



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

Prishtina, on 8 March 2021  
Ref.no.:RK 1727/21

*This translation is unofficial and serves for information purposes only*

## DECISION TO REJECT THE REFERRAL

in

**Case No. KI138/20**

Applicant

**Sejdi Namani**

**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. The Referral was submitted by Sejdi Namani, residing in Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant does not challenge any concrete decision 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 specifically clarified what rights and fundamental freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have allegedly been violated by some 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, 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 (hereinafter: the Rules of Procedure).

## **Proceedings before the Court**

6. On 23 September 2020, the Applicant submitted the Referral to the Court.
7. On 24 September 2020, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Safet Hoxha (members).
8. On 7 October 2020, the Court notified the Applicant of the registration of the Referral, and requested him to specify which decision he challenges, to submit it to the Court and to clarify before the Court which rights and freedoms he alleges to have been violated.
9. On 14 October 2020, the Applicant submitted to the Court a "*Request or Complaint Form*", which the Applicant submitted to the Municipality of Prishtina. The Applicant did not respond to the above mentioned requests of the Court.
10. On 19 October 2020, the Applicant once again submitted to the Court additional documents related to his case, namely the Applicant's complaint submitted to the Municipality of Prishtina.
11. On 18 February 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 of the case

12. Based on the case files, it follows that the Applicant had been employed as a teacher in the Primary and Lower Secondary School "Nazim Gafurri" in Prishtina.
13. On 30 March 2015, the Municipal Education Directorate of the Municipality of Prishtina, by Decision No. 119, imposed on the Applicant a disciplinary measure – temporary dismissal, with compensation of 50% of salary, due to serious violations of duties, for reasonable suspicion of sexual harassment against a schoolgirl.
14. On 30 September 2015, the Municipal Education Directorate in Prishtina, by Decision No. 329, had permanently terminated the employment relationship of the Applicant.
15. On 8 January 2016, the Basic Prosecution in Prishtina - Juvenile Department filed Indictment PP/I. No. 216/15 against the Applicant for reasonable suspicion of having committed the criminal offense of "*Sexual Abuse of persons under age of sixteen (16) years*", of Article 235 para. 4.9 in conjunction with para. 1.4 of the Criminal Code of the Republic of Kosovo (hereinafter: the Criminal Code).
16. On 2 July 2018, the Basic Court in Prishtina, by Judgment PM. No. 4/16, acquitted the Applicant of the charge of committing the criminal offense he was charged with.
17. On 16 May 2019, the Applicant addressed to the Dispute Resolution and Complaints Commission in the Municipality of Prishtina a complaint to review Decision No. 329, of 30 September 2015, whereby the Applicant's employment relationship was terminated.
18. On 16 June 2019, the Dispute Resolution and Complaints Commission in the Municipality of Prishtina, by Decision 14-117/01-111701/19, rejected the Applicant's complaint as ungrounded. The reasoning of the above mentioned decision states that, "*Based on Article 75 of the Law No.03/L-212 on Labour which provides that the duration of temporary dismissal from work under Article 73 described above may last at most six (6) months, a period within which the employer is obliged to return the employee to work or terminate his/her employment contract*". Based on all the above, the Applicant's employment was terminated.
19. On 4 July 2019, the Applicant filed an appeal with the Labor Inspectorate against Decision 14-117/01-111701/19, of 16 June 2019 of the Dispute Resolution and Complaints Commission in the Municipality of Prishtina, requesting the following: "*i) to oblige employer MED Prishtina to reinstate the appellant [the Applicant] to work; ii) to make the payment in the name of salary and contributions for the period of dismissal and to recognize the right of experience for this period*".

20. On 13 September 2019, the Labor Inspectorate by Decision No. 01/37-153/19-A approved the appeal of the Applicant as partially grounded, deciding as follows: 1. *With regard to the appeal for reinstatement to his job, the appeal is grounded*; 2. *With regard to the compensation of salaries, the appeal is ungrounded*. The Labor Inspectorate obliged the Municipality of Prishtina to annul Decision No. 329 of 30 September 2015, and Decision 14-117/01-111701/19, of 16 June 2019, of the Dispute Resolution and Complaints Commission in Prishtina and to reconsider the termination of employment of the Applicant.

### **Applicant's allegations**

21. The Applicant has not challenged specifically any concrete act of any public authority and has not specifically clarified which rights and fundamental freedoms guaranteed by the Constitution he alleges to have been violated through any act of a public authority.
22. The Applicant in his Referral states "*they have violated all administrative procedures: prolongation of the procedure*".
23. Finally, the Applicant addresses the Court, requesting to be reinstated to his job and that all salaries be compensated from 23 March 2015 until 23 September 2020.

### **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 regard, 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."*

26. 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”.*

27. Assessing whether the Applicant meets the constitutional and legal criteria for constitutional review his Referral, the Court recalls that pursuant to Article 113 of the Constitution, individuals are authorized to refer to the Court alleged violations of rights and fundamental freedoms, guaranteed by the Constitution, by “*public authorities*”, after they have exhausted all legal remedies provided by law. The same criterion is also set forth in Article 47 of the Law. In the circumstances of the present case, the Court notes that the Applicant does not challenge any specific act of a public authority that may have resulted in violation of his rights and fundamental freedoms.
28. Furthermore, Article 48 of the Law specifically obliges Applicants to accurately clarify the concrete act of public authority they are challenging. The same article also obliges the Applicants to accurately clarify what rights and fundamental freedoms they claim to have been violated.
29. In the circumstances of the present case, the Applicant: *i*) neither specified the act of public authority he is challenging, and *ii*) nor did he accurately clarify what rights and freedoms he claims to have been violated by this act. Consequently, the Referral of the Applicant does not meet the admissibility criteria set out in the Constitution and the Law.
30. In such cases of incomplete referrals which, as such, result in non-compliance with the constitutional and legal admissibility criteria, 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 his Referral. In this respect, the Court recalls paragraph 4 of Article 22 [Processing Referrals], of the Law and items (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 [...] 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;*

*[...]*

*(f) succinct description of the facts;*

*(g) the procedural and substantive justification of the referral; and*

*(h) the supporting documentation and information;*

31. In this regard, the Court recalls that the latter received the Referral on 23 September 2020. Considering that the Referral was incomplete, on 7 October 2020, pursuant to paragraph 4 of Article 22 of the Law, the Court requested the Applicant to clarify his Referral by: a) specifying the acts of public authorities which he challenges; b) accurately clarifying his allegations for violation of rights and fundamental freedoms guaranteed by the Constitution; and c) submitting copies of documents and other information supporting his allegations.
32. On 14 and 19 October 2020, the Applicant, through the documents he submitted to the Court, upon the request of the latter, did not respond to the Court's request, namely did not specify what decision he was challenging and what freedoms and rights protected by the Constitution have been violated.
33. In this regard, and taking into account that the Referral of the Applicant as submitted to the Court, does not meet the admissibility criteria established by the Constitution and the Law, and also despite the request of the Court, the Applicant has not completed nor clarified his Referral, the Court, based on its Rules of Procedure, may summarily reject the Referral. In this regard, the Court refers to Rule 35 of the Rules of Procedure, which establishes 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, [...]”.*

34. The Court recalls that the burden of constructing, clarifying and supplementing the Referral falls on applicants, who have a direct interest so that their allegations and claims can be effectively addressed by the Court. In cases where applicants do not respond to the Court's request for clarification and supplementation of referral, the Court declares these referrals vague and incomplete and consequently does not examine the applicant's allegations (see Case KI48/17, *Sladana Radojković-Marinković*, Constitutional Court, Resolution to Reject the Referral, of 4 December 2017, paragraph 21).
35. Therefore, the Court considers that the Referral of the Applicant does not meet the procedural requirements for further review, because it was not completed

with supporting documentation, as required by the Court, based on Article 22.4 of the Law and Rule 32 (2) (e), (g) of the Rules of Procedure.

36. Consequently, the Court, in accordance with the Article 113.7 of the Constitution, Article 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 20 and 48 of the Law, and in accordance with Rule 35 (5) of the Rules of Procedure, on 18 February 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**

Bekim Sejdiu



Arta Rama-Hajrizi

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