to the Applicant to clarify and supplement his Referral - notifying him that in case the referral is not completed and clarified, the Court will decide the case based on the available documents. However, even after the second attempt of the Court, the Applicant did not complete and clarify his Referral.
26. In this respect, the Court refers to paragraph (5) of Rule 35 of the Rules of Procedure, which reads as follows:

Rule 35  
[Withdrawal, Dismissal and Rejection of Referrals]

*“(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, [...]”.*

27. 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 summarily rejects these Referrals and, as a result, does not examine the Applicant's allegations. (See Case KI48/17, *Sladana Radojković-Marinković*, Constitutional Court, Decision to reject the Referral of 4 December 2017, paragraph 21; KI74/18, *Gëzim Murati*, Decision to reject the Referral of 3 December 2018, paragraph 26).

28. In the circumstances of the present case, the Court notes that the Applicant: (i) did not specify the act of public authority which he challenges; (ii) did not accurately clarify what rights and freedoms he claims to have been infringed; and (iii) he did not submit copies of the documents and other information supporting his allegations.
29. Therefore, the Court considers that the Applicant's Referral does not meet the procedural criteria for further examination, because it was not supplemented with supporting documentation, as requested by the Court, based on paragraph 4 of Article 22 of the Law and by items (e) and (h), paragraph (2) of Rule 32 of the Rules of Procedure.
30. Therefore, as a conclusion in accordance with Article 113.7 of the Constitution, and Rule 35 (5) of the Rules of Procedure, the Referral is to be summarily rejected.

#### **Applicant's request for non-disclosure of identity**

31. The Court notes that the Applicant in his Referral also requested that his identity be not disclosed.
32. The Applicant in relation to the request for non-disclosure of identity reasons as follows: *"Because it can be a problem for me and my family, so there may be various threats by uncultured people or better say arrogant people"*.
33. In this respect, the Court refers to Rule 32 (6) of the Rules of Procedure, which provides:  
  
*"(6) Parties to a referral who do not wish their identity to be disclosed to the public shall so indicate and shall state the reasons justifying such a departure from the rule of public access to information in the proceedings before the Court. The Court by majority vote authorizes non-disclosure of identity or grants it without a request from a party. When non-disclosure of identity is granted by the Court, the party should be identified only through initials or abbreviations or a single letter"*.
34. Based on the reasoning presented by the Applicant, the Court considers that this is not the basis for the approval of this request (See the case of the Constitutional Court, KI74/17, Applicant *Lorenc Kolgjera*, Resolution on Inadmissibility of 5 December 2017).
35. Therefore, the Applicant's request for non-disclosure of identity is to be rejected.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 22.4 of the Law, and Rule 35 (5) of the Rules of Procedure, in the session held on 25 September 2019, unanimously

## **DECIDES**

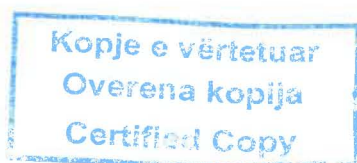
- I. TO REJECT the Referral;
- II. TO REJECT the request for non-disclosure of identity;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Nexhmi Rexhepi

Arta Rama-Hajrizi



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