



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

Prishtina, on 6 April 2021
Ref. No: RK 1742/21

This translation is unofficial and serves for informational purposes only

DECISION TO REJECT THE REFERRAL

in

Case No. KI57/20

Applicant

Dile (Palushi) Bala

Constitutional review of several decisions of regular courts

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 Dile (Palushi) Bala (hereinafter: the Applicant), who is represented by Avdi Rizvanolli, a lawyer from Gjakova.

Challenged decision

2. The Applicant only mentions literally several decisions of the regular courts, respectively the decisions Rev. no. 413/19, of 6 February 2020, Ac. no. 4927/15 of 28 August 2019 and C. no. 327/12, of 16 September 2014), although the same decisions have not been attached to the Referral.

Subject matter

3. The subject matter of the referral is the constitutional review of the challenged decisions, by which the Applicant alleges that her rights guaranteed by Articles 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) and Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: ECHR) have been violated.

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 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 7 April 2020, the Referral was submitted (by mail service) to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 May 2020, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).
7. On 27 May 2020, the Court notified the Applicant about the registration of the Referral and requested from the same to complete the Referral form and attach the supporting documentation.
8. On 15 December 2020, the Applicant was requested again to complete the Referral and attach supporting documentation.
9. On 29 December 2020, the Applicant's authorized representative submitted the power of attorney signed by the Applicant as evidence of her representation in the Court, although none of the decisions mentioned in the Referral were attached to the Referral.
10. On 25 March 2021, after considering the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court to summarily reject the Referral.

Summary of facts

11. The Applicant only mentions literally several decisions of the regular courts, by which she alleges that her rights guaranteed by the Constitution and the ECHR have been violated, although those decisions were not attached to the Referral.

Applicant's allegations

12. The Applicant alleges that the regular courts violated her rights guaranteed by Articles 31 and 54 of the Constitution and Article 6 of the ECHR, because they have erroneously determined the factual situation and misapplied the substantive law in her case.

Assessment of the Admissibility of Referral

13. The Court first examines whether the Referral has fulfilled the admissibility criteria established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
14. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties], 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."

[...]

15. The Court, in the circumstances of this case, specifically refers to Article 22, paragraph (4) of the Law, which stipulates:

"If the referral ... is not ... complete, 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 (...)"

16. In addition, the Court takes into account Rule 32 [Filing of Referrals and Replies], sub-Rule (2) (h) and Rule 35 [Withdrawal, Dismissal and Rejection of Referrals], sub-Rule (5) of the Rules of Procedure, which establish:

32 (2) "The referral shall also include:

[...]

(h) the supporting documentation and information.

[...]

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, (...)".

17. The Court recalls that the Applicant alleges that the regular courts violated her rights guaranteed by Articles 31 and 54 of the Constitution and Article 6 of the ECHR, due to erroneous determination of the factual situation and misapplication of the substantive law.
18. Pursuant to the above provisions, the Court cannot take into account either the facts of the case or the allegations of the Applicant, because the Referral is incomplete, because the challenged court decisions were not attached to it. (See the Decision of the Constitutional Court, in case KIO3/15, Applicant *Hasan Beqiri*, of 13 May 2015, paragraphs 14, 15, 17, 19, 20 and 21, as well as the case KIO7/16, Applicant *Rifat Abdullahi*, of 14 July 2016, paragraph 22).
19. The Court attempted twice to communicate with the Applicant, for the purposes of completing the Referral, however, apart from the authorization submitted by the Applicant's authorized representative, no other relevant documents were attached to the Referral.
20. In this context, the Court considers that the burden of responsibility for the failure to complete the Referral with supporting documentation falls on the Applicant and her authorized representative.
21. In sum, the Court concluded that the Applicant's Referral did not meet the formal criteria for further consideration, due to its incompleteness with supporting documentation.
22. Therefore, the Court, pursuant to Article 22.4 of the Law, Rule 32 (2) (h) and Rule 35 (5) of the Rules of Procedure, concludes that the Applicant's Referral be rejected summarily.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 22.4 of the Law and Rules 32 (2) (h) and 35 (5) of the Rules of Procedure, on 25 March 2021, unanimously

DECIDES

- I. TO summarily 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

Nexhmi Rexhepi

**Kopje e vërtetuar
Overena kopija
Certified Copy**

Arta Rama-Hajrizi

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