



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

---

Prishtina, on 1 February 2021  
Ref.No:RK 1698/21

*This translation is unofficial and serves for informational purposes only.*

## **DECISION TO REJECT THE REFERRAL**

**Case No. KI132/20**

Applicant

**Qamile Murtezi - Salihu**

**Constitutional review of an unspecified act  
of a 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. The Referral was submitted by Qamile Murtezi–Salihu from Bresalc village, Municipality of Gjilan (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant did not specify the act of the public authority that she is challenging before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of an unspecified act of the public authority, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Article 7 [Values], 21 [General Principles], 24 [Equality Before the Law], 31 [Right to a Fair and Impartial Trial], and 54 [Judicial Protection of Rights] of 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 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 (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 7 February 2020, the Applicant submitted a letter via mail to the Court.
6. On 22 September 2020, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Radomir Laban (Members).
7. On 29 September 2020, the Court notified the Applicant of the registration of the Referral. The Court also requested the Applicant to (i) complete the official form of the Court; (ii) clarify in the Referral which act of the public authority she is challenging before the Court; (iii) accurately clarify what constitutional rights and freedoms she alleges to have been violated through the challenged act; and (iv) submit all relevant decisions of competent authorities in relation to her Referral.
8. On 13 October 2020, the Applicant submitted to the Court the official form, but it was not completed with all relevant information. Also, the submitted form did not specify the act of the public authority which is being challenged before the Court, but a letter of 7 July 2020 which was addressed to the Special Chamber of the Supreme Court on Privatisation Agency of Kosovo Related Matters (hereinafter: the SCSC) was attached.
9. On 11 November 2020, the Court sent another letter to the Applicant, requesting once again all the information requested through the initial letter of 29 September 2020.

10. On 23 November 2020, the Applicant submitted to the Court the following additional documents: (i) the form of 7 October 1982 on pension and disability insurance of the Socially Owned Enterprise “28 Nëntori” in Gjilan (hereinafter: SOE “28 Nëntori”); (ii) The decision of the SOE “28 Nëntori” whereby the annual leave was set for the period from 1 August 1986 until 1 February 1987; (iii) a copy of the identity card; (iv) a copy of the employee records from the register of employees of SOE “28 Nëntori”; and (v) a response of the SCSC of 10 July 2020.
11. On 20 January 2021, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court to summarily reject the Referral.

### **Summary of facts**

12. Based on the case file submitted by the Applicant results that she had established an employment relationship with the SOE “28 Nëntori” on 13 July 1982.
13. On a date unspecified in these files, it turns out that the SOE “28 Nëntori” was privatized. The Privatisation Agency of Kosovo (hereinafter: the PAK) compiled the list of employees eligible to benefit from twenty percent (20%) of the privatization of the SOE “28 Nëntori” The Applicant was not part of this list. The deadline for appeals before the SCSC regarding this list was 14 June 2014.
14. On 7 July 2020, the Applicant sent a letter to the SCSC, wherein she stated that, “*I address the Privatisation Agency of Kosovo to review my claim regarding the 20% of the liquidation of GJ1098, SOE “28 nëntori” (former “16 nëntori”, as I was in employment relationship in this socially owned enterprise”.*
15. On 10 July 2020, the SCSC sent a notice to the Applicant stating, inter alia, the following: i) court proceedings concerning the list of employees eligible to benefit from twenty per cent (20%) of the proceeds from the privatization of the SOE “28 nëntori” have been completed in both instances of decision-making; (ii) the deadline for submitting claims/complaints to the SCSC regarding the list of employees of this enterprise was 14 June 2014; and (iii) “*regarding your submission, no legal action can be taken and it can not be registered as a court case, because the deadline for appeals regarding the list of employees of your enterprise to benefit from the 20%, has expired long ago”.*

### **Applicant’s allegations**

16. The Applicant alleges before the Court that her fundamental rights and freedoms guaranteed by Articles 7 [Values], 21 [General Principles], 24 [Equality Before the Law], 31 [Right to a Fair and Impartial Trial], and 54 [Judicial Protection of Rights] of the Constitution have been violated. She did not specify before the Court the act of the public authority whereby these rights were violated.

17. The Applicant states before the Court that, (i) *“with these actions that have been done by the representative of the union of the SOE “28 nëntori” and by the KPA were violated Articles 7, 21, 24, 31 and 54 of the Constitution to my detriment”*; and (ii) *“pursuant to UNMIK Regulation No. 2003/13, Article 10.3, everyone who has had over 3 (three) years of work, is entitled to 20% from the privatization. With this action, personal discrimination was committed, and the law was violated ....everyon is equal before the law”*.
18. The Applicant requests from the Court *“to be a participant in the 20% like the other employees of the enterprise “28 nëntori” and to be paid 20%”*.

### **Admissibility of the Referral**

19. 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.
20. 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.”*
21. In addition, the Court also refers to the admissibility criteria, as defined by Law. In this respect, the Court first refers to Articles 47 (Individual Requests) and 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”.*

22. 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. Furthermore, pursuant to Article 48 of the Law and

point d) of paragraph 1 of Rule 39 (Admissibility Criteria) of the Rules of Procedure, in addition to specifying a concrete act of the public authority which is challenged, the parties are also obliged to accurately clarify which of their fundamental rights and freedoms they allege have been violated and adequately set forth the facts and allegations for violation of constitutional rights or provisions. 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 she is challenging; and (ii) nor did she set forth or adequately clarify the violations of rights or constitutional provisions.

23. The Court recalls that a letter of the Applicant was received on 7 September 2020. Considering that the Referral was not completed, on 29 September 2020, pursuant to paragraph 4 of Article 22 (Processin 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 requested the Applicant, *inter alia*, to supplement her Referral by: (i) specifying act/s of public authorities which she is challenging; (ii) accurately clarifying her allegations for violation of the fundamental rights and freedoms guaranteed by the Constitution; and (iii) submitting copies of documents and other information supporting her allegations. On 13 October 2020, the Applicant submitted the completed form to the Court, but did not address all of the Court's requests. Consequently, the latter addressed once again the Applicant with a request for necessary clarifications, especially in relation to the challenged act of the public authority. On 23 November 2020, the Applicant submitted to the Court several files which have been specified above, but still she did not address the requests of the Court.
24. In this regard, the Court refers to Rule 35 (5) 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.”*

[...]

25. 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.
26. 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 her constitutional rights and freedoms; and (iii) based on the case file and their content, the facts of the case are incomprehensible.

27. 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.
28. The Court recalls that the burden of constructing, clarifying and supplementing the Referral falls on the Applicants, who have a direct interest so that their allegations can be effectively addressed by the Court. In cases where the Applicants do not respond to the Court's request for clarification and supplementation of the Referral, the Court declares these Referrals vague and incomplete and as a result, does not examine the Applicant's allegations (see cases of the Court, KI89/18, *Agrim Jashari*, Decision to Reject the Referral, of 27 November 2018, paragraph 29; t, Resolution to Reject the Referral, of 3 December 2018, paragraph 26; KI74/18, Applicant *Gëzim Murati*, Decision to Reject the Referral, of 3 December 2018, paragraph 26; KI78/20, KI79/20 and KI80/20, Applicants *Hilmi Aliu dhe others*, Decision to Reject the Referral, of 11 November 2020, paragraph 33; and KI90/20, Applicant *Arben Boletini*, Decision to Reject the Referral, of 25 November 2020, paragraph 25).
29. Therefore, finally, based on Rule 35 (5) of the Rules of Procedure, the Referral is to be summarily rejected.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 22, 47 and 48 of the Law, and in accordance with Rule 35 (5) of the Rules of Procedure, on 20 January 2021, 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



*This translation is unofficial and serves for informational purposes only.*