



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

Prishtina, on 23 November 2020
Ref. no.:RK 1645/20

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DECISION TO REJECT THE REFERRAL

in

Cases No. KI78/20, KI79/20 and KI80/20

Applicant

Hilmi Aliu and others

**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. Referral KI78/20 was submitted by Hilmi Aliu, residing in the Municipality of Prishtina. Whereas Referrals KI79/20 and KI80/20 were submitted by Hilmi Aliu on behalf of Vehbi Aliu and Lumturije Aliu (hereinafter: the Applicant).

Challenged decision

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

Subject matter

3. The subject matter is the constitutional review of unspecified acts of public authorities. Moreover, 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 any act of a public authority.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] 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 Rule 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 Constitutional Court

5. On 21 May 2020, the Applicant submitted the above mentioned Referrals by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 June 2020, in accordance with paragraph 1 of Rule 40 (Joinder and Severance of Referrals) of the Rules of Procedure, the President of the Court ordered the joinder of Referrals KI79/20 and KI80/20 with Referral KI78/20.
7. On 12 June 2020, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur. On the same day, the President appointed the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Radomir Laban.
8. On 18 June 2020, the Court notified the Applicant of the registration of the Referral and requested to: (i) complete and sign the official referral form; (ii) specify acts of public authorities which he challenges; (iii) accurately clarify his allegations for violation of the fundamental rights and freedoms guaranteed by the Constitution; (iv) submit copies of documents and other information supporting his allegations; and (v) clarify in what capacity he has submitted Referrals KI79/20 and KI80/20 to the Court.
9. On 15 July 2020, the Applicant submitted to the Court several documents containing additional allegations related to his case but which did not address the Court's requests for clarification.

10. On 28 September 2020, the Court sent once again a letter to the Applicant requesting him to submit to the Court the information and documents requested through the letter of 18 June 2020, within 7 (seven) days.
11. On 9 October 2020, the Applicant submitted to the Court a letter titled "Questions for Mrs. Arta Rama-Hajrizi", the content of which is incomprehensible and does not address the Court's requests for clarification.
12. On 11 May 2020, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court to summarily reject the Referral.

Summary of facts

13. Based on the case file, it follows that on an unspecified date, the Applicant had applied for the basic age pension in the Ministry of Labor and Social Welfare (hereinafter: the MLSW).
14. On 11 June 2006, the MLSW issued a decision approving the basic pension of the Applicant in the amount of forty (40) Euros per month.
15. On 7 March 2016, the Applicant also submitted a request for recognition of the right to age contribution-payer pension to the MLSW.
16. On 2 November 2016, the MLSW by Decision [146089] rejected the request of the Applicant, stating, *inter alia*, that the Applicant's request (i) does not meet the criteria set out in Article 8 (Conditions and criteria for recognition of the right to age contribution-payer pension) of Law No. 04/L-131 on Pension Schemes Funded by the State; and (ii) Administrative Instruction No. 09/2015 on the Categorization of Beneficiaries of Contribute Paying Pensions, regarding sufficient evidence for the level of education qualification.
17. On 2 December 2016, the Applicant submitted a complaint to the Complaints Council of the Department of Pensions of the MLSW against the above mentioned decision alleging violation of procedural law, erroneous and incomplete determination of factual situation and erroneous application of the substantive law, with the proposal to declare the challenged decision of the MLSW invalid and to recognize the right to contribution-payer pension.
18. On 14 April 2017, the Complaints Council of the Department of Pensions of the MLSW rejected the Applicant's complaint and consequently upheld the challenged Decision of the MLSW. The above mentioned Council, *inter alia*, reasoned that the evidence submitted, namely the diploma submitted, does not serve as sufficient evidence to re-categorize the Applicant to the contribution-payer pension.
19. On 3 November 2017, against the above mentioned decision, the Applicant filed a complaint with the Basic Court in Prishtina (hereinafter: the Basic Court), alleging erroneous application of substantive law and erroneous and incomplete determination of the factual situation. Based on the case file, on 4 May 2018, the

MLSW submitted a response to the claim, proposing rejection of the claim of the Applicant and upholding of the Decision of the Complaints Council.

20. On 22 November 2018, the Basic Court by Judgment [A. no. 1879/17] approved the complaint of the Applicant and remanded the Decision of the Complaints Council of 14 April 2017 for reconsideration.
21. On 21 February 2019, the Applicant submitted a request “*for issuance of an administrative act*”, based on the above mentioned Judgment of the Basic Court. Based on the case file, it follows that the MLSW may not have acted in accordance with the Judgment [A. no. 1879/17] of 22 November 2018.
22. The following documents are also found in the case file: (i) Judgment [ARJ-UZVP. no. 49/2019] of 21 March 2019, whereby the request for extraordinary review of the court decision of Lumturije Aliu, namely the wife of the Applicant's son, was rejected as ungrounded. This court trial is related to the request of Lumturije Aliu for annulment of Decision [no. 5025536] of 11 March 2016 of the Department of Pension Administration of the MLSW; (ii) Judgment [A. no. 700/2014] of 21 January 2016 of the Basic Court whereby the statement of the claim of Lumturije Aliu for annulment of the Decision [no. 5025536] of 18 March 2014 of the MLSW was approved as grounded and the case was remanded for reconsideration to the MLSW; (iii) Judgment [A. no. 2006/2017] of the Basic Court, of 7 November 2018, whereby the claim of Vehbi Aliu, namely the son of the Applicant, was approved as grounded, remanding the Decision of the Social Assistance Division of the MLSW for reconsideration; (iv) Decision [PPP. no. 10/2019] whereby the objection against the Enforcement Writ [P. no. 1130/2018], of 7 November 2018, related to the proposal for enforcement of the Kosovo Electricity Distribution and Supply Company, was rejected as ungrounded; (v) Criminal report [No. 2009-AF-1152] of 12 September 2009 against suspect N. N. due to grounded suspicion that he has committed the criminal offense of aggravated theft, as set forth in Article 253 of the Criminal Code of the Republic of Kosovo; (vi) letter addressed to the President of the Supreme Court, of 2 May 2019, the content of which is incomprehensible; (vii) request to the Anti-Corruption Agency, the content of which is incomprehensible; (viii) complaint addressed to the Assembly of the Republic of Kosovo on 21 May 2019, the content of which is incomprehensible; (ix) Decision to Strike Out the Case From the List Pertaining the Complaint [no. 167/2015], *Hilmi Aliu v. the Basic Court*, of the Ombudsperson, of 9 January 2018. This letter seems to relate to another Decision of the MLSW, namely Decision [no. 18-00186] of 14 August 2013 whereby it seems that the pension for disabled persons of the Applicant's son, namely Vehbi Aliu, was terminated; (x) request addressed to the Ministry of Justice, of 28 June 2017, the content of which is incomprehensible, but which seems to relate to the pension for disabled persons for his son's wife, namely Lumturije Aliu; and (xi) request addressed to the Secretary General of the Court, the content of which is incomprehensible.

Applicant's allegations

23. The Applicant states before the Court, *inter alia*, as follows: (i) “*Court, I do not understand the articles, but I seek justice in accordance with the laws that you have drafted with the Constitution of Kosovo, but the state does not recognize*

you, nor the laws that you make. I certainly have the facts and dates, but I do not have even half of them now because I left them in courts, with forgeries by the state in the Municipality of Podujevo”; and (ii) “We gave blood for justice, but not justice for ourselves and our families, or for money and corruption”.

Admissibility of the Referral

24. 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.

25. In this respect, the Court 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.”

26. The Court further refers to the admissibility criteria, as provided by the Law. In this respect, the Court 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”.

27. In the context of the aforementioned provisions, the Court emphasizes that based on paragraph 7 of Article 113 of the Constitution, paragraph 1 of Article 47 and Article 48 of the Law, the parties before the Court must challenge an act of a public authority. Moreover, based on Article 48 of the Law, in addition to specifying a concrete act of public authority which is being challenged, the parties are also obliged to accurately clarify what rights and freedoms they claim to have been violated. In the circumstances of the present case, the Court notes that the Applicant, despite the Court's requests for clarification, has not clarified before the Court (i) neither the act of the public authority which he is

challenging; and (ii) nor did he clarify what fundamental rights and freedoms he claims to have been violated.

28. The Court recalls that the Referral of the Applicant was received on 21 May 2020. Taking into account that the Referral was incomplete, on 18 June 2020, in accordance with paragraph 4 of Article 22 (Processing Referrals) of the Law and points (f) and (g) of paragraph (2) of Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure, the Court asked the Applicant, *inter alia*, to complete his Referral by: (i) specifying acts of public authorities which he is challenging; (ii) accurately clarifying his claims for violation of the fundamental rights and freedoms guaranteed by the Constitution; (iii) submitting copies of documents and other information supporting his allegations. On 15 July 2020, the Applicant submitted to the Court some additional documents which did not address the requests of the letter of the Court, of 18 June 2020. Consequently, the Court once again addressed the Applicant with a request for clarification on 28 September 2020. In response to this request, the Applicant submitted to the Court a letter titled “*Questions for Mrs. Arta Rama-Hajrizi*”, the content of which is incomprehensible and does not address the Court’s requests for clarification.
29. In this regard, the Court refers to paragraph (5) of Rule 35 of the Rules of Procedure, which establishes 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, [...]*”.

[...]

30. The Court notes that the above mentioned Rule of the Rules of Procedure allows the Court to summarily reject a referral if, *inter alia*, the Applicant's Referral is incomplete and unclear, despite the Court's requests to supplement and clarify the referral in question. The Court has addressed such a request to the Applicant twice, unsuccessfully.
31. The Court reiterates that in the circumstances of the present case, it is unclear (i) what act of public authority the Applicant is challenging before the Court; (ii) what are the allegations of the Applicant about the violation of his constitutional rights and freedoms; and (iii) based on the case file and their content, the facts of the case are incomprehensible.
32. Therefore, the Court finds that the Referral of the Applicant does not meet the procedural requirements for further review because it is incomplete and unclear, as defined in paragraph (5) of Rule 35 of the Rules of Procedure.
33. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on applicants, who have direct interest, so that their claims and allegations are effectively addressed by the Court. In cases when applicants do

not respond to the requests of the Court for clarification and supplementation of the referral, the Court summarily rejects these referrals. (See, *inter alia*, the cases of Court KI48/17, Applicant *Sladana Radojković-Marinković*, Decision to Reject the Referral, of 4 December 2017, paragraph 21; and KI74/18, Applicant *Gëzim Murati*, Decision to Reject the Referral, of 3 December 2018, paragraph 26).

34. Finally, based on Rule 35 (5) of the Rules of Procedure, the Referral is to be summarily rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 22, 47 and 48 of the Law, and Rule 35 (5) of the Rules of Procedure, on 11 November 2020, unanimously

DECIDES

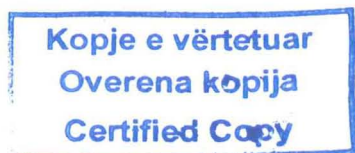
- I. TO REJECT the Referral;
- II. TO NOTIFY this Decision to the parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Gresa Caka-Nimani

Arta Rama-Hajrizi



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