



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

Prishtina, on 7 December 2020
Ref. No.:RK 1661/20

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case no. KI126/20

Applicant

Ganimete Zeka

Constitutional review of an unspecified act of public authority

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 Ganimete Zeka, with residence in Fushë Kosovë (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges no concrete act of any public authority.

Subject Matter

3. The subject matter is the constitutional review of unspecified acts of public authorities.
4. The Applicant has not clarified accurately which fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) she alleges to have been violated through an act of a public authority.

Legal basis

5. The Referral is based on paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, on Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), as well as 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 Court

6. On 18 August 2020, the Applicant submitted the Referral to the Court.
7. On 26 August 2020, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban (Members).
8. On 3 September 2020, the Court requested the Applicant to specify which decision she is challenging, to submit the same to the Court and to clarify before the Court which rights and freedoms she alleges to have been violated.
9. On 21 September 2020, the Applicant submitted a letter to the Court repeating the same arguments she had submitted in her initial Referral.
10. On 11 November 2020, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended that the Court reject the Referral.

Summary of case facts

11. The Applicant states that *"I am a victim of organized crime and also a hostage of the mafia of a criminal boss [G.A.]. Since 1990, an unseen crime has been committed against me and my family. [...] The main problem lies in the wiretaps and cameras that have been placed at my place since 1990 by his people"*.

12. In the case file, the Applicant has attached the Criminal Report, filed by the Applicant against [G.A.] as well as the Resolution of the State Prosecutor's Office, PP.II.nr.6733/16, dated 31 May 2017, on the basis of which the investigations against [G.A.] were terminated, concluding that there is no reasonable doubt that the above-mentioned person has committed a criminal offense.
13. The Applicant also attached to her Referral the Criminal Report filed against her ex-husband [F.A.] as well as the Resolution of the Basic Court on the basis of which the marriage between the Applicant and her ex-husband was dissolved.

Applicant's allegations

14. The Applicant has not challenged any concrete act of any public authority and has not clarified accurately which fundamental rights and freedoms guaranteed by constitution she alleges to have been violated through an act of a public authority.
15. The Applicant in her Referral states *"when your life is stolen, when your life is abused, when you are not allowed to live, are articles that you will find or in the name of justice formulate other articles [...] I must first point out that the main freedom is and starts from inside the house - and when you are violated the rights and freedoms there, other (things) are not possible"*.
16. Finally, the Applicant addresses the Court, stating that: *"with my request I wish that the Constitutional Court work in the name of justice and there be no place for injustice within it"*.

Admissibility of the Referral

17. The Court first examines whether the Applicant has fulfilled the admissibility criteria provided by the Constitution, and further specified by the Law and Rules of Procedure.
18. 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."

19. In addition, the Court also refers to the admissibility criteria, as defined by Law. In this respect, the Court first refers to Article 47 [Individual Requests], Article 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.”

(...).

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.”

20. In the assessment whether the Applicant fulfils the constitutional and legal criteria for the constitutional review of her Referral, the Court recalls that pursuant to Article 113 of the Constitution, 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. The same criterion is also defined in Article 47 of the Law. In the circumstances of the present case, the Court notes that the Applicant does not challenge any act of a public authority that may have resulted in a violation of her fundamental rights and freedoms.
21. Furthermore, Article 48 of the Law specifically obliges the Applicants to clarify accurately the concrete act of the public authority which they challenge. The same article also obliges the Applicants to clarify accurately which fundamental rights and freedoms they claim to have been violated.
22. In the present circumstances of the case, the Applicant: a) has neither specified the act of the public authority she is challenging, and b) has neither clarified accurately which rights and freedoms she claims to have been violated by this act. Consequently, the Applicant’s Referral does not fulfil the admissibility criteria set out in the Constitution and the Law.
23. In such cases, of incomplete Referrals, which as such result in non-fulfilment of the constitutional and legal criteria of admissibility, the Law and the Rules of Procedure set the procedure to be followed by the Court in order to give the Applicant the opportunity to complete and supplement her Referral. In this regard, the Court recalls paragraph 4, Article 22 [Processing Referrals] of the Law and points (e) and (h) of paragraph (2) of Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure, which define:

Article 22
[Processing Referrals]

“[...]

4. If the referral [...] is not clear or 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]

“32 (2) The referral shall also include:

[...]

(e) a statement of the relief sought;

[...]

(h) the supporting documentation and information;

[...]

24. In this regard, the Court recalls that the Applicant's Referral was received on 18 August 2020. Considering that the Referral was not completed, on 3 September, pursuant to paragraph 4 of Article 22 of the Law, the Court requested the Applicant to complete her Referral, by: a) specifying the acts of the public authorities which she challenges; b) clarifying accurately her allegations of violation of fundamental rights and freedoms guaranteed by the Constitution; and c) submitting copies of documents and other information supporting her allegations.
25. On 29 September 2020, the Applicant responded with a letter to the Court, repeating the same arguments as in her initial Referral, but not responding to the requests of the Court, respectively not specifying which decision she is challenging and which freedoms and rights protected by the Constitution she alleges to have been violated.
26. In this respect, and given 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 request of the Court, the Applicant has not completed or clarified her Referral, the Court, based on its Rules of Procedure, may summarily reject the Referral. In this respect, the Court refers to Rule 35 of the Rules of Procedure, which provides 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, [...].”

27. The Court recalls that the burden of constructing, clarifying and supplementing the Referral falls upon the Applicants, who have a direct interest so that their claims and allegations are effectively addressed by the Court. In cases where the Applicants do not respond to the Court's request for clarification and completion of the Referral, the Court declares these Referrals as vague 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).
28. Therefore, the Court considers that the Applicant's Referral does not meet the procedural criteria for further consideration, due to its non-completion with supporting documentation, as requested by the Court, pursuant to Article 22.4 of the Law and Rule 32 (2) (h) of the Rules of Procedure.
29. Therefore, the Court pursuant to Article 113.7 of the Constitution, Articles 47 and 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 113.7 of the Constitution, Articles 47 and 48 of the Law and pursuant to Rule 35 (5) of the Rules of Procedure, on 11 November 2020, unanimously

DECIDES:

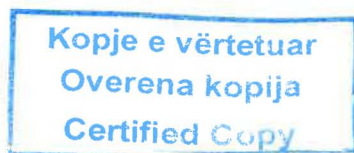
- I. TO REJECT the Referral;
- II. TO NOTIFY this decision to the Parties;
- III. TO PUBLISH this decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Safet Hoxha

Arta Rama-Hajrizi



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