



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

Prishtina, on 24 August 2020
Ref. no.:RK 1608/20

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI191/19

Applicant

Kadri Rexhepi

**Constitutional review of Judgment of the Supreme Court of Kosovo Pml.
no. 272/19, of 18 September 2019**

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 Kadri Rexhepi, residing in Ferizaj, represented by Admir Salihu, a lawyer from Ferizaj (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [Pml. No. 272/19] of the Supreme Court of the Republic of Kosovo, of 18 September 2019 (hereinafter: the Supreme Court).

Subject matter

3. The subject matter is the constitutional review of the challenged judgment, which allegedly violates the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR), as well as Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution.

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 22 October 2019, G.R. submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 26 November 2019, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani (members).
7. On 5 November 2019, the Court notified G.R. about the registration of the referral, and asked him to clarify (i) in what capacity he submitted the referral, namely to specify whether he submitted the referral in the capacity of a party or in the capacity of legal representative, and in case he submitted the referral in the capacity of the representative to submit the power of attorney for representation in the proceedings before the Court: (ii) copies of the decisions of the regular courts; and (iii) specify who are the Applicants in the present case.
8. On 14 January 2020, as a result of the non-response of G.R., the Court sent again the notification about the registration of the referral, a request for additional documents, namely the copies of the decisions of the regular courts, as well as specification of the data related to the referral.
9. On 27 January 2020, the Court received an (i) explanatory response from G.R. ; (ii) a power of attorney for representation that he, in his capacity as the

Applicant's son, had given to the lawyer Admir Salihu; and (iii) copies of the Decision [P. No. 3651/2018], of 14 August 2019 of the Basic Court in Prishtina and Judgment [Pml. No. 272/2019], of 18 September 2019 of the Supreme Court.

10. On 10 February 2020, the Court received the power of attorney on behalf of the Applicant, which authorized lawyer Admir Salihu to represent him before the Constitutional Court.
11. On 18 February, the Court also received a Referral Form, completed by lawyer Admir Salihu, stating his name as the Applicant in the data section of the official Referral Form.
12. On 5 May 2020, the Court sent to lawyer Admir Salihu, as the legal representative, a request to supplement the Referral with the following information: (i) to resubmit the official form of the Court, legible and clear, and supplementing it with the data of the Applicant; (ii) specify whether the allegations raised in the Court refer only to the challenged Judgment [Pml. No. 272/19] of 18 September 2019 of the Supreme Court, regarding the procedure for extension of detention on remand, or Decision [Pn. No. 943/2019] of 28 August 2019, of the Court of Appeals, rendered in the procedure for dismissal of the indictment; (iii) submit a copy of Decision [P. No. 3651/2019] of the Basic Court of 29 August 2019; copy of the Decision of the Court of Appeals, of 4 September 2019; a copy of the appeal filed with the Court of Appeals and the request for protection of legality filed with the Supreme Court; and (iv) inform the Court whether the Applicant, whom he stated through the power of attorney that he represents in the Court, is still in detention on remand. The Court, to date, has not received a response to its request for clarification and additional information.
13. On 15 July 2020, after having considered the Report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court to summarily reject the Applicant's Referral.

Summary of facts

14. On 21 March 2018, the Basic Prosecution in Ferizaj by the Indictment [PP. No. 335-7/2018] accused the Applicant because in co-perpetration he committed the criminal offense of "fraud", under paragraph 5 of Article 335 in conjunction with paragraph 1 of Article 31 of the Criminal Code of the Republic of Kosovo (hereinafter: the CCK).
15. On 6 August 2018, the Basic Court by Decision [P. No. 413/18] in Ferizaj declared itself incompetent in the territorial aspect to decide on this criminal case and the case was sent to the Basic Court in Prishtina.

Proceedings regarding the dismissal of the indictment

16. On 24 July 2019, the Applicant through his defense counsel filed a request for dismissal of the Indictment [PP. no. 335-7/2018], of 21 March 2018 with the Basic Court in Prishtina.

17. On 14 August 2019, the Basic Court in Prishtina (hereinafter: the Basic Court) by Decision [P. No. 3651/2018] rejected the Applicant's request for dismissal of the indictment [PP. II. no. 335-7/2018] of 21 March 2018.
18. On an unspecified date, against the above-mentioned Decision of the Basic Court, the Applicant filed an appeal with the Court of Appeals.
19. On 28 August 2019, the Court of Appeals by Decision [Pn. No. 943/2019] rejected the Applicant's appeal as ungrounded.

Proceedings regarding the detention of the Applicant

20. On an unspecified date the Applicant was imposed the measure of detention on remand. Based on the case file, on 30 May 2019 the Applicant was placed in detention on remand.
21. On 29 August 2019, the Basic Court by Decision [P. No. 3651/2019] extended the detention measure against the Applicant for a period of 2 (two) months. A copy of this Decision is not found in the case file.
22. On an unspecified date, the Applicant filed an appeal with the Court of Appeals.
23. On 4 September 2019, the Court of Appeals by Decision [PN. no. PNI. DP. No. 933/2019] rejected as ungrounded the appeal submitted by the Applicant. A copy of this Decision, as well as the appeal filed by the Applicant, are not found in the case file.
24. On an unspecified date, the Applicant filed a request for protection of legality against the Decision [P. No. 3651/2019] of 29 August 2019 of the Basic Court and Decision [PNI. DP. No. 933/2019] of 4 September 2019 of the Court of Appeals. A copy of the Applicant's request for protection of legality was not submitted by the Applicant in his Referral to the Court.
25. On 18 September 2019, the Supreme Court by Judgment [Pml. No. 272/2019] rejected the request for protection of legality against the above mentioned Decisions of the Basic Court and that of the Court of Appeals as ungrounded.

Applicant's allegations

26. The Applicant specifies that he challenges the Judgment of the Supreme Court, rendered in the framework of the proceedings for the extension of the detention measure against him.
27. In his Referral, the Applicant alleges that his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial), of the ECHR have been violated, as well as Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution.
28. The Applicant specifies that in relation to the criminal offense for which he is accused a relative statute of limitations has been reached. In the context of this

allegation, in the submissions submitted to the Court by G.R. the judgments of the Supreme Court and the Court of Appeals were also submitted, which allegedly contain similar factual and legal circumstances as those of the Applicant.

29. However, in his Referral, the Applicant also submitted the decisions of the regular courts regarding the dismissal of the indictment, challenging the latter on the grounds of relative statute of limitations.
30. As regards the challenged Judgment of the Supreme Court, rendered in the framework of the procedure of detention on remand, the Applicant specifies that “*detention on remand for the defendant [the Applicant] is not lawful*”. In the context of this allegation, the Applicant alleges that the detention measure is also contrary to Article 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution.
31. Finally, the Applicant in his Referral does not clarify the relief sought through his Referral to the Court, he only states that: “*With this referral we want to state what we have said from the beginning that in this case there is a relative statute of limitations and that detention on remand has been and is in violation of legal provisions and in full contradiction with the Constitution of Kosovo Article 55. In this case we consider that we have to do with the violations of Article 31 of the Constitution of Kosovo and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which in Kosovo is directly applied, and in this case is applied to the detriment of the defendant Kadri Rexhepi, who has been detained since 30.05.2019*”.

Admissibility of the Referral

32. 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.
33. 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.*”
34. The Court also refers to Article 21 [Representation] of the Law, which stipulates:
 - “*During the process in the Constitutional Court, parties are either represented in person or by a person authorized by the party*”.

35. 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 Article 48 [Accuracy of the Referral] of the Law, which stipulates:

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.”

36. In the present case, and based on the submissions submitted through the Referral of the Applicant, the Court recalls that the Applicant’s Referral is not complete with all the data, so that in this case the Court can proceed further with the constitutional review of the Judgment of the Applicant.
37. In cases of incomplete referral, which as such result in non-compliance with the constitutional and legal admissibility criteria, the Law and the Rules of Procedure set out the procedure to be followed by the Court in order to give the Applicant the opportunity to complete and fill in his referral. In this regard, the Court recalls paragraph 4 of Article 22 [Processing Referrals] of the Law and Rule 32 (2) (e) and (h) [Filing of Referrals and Replies] of the Rules of Procedure, which establish:

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]

“(2) The referral shall also include:

[...]
(h) the supporting documentation and information;
[...]

38. The Court first recalls that based on the power of attorney received on 10 February 2020, it appears that lawyer Admir Salihu is the legal representative representing the Applicant before the Court. However, based on the documentation received, on 10 February 2020 and 18 February 2020, respectively, the Applicant’s Referral was not completed with all the submissions and copies of decisions that are necessary for the Court to be able to address his allegations, set out in his referral.
39. Furthermore, the Court takes into account the fact that the Applicant only specifies that he challenges the Judgment of the Supreme Court, citing the issue

of statute of limitation for the criminal offense with which he is accused of, but does not provide a clear summary of the facts regarding the proceedings before the courts, has not supported his referral with all supporting documentation in procedural and substantive terms, and has not specified what is the relief of his referral sought from this Court.

40. Consequently, on 5 May 2020, the Court sent a request to the legal representative to supplement the Referral with the following information: (i) to resubmit the official form of the Court, legible and clear, and to complete it with data of the Applicant; (ii) specify whether the allegations raised in the Court refer only to the challenged Judgment [Pml. No. 272/19] of 18 September 2019 of the Supreme Court, regarding the procedure for extension of detention on remand, or Decision [Pn. no. 943/2019] of 28 August 2019, of the Court of Appeals, rendered in the procedure for dismissal of the indictment; (iii) submit a copy of Decision [P. No. 3651/2019] of the Basic Court of 29 August 2019; copy of the Decision of the Court of Appeals, of 4 September 2019; and of the appeal filed with the Court of Appeals and the request for protection of legality filed with the Supreme Court; and (iv) inform the Court whether the Applicant, whom he stated through the power of attorney that he represents in the Court, is still in detention on remand.
41. In this regard, the Court notes that on the basis of the acknowledgment of receipt, the legal representative received the letter of the Court on 8 May 2020. The Court has so far not received a response to the letter of the Court of 5 May 2020, through which the legal representative was requested to submit the aforementioned additional information.
42. In this respect, and considering that the Applicant's Referral as submitted to the Court does not meet the admissibility criteria set out in the Constitution and the Law, and also despite the Court's requests, the Applicant has not completed or clarified 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 as follows:

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, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous, [...]."

43. In such cases, 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, *Sladana Radojković-Marinković*, Constitutional Court, Decision to reject the Referral of 4 December 2017, paragraph 21; KI89/18, Applicant *Agim Jashari*, Decision to reject the Referral, of 27 November 2018,

paragraph 29; KI134/18, Applicant *Bajram Santuri*, Decision to reject the Referral of 16 January 2019, paragraph 36).

44. Therefore, the Court considers that the Applicant's Referral does not meet the procedural criteria for further review, because it is not completed with supporting documentation, as requested by the Court based on Article 22.4 of the Law and Rule 32 (2) (h) of the Rules of Procedure.
45. Therefore, the Court, in accordance with Article 48 of the Law and Rule 35 (5) of the Rules of Procedure, concludes that the Referral is to be summarily rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 48 of the Law and Rule 35 (5) of the Rules of Procedure, in its session held on 15 July 2020, 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. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Remzije Istrefi-Peci

Arta Rama-Hajrizi

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Overena kopija
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