



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

Prishtina, on 8 December 2020
Ref. no.:RK 1658/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI28/20

Applicant

Amir Hamza

**Constitutional review of Notification No. 03/116/1083/1 of the Police
Inspectorate of the Ministry of Internal Affairs of Kosovo of 29 October
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 Amir Hamza, residing in Prizren (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Notification No. 03/116/1083/1 of the Police Inspectorate of the Ministry of Internal Affairs of Kosovo, of 29 October 2019 (hereinafter: the Police Inspectorate).

Subject matter

3. The Applicant has not accurately clarified what rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have allegedly been violated by the challenged notification.
4. The Applicant has also requested the non-disclosure of his identity.

Legal basis

5. 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] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 8 January 2020, the Applicant submitted by mail service the Referral to the Court.
7. On 22 January 2020, the Court requested additional clarification regarding the submitted documents.
8. On 5 February 2020, the Applicant submitted additional documents to the Court.
9. On 14 February 2020, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha.
10. On 21 February 2020, the Court sent another 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 last and concrete act of the public authorities which he challenges.
11. On 24 August 2020, as there was no reply to the sent letter, the Court again sent a letter to the Applicant, notifying him about the registration of the Referral and again requested him to: (i) state the acts of the public authorities which he challenges; (ii) accurately clarify his allegations of violations of fundamental rights and freedoms guaranteed by the Constitution. The Court did not receive any response to this letter either.

12. On 4 November 2020, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court to declare the Applicant's Referral inadmissible.

Summary of facts

13. On 18 April 2019, the Applicant submitted Referral No. KI72/19. In that Referral, the Applicant requested the constitutional review of an unspecified act of the public authorities. On 25 September 2019, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court to summarily reject the Referral.

Summary of facts in Referral KI28/20

14. From the submitted documents it results that on 17 October 2019, the Applicant was invited to the Police Station in Prizren to give a statement regarding the incident that occurred that day in the morning hours.
15. On 21 October 2019, the Applicant, dissatisfied with the way the police officers treated him during the receipt of his statement, filed a complaint with the Police Inspectorate at the Ministry of Internal Affairs (MIA).
16. On 29 October 2019, the Police Inspectorate (by Notification No. 03/116/1803/1) informed the Applicant that the event described in his complaint does not contain elements of a criminal offense and, consequently, the Applicant's complaint will be forwarded to the Directorate of Internal Investigations and Past Verification of the Kosovo Police for further disciplinary investigations..

Applicant's allegations

17. The Applicant addressed the Court alleging that he had been insulted, physically and mentally ill-treated by the police staff while receiving his statement at the Police Station in Prizren.
18. The Applicant in the Referral attached the Notification (No. 03/116/1803/1) of the Police Inspectorate, by not expressly stating that he challenges this decision and by not accurately explaining what fundamental rights and freedoms guaranteed by the Constitution he considers to have been violated by the challenged Notification.
19. The Applicant attached to the Referral a medical report (Report from the consultation with the code: 20058 of 17.10.2019).
20. In the documents submitted by the Applicant on 5 February 2020, the Applicant reiterates the allegations of ill-treatment by police officers at the Police Station in Prizren during his statement regarding the incident of 17 October 2019. The Applicant also mentions two articles (Article 47 and Article 48 without specifying any legal document) and mentions human dignity and freedom of movement.

21. Finally, the Applicant addresses the Court, stating that, *“these persons to receive the deserved punishment and I seek responsibility, starting from the PIK authorities and the deserved compensation”*.

Admissibility of the Referral

22. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and foreseen by the Rules of Procedure.
23. 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”.

24. In this regard, the Court notes that the Applicant is an authorized party that challenges the act of public authority, namely Notification No. 03/116/1803/1 of the Police Inspectorate of 29 October 2019.
25. However, the Court notes that paragraph 7 of Article 113 of the Constitution also sets out the obligation to exhaust *“all legal remedies provided by law”*. This constitutional obligation is also established in paragraph 2 of Article 47 of the Law and item (b) of paragraph (1) of Rule 39 of the Rules of Procedure. The latter establish:

Article 47
[Individual Requests]
“[...]

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

Rule 39
[Admissibility Criteria]

“(1) The Court may consider a referral as admissible if:

(...)

“(b) all effective remedies that are available under the Law against the judgment or decision challenged have been exhausted”.

26. The Court recalls that the rule for exhaustion of legal remedies under Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (1) (b) of the Rules of Procedure, obliges those who wish to bring their case before the Constitutional Court, that they must first use the effective legal remedies available to them in accordance with law, against a challenged judgment or decision.
27. In that way, the regular courts must be afforded the opportunity to correct their errors through a regular judicial proceeding before the case arrives to the Constitutional Court. The rule is based on the assumption, reflected in Article 32 of the Constitution and Article 13 of ECHR, that under the domestic legislation there are available legal remedies to be used before the regular courts in respect of an alleged breach, regardless whether or not the provisions of the ECHR are incorporated in national law (see, *inter alia*, case *Aksoy v. Turkey*, Judgment of 18 December 1996, paragraph 51, Judgment of ECtHR of 18 December 1996).
28. The principle is that that the protection mechanism established by the Constitutional Court is subsidiary to the regular system of judiciary safeguarding human rights (see, *inter alia*, *Handyside v. United Kingdom*, paragraph 48, ECtHR Judgment of 7 December 1976).
29. Under Article 113.7 of the Constitution, the Applicant should have a regular way to the legal remedies which are available and sufficient to ensure the possibility to put right the alleged violation. The existence of such legal remedies must be sufficiently certain, not only in theory but also in practice, and if this is not so, those legal remedies will lack the requisite accessibility and effectiveness (see, *inter alia*, case *Vernillo v. France* paragraph 27, ECtHR Judgment of 20 February 1991, and *Dalia v. France*, paragraph 38, ECtHR Judgment of 19 February 1998).
30. It falls to the Court to examine whether the legal remedies have been exhausted, and whether the legal remedy was effective, available in theory and practice at the relevant time, that is, that the remedy was accessible, and that it could redress the violations in relation to the objections of the Applicant and that it enables reasonable prospect for success (see, case *Civet v. France* paragraphs 42-44, of the ECtHR Judgment of 28 September 1999).
31. However, when the legal remedy is provided by law, it is up to the Applicant to prove that the legal remedy provided by law has in fact been exhausted, or that for any reason it was not available and effective in the particular circumstances of the case, or that there have been special circumstances due to which he or she is exempted from the requirements of exhaustion of legal remedies.
32. In the present case, the Court notes that with regard to the challenged notification, namely the conduct of police officers in the Applicant's case, the procedure has not been completed, as stated by the Police Inspectorate in the notification, "*your complaint was sent to the Director of Internal Investigations and Past Verification within the Kosovo Police for further disciplinary investigations*".

33. Therefore, the Court concludes that the proceedings before the public administration authorities as well as the regular courts regarding the issue of the dispute between the Applicant and the opposing party are still ongoing and are in the Directorate of Internal Investigations of the Police of Kosovo and that the Applicant does not substantiate that the appeal before the regular courts for any reason was not accessible and effective in the particular circumstances of the case, or that there were special circumstances due to which he was exempted from the requirement of exhaustion of legal remedies.
34. Based on the above, the Court concludes that the Applicant's Referral should be declared inadmissible, as the Applicant has not exhausted his regular legal remedies in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and the Rule 39 (1) (b) of the Rules of Procedure.

Applicant's request for non-disclosure of identity

35. The Court notes that the Applicant in his Referral also requested that his identity be not disclosed.
36. The Applicant in relation to the request for non-disclosure of identity reasons as follows: *"Because there can be unpredictable consequences from these people for me and my family"*.
37. 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".
38. 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 Court, KI74/17, Applicant *Lorenc Kolgjeraj*, Resolution on Inadmissibility of 5 December 2017).
39. 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, Articles 20 and 47 of the Law, and in accordance with Rule 39 (1) (b) of the Rules of Procedure, on 4 November 2020, unanimously:

DECIDES

- I. TO DECLARE the Referral inadmissible;
- 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

Remzije Istrefi-Peci

Kopje e vërtetuar
Qytetëna kopija
Certified Copy

Arta Rama-Hajrizi

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