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

Prishtina, 9 December 2020
Ref. No.:RK 1664/20

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI90/20

Applicant

Arben Boletini

Constitutional review of Judgment P. no.4333/19 of the Basic Court in Prishtina, of 26 November 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 Arben Boletini from the Municipality of Fushë Kosovë (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [P. no. 4333/19] of the Basic Court in Prishtina (hereinafter: the Basic Court), of 26 November 2019.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, which as alleged by the Applicant has violated his fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

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 the 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 11 March 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 8 January 2019, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Safet Hoxha and Remzije Istrefi-Peci.

7. On 8 April 2020, the Court sent a submission to the Applicant requesting from him to clarify (i) the act of the public authority which he is challenging before the Court; and (ii) if the submitted Referral is an additional document related to another Referral submitted on 9 March 2020, registered as Referral no. KI47/20 or the present Referral is submitted independent of the previous Referral.

8. On 28 May 2020, the Applicant responded via e-mail, stating that (i) *"in relation to this Referral we have presented an earlier case in which I was sentenced to 4 months of imprisonment without facts and arguments"; and (ii) "I ask for justice, namely I demand a retrial because an injustice has been done to me, and in case you need additional documents we are ready to provide all of them to you, with the sole aim to have the justice served"*.

9. On 24 June 2020, the Court notified the Applicant about the registration of the Referral and again requested from him to clarify for the Court his allegations for violation of his constitutional rights and freedoms and whether he has used any legal remedy against the challenged Judgment of the Basic Court.

10. The court did not receive any response from the Applicant within the stipulated deadline.

11. On 25 November 2020, the Review Panel considered the Report of the Judge Rapporteur, and unanimously made a recommendation to the Court to summarily reject the Referral.

Summary of facts

12. On the basis of the documents that have been submitted to the Court, it results that on 1 May 2019, the Applicant was threatened by the defendant J.S. The Applicant reported the above person to the Police due to the alleged threat.

13. On 24 September 2019, the General Department of the Basic Prosecutor's Office in Prishtina filed the Indictment [PP. II. no. 2657/19] due to the criminal offence of Threat as defined by Article 181 (Threat) of Code No.06/L-074 of the Republic of Kosovo and requested from the Basic Court to impose the punitive order of judicial admonition against the defendant S.J.

14. On 26 November 2019, the Basic Court by Judgment [P.no.4333/19] approved the request of the Basic Prosecutor's Office and after having ascertained the guilt of the defendant S. J., punished him with the aforementioned punitive order.

Applicant's allegations

15. The Applicant has failed to clarify exactly which fundamental rights and freedoms he claims to have been violated. He only states before the Court that the challenged Judgment was issued in violation of his fundamental rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights (hereinafter: ECHR), because the punitive order issued by the Basic Court against the defendant SJ, is not a fair punishment. The Applicant requests from the Court to *"reconsider the case"*.

Assessment of the admissibility of the Referral

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

17. 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".

18. In addition, the Court also refers to the admissibility requirements, as specified in the Law. In this respect, the Court refers to Articles 47 (Individual Requests) and 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".

19. In the context of the aforementioned provisions, the Court notes that on the basis of paragraph 7 of Article 113 of the Constitution, paragraph 1 of Article 47 and Article 48 of the Law, in addition to specifying the concrete act of the public authority which they are challenging, the parties are also obliged to accurately clarify what rights and freedoms they claim have been violated. In the circumstances of the present case, the Court notes that the Applicant, despite the Court's requests for clarification, has failed to clarify before the Court what fundamental rights and freedoms he claims to have been violated.

20. In this respect, the Court first recalls that the Applicant's Referral was received on 11 March 2020. Given that the Referral was not clearly stated, on 8 April 2020, acting pursuant to paragraph 4 of Article 22(Processing Referrals) of Law and items (f) and (g) of paragraph (2) of Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure, the Court requested from the Applicant to clarify his Referral.

21. On 28 May 2020, the Applicant sent a response via e-mail on the official e-mail of the Court, but did not provide the clarification requested by the Court. Consequently, the Court registered the Applicant's Referral as a new case, but however on 24 June 2020, it once again addressed the Applicant with a request for clarification, and in particular regarding his allegations for violation of his constitutional rights and freedoms. The Applicant did not respond to the Court's request.

22. In this respect, the Court refers to paragraph (5) of Rule 35 of the Rules of Procedure, which stipulates 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, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous,".
[...]

23. The Court emphasizes that the above rule of the Rules of Procedure enables the Court to summarily reject a Referral if, *inter alia*, an Applicant's Requests is incomplete and not unclear, despite the Court's requests to supplement and clarify the respective Referral. The court has twice addressed such a request to the Applicant, but did not receive any response.

24. Therefore, the Court finds that the Applicant's Referral does not meet the procedural criteria for further examination, because it is incomplete and not clearly stated, as stipulated in paragraph (5) of Rule 35 of the Rules of Procedure.

25. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on the applicants, who have a direct interest, to have their claims and allegations addressed in effective manner by the Court. In cases where the applicants do not respond to the Court's requests for clarification and supplementation of the Referral, the Court summarily rejects those 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).

26. Finally, pursuant to Rule 35 (5) of the Rules of Procedure, the Referral must 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 25 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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