



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

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Prishtina, on 1 March 2021  
Ref. no.:RK 1718/21

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

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. KI33/20**

Applicant

**Jovan Gužvić**

**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 Jovan Gužvić , from Municipality of Gjilan (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. Moreover, the Applicant has not specifically clarified what fundamental rights and 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**

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 18 February 2020, the Applicant submitted the above mentioned Referral by mail to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 February 2020, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur. On the same day, the President of the Court appointed the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Gresa Caka Nimani and Safet Hoxha.
7. On 25 February 2020, the Court notified the Applicant of the registration of the Referral and requested to: (i) complete the official referral form; (ii) specify the act of the public authority it is challenging; (iii) submit copies of the challenged decision and other relevant information that might be necessary to the Court.
8. On 12 March 2020, the Applicant submitted to the Court the official referral form containing additional allegations pertaining his case but which did not address the Court's requests for clarification as to which specific decision he is challenging.
9. On 21 May 2020, the Court sent once again a letter to the Applicant and requested him to clarify accurately which rights and freedoms he claims to have been violated and what is the concrete act of the public authority he is challenging.
10. On 17 June 2020, the Applicant submitted to the Court an additional document containing additional allegations pertaining his case but which did not address the Court's requests for clarification as to which specific decision he is challenging.

11. On 10 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**

12. Based on the case file, it follows that the Applicant was an employee of the SOE Kosova Trans.
13. On 12 July 2006, the Socially Owned Enterprise SOE Kosova Trans in Gjilan was privatized.
14. On 8 May 2009, the Privatization Agency of Kosovo (hereinafter: PAK) published a list of eligible employees entitled to a share of proceeds from the privatization process of the SOE Kosova Trans.
15. On 5 June 2009, the Applicant filed a complaint with the Special Chamber of the Supreme Court of Kosovo on the Privatization Agency of Kosovo Related Matters (hereinafter: the SCSC) against the PAK related to the review of the final list of eligible employees, compiled by the PAK for the SOE Kosova Trans, in order to realize the right to payment of 20% from the privatization of the SOE Kosova Trans.
16. On 20 January 2011, the SCSC issued a Judgment [SCEL-09-0010] whereby it declare the list of eligible employees entitled to a share of the proceeds from the privatization of SOE "Kosova Trans" issued by the PAK invalid on the grounds that the KPA Review Committee when compiling the list was not composed in accordance with the law because it had no international member. Finally, the SCSC instructed the latter to publish a new list in accordance with the law.
17. On 8 December 2011, the PAK published the final list of the PAK for illegible employees, beneficiaries of 20 percent of the proceeds from privatization of SOE Kosova Trans.
18. Based on the case file, it is noted that 32 complaints were filed against this list with the SCSC.
19. On 25 July 2014, the Specialized Panel of the Special Chamber issued Decision SCEL-11-0071 responding to several appeal regarding the final list issued by the PAK.
20. On 9 February 2015, the Applicant challenged the above mentioned decision to the Appellate Panel of the SCSC alleging substantial violation of legal provisions, erroneous and incomplete determination of the factual situation and erroneous application of substantive law and proposed to the Appellate Panel to approve the appeal as grounded and to register him in the final list of employees of the SOE Kosova Trans in Gjilan.

21. On 7 October 2019, the Appellate Panel of the SCSC rejected the Applicant's appeal as inadmissible reasoning that the Applicant did not file a complaint to the first instance after the publication of the new list by the PAK.

### **Applicant's allegations**

22. The Applicant states before the Court, *inter alia*, as follows: "*Through my claim, I want to be included in the list as most of the employees have been included in the list of 20% of the property sold by SOE Kosova Trans Gjilan (Technical Base). I consider that I was ignored by SOE Kosova Trans and P.A. which was obliged to put me on the list because I was a worker from 1977 until 2003, when my work booklet was closed. Until today I have not withdrawn my documentation*".

### **Admissibility of the Referral**

23. 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.
24. 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."*

25. The Court further refers to the admissibility criteria, as provided by the Law. In this respect, the Court refers to Article 47 (Individual Requests) and Article 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".*

26. 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. Moreover, based on Article 48 of the Law, in addition to specifying a concrete act of public authority which is being challenged, the parties are also obliged to accurately clarify what rights and freedoms they claim to have been violated. In the circumstances of the present case, the Court notes that the Applicant, despite the Court's request for clarification, has not clarified before the Court (i) neither the act of the public authority which he is challenging; and (ii) nor did he clarify what fundamental rights and freedoms he claims to have been violated.
27. The Court recalls that the Referral of the Applicant was received on 18 February 2020. Taking into account that the Referral was incomplete, on 25 February 2020, in accordance with paragraph 4 of Article 22 (Processing 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 asked the Applicant, *inter alia*, to complete his Referral by: (i) specifying the act of public authority which he is challenging; (ii) submitting copies of documents and other information supporting his allegations. On 12 March 2020, the Applicant submitted to the Court several additional documents which did not address the requests of the letter of the Court, of 25 February 2020. On 21 May 2020, the Court once again addressed to the Applicant a request for clarification of his allegations for violation of rights and fundamental freedoms guaranteed by the Constitution and what is the concrete act that he is challenging. In response to this letter, the Applicant submitted to the Court a document, the content of which does not address the requests of the Court.
28. In this regard, the Court refers to paragraph (5) of Rule 35 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, [...]”.*

[...]

29. 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 addressed a request to the Applicant, unsuccessfully.
30. 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 his constitutional rights and freedoms.

31. 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.
32. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on applicants, who have direct interest, so that their claims and allegations are effectively addressed by the Court. In cases when applicants do not respond to the requests of the Court for clarification and supplementation of the referral, the Court summarily rejects these 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).
33. Finally, based on Rule 35 (5) of the Rules of Procedure, the Referral is to be summarily rejected.

## **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law, and Rule 35 (5) of the Rules of Procedure, on 10 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**

Bajram Ljatifi

Arta Rama-Hajrizi

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