



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

Prishtina, 15 June 2020
Ref. no.:RK 1577/20

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI04/20

Applicant

Lulzim Sadiku

Constitutional review of the “alleged Judgment PAKR. No. 494/16 of the Court of Appeals of Kosovo, of 11 November 2016”

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 Lulzim Sadiku, who is currently serving the imprisonment sentence at the Detention Center in Hajvalia (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the *“alleged judgment PAKR. No. 494/16 of the Court of Appeals of Kosovo, of 11 November 2016”*.

Subject matter

3. The subject matter is the constitutional review of *“the alleged judgment”*, which found the Applicant guilty. The Applicant does not state what rights guaranteed by the Constitution have been violated, but requests the Court to *“...declare my innocence, and to bring before justice those who still support crime at this time, and to acquit me of the fabricated indictments...”*

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] and Article 47 [Individual Requests] of 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 24 December 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) with an illegible letter that did not meet the basic requirements to be registered as a new case in the Court.
6. On 26 December 2019, the Court notified the Applicant that it had received the letter submitted by the Applicant and clarified to the Applicant that if he wants the Court to register his case in accordance with Article 113.7 of the Constitution and Article 48 of the Law on the Constitutional Court, the Applicant must fill in the referral form, state what act of the public authority is challenged and submit a copy of the challenged act, and that he is obliged to state what rights have been violated.
7. On 14 January 2020, the Applicant submitted the referral form by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 15 January 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
9. On 28 February 2020, the Court notified the Applicant that it received the referral form and registered it in the relevant register with number KIO4-20. By the same letter, the Court requested the Applicant to specify the referral within 15 days and to state what rights have been violated, what is the act of the public authority that he is challenging and to submit a copy of the latter.

10. On 20 March 2020, the Applicant addressed the Court with a letter stating that:

“...As a natural person, on 26 December 2019, I wrote down all the facts according to the dates and with the decisions of the concrete courts, I informed you in detail about all of them, calculating that this referral of mine will be considered by you, there is ample evidence to initiate the procedure of reviewing this referral, in which everything is written in detail without any tendency and without any other purpose, except to officially prove my innocence, where I am able to face any institution and individual, before your justice...”

11. On 27 May 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

12. The Court does not refer to the facts of this case, as the Applicant presented the factual situation in an unclear way and did not submit to the Court *“the alleged judgment PAKR. No. 494/16 of the Court of Appeals of Kosovo”* which the Applicant is attempting to challenge, or any other document of a public authority, from which the Court could be informed about the factual situation.

Applicant's allegations

13. The Applicant does not specify what rights guaranteed by the Constitution have been violated by *“the alleged judgment PAKR. No. 494/16 of the Court of Appeals of Kosovo”*.
14. The Applicant requests the Court *“...to declare my innocence, and to bring before justice those who still support crime at this time, and to acquit me of the fabricated indictments...”*

Admissibility of the Referral

15. The Court first examines whether the Referral has fulfilled the admissibility requirements, established in the Constitution, and further specified in the Law and the Rules of Procedure.
16. In this respect, the Court initially refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] 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”.

17. In addition, the Court also examines whether the Applicant has met the admissibility requirements as defined by the Law. In this regard, the Court first refers to Articles 47 [Individual Requests] and 48 [Accuracy of the Referral] of the Law, which stipulate:

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.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law “.

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”.

18. In 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 violations by “public authorities” of their individual rights and freedoms, after exhaustion of all legal remedies provided by law. The same requirement is also established in Article 47 of the Law.
19. In addition, Article 48 of the Law specifically obliges the Applicants to accurately clarify the concrete act of the public authority that is subject to challenge. The same Article also obliges the Applicants to accurately clarify what rights and freedoms they claim to have been violated.
20. In this respect, the Court refers to paragraph 4 of Article 22 [Processing Referrals] of the Law which stipulates:

“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 [...]”.

21. In addition, the Court refers to Rule 32 (2) (h) [Filing of Referrals and Replies] of the Rules of Procedure, which establishes:

(2) The referral shall also include:

[...]

(h) the supporting documentation and information.

[...]

22. In this respect, the Court also refers to Rule 35 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which establishes:

“[...]

(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, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous”.

23. First of all, the Court also recalls that it addressed the Applicant twice by letter requesting that he submits to the Court the acts of the public authorities which he challenges and to clarify the referral, as well as to show accurately what rights guaranteed by the Constitution have been violated. Specifically, the Court sent a letter to the Applicant on 26 December 2019 and 28 February 2020, however, the Applicant did not submit the required documents and did not clarify the referral, nor did he state what rights guaranteed by the Constitution have been violated.
24. The Court finds that the Applicant did not submit to the Court *“the alleged judgment PAKR. No. 494/16 of the Court of Appeals of Kosovo”* which the Applicant is trying to challenge, and the authenticity of which the Court cannot determine due to the failure of the Applicant to submit the latter. Also, the Court finds that the Applicant did not state what rights guaranteed by the Constitution were violated and did not clarify the referral.
25. Based on the above, the Court finds that the Applicant did not provide the information which the Court tried to obtain twice from the Applicant. Therefore, the Court concludes that the referral is incomplete and that the referral is not clear despite the Court’s requests towards the party to supplement or clarify the referral (see the Decision to reject the referral of the Constitutional Court in case KI121/18 *Gëzim Murati* of 14 December 2018, paragraph 31; as well as the Decision to reject the referral of the Constitutional Court, in case KIO3/15, Applicant: *Hasan Beqiri*, of 13 May 2015, paragraphs 17- 19).
26. In sum, the Court considers that the Applicant’s Referral does not meet the procedural requirements for further review, because the Referral is incomplete with the supporting documentation, as required by Article 22 paragraph 4 and Article 48 of the Law and Rules 32 (2) (h) and 35 (5) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 22.4 and 48 of the Law, and in accordance with Rules 32 (2) (h) and 35 (5) of the Rules of Procedure, on 26 February 2020, unanimously

DECIDES

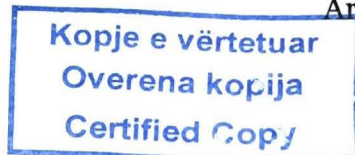
- I. TO REJECT the Referral;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Radomir Laban

Arta Rama-Hajrizi



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