



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

Prishtina, on 17 May 2021
Ref.no.:RK 1780/21

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI34/21

Applicant

Skender Murseli

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 Skender Murseli residing in Essen, Germany (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 an unspecified acts of a public authority.
4. The Applicant has not specifically clarified the rights and fundamental freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution), which 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 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 22 January 2021, by mail, the Applicant sent to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) an "*Open Letter*". He had also addressed it to the Central Election Commission (hereinafter: the CEC).
7. On 4 February 2021, the Court received the abovementioned letter of the Applicant.
8. On 5 February 2021, the Court sent a letter to the e-mail address of the Applicant, notifying him that based on paragraph 7 of Article 113 of the Constitution, Articles 47 (Individual Referral) and 48 (Accuracy of the Referral) of the Law and point (d) of paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure, before the Court he must (i) specify the act of public authority being challenged; and (ii) accurately clarify what rights he claims to have been violated through the relevant act of public authority. The Court also requested the Applicant to (i) fill in the Referral Form of the Court; and (ii) attach additional documents related to the decisions of the public authority he is challenging.
9. On 8 February 2021, the Court received via e-mail from the Applicant a "Complaint", to which he had attached (i) the unfilled and unsigned referral form; (ii) a picture of the receipt of the payment of mail; (iii) the stamp photographed proving that the Applicant sent the mail on 22 January 2021; and (iv) a picture of the mail specifying that the letter is sent to the Court and the CEC.

10. On 11 February 2021, 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.
11. On 12 February 2021, the Court notified the Applicant of the registration of the Referral and once again requested him to (i) fill in the the Court's form; (ii) specify the act of public authority being challenged; and (iii) accurately clarify what rights and fundamental freedoms guaranteed by the Constitution he claims to have been violated through the relevant act of public authority. The Court requested the Applicant to submit the above clarification to the Court within seven (7) days.
12. On 19 February 2021, via e-mail, the Applicant sent another letter to the Court, stating that (i) *"I do not agree that the opportunity provided to the Diaspora to vote by classic mail (with Envelops) on the occasion of voting on 14 February 14 2021 meet the necessary conditions and circumstances to vote"*; (ii) *"the time of 10 days in the conditions created by the Pandemic were by no means sufficient for the mail to arrive at the destination" [...]*; and (iii) *"the requirement for an applicant to answer an (anonymous) call as a fulfillment of voting approval criteria was not an appropriate instrument given the technical possibilities that such a call might bring"*.
13. On 5 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

14. Based on the case files, the Applicant lives in Germany and he sent his vote by mail for the parliamentary elections of the Republic of Kosovo of 14 February 2021.
15. Based on the case files, it turns out that the Applicant had sent two letters, which he called "test" to the Court and the CEC. These letters were sent by mail from Germany on 22 January 2021 and had arrived at the Court on 4 February 2021. The Applicant states before the Court that through the above mentioned letters, *"he is testing how long it takes a similar letter to arrive at the destination – CEC Prishtina"*. The Applicant did not attach any additional document.

Applicant's allegations

16. The Applicant has not specified before the Court the act of the public authority he is challenging, nor has he accurately clarified what rights and fundamental freedoms guaranteed by the Constitution he claims to have been violated.
17. The Applicant, in essence, claims that his vote and votes of his family members in Germany should be as valid as the ones of the citizens of the Republic of Kosovo. Moreover, in this context, he states that (i) *the time of 10 days in the conditions created by the Pandemic were by no means sufficient for the mail to arrive at the destination" [...]*; and (ii) *"the requirement for an*

applicant to answer an (anonymous) call as a fulfillment of voting approval criteria was not an appropriate instrument given the technical possibilities that such a call might bring” and moreover “it is not a European practice”.

18. Lastly, the Applicant requests from the Court to oblige, through a decision, the CEC to enable that *“all those emigrants that have successfully applied and will post (send) the ballots within the time set by the CEC respectively the Constitutional Court from (dt. 02.02 until 12.02.2021) to accept their mails until all votes (even conditional ones) are counted within the territory of the Republic of Kosovo; and only from that day the mails should not be accepted any more, and to start counting of their ballots”.*

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 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.”

21. The Court further 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 must accurately and adequately

clarify the facts and claims for violation of constitutional rights and provisions. In the circumstances of the present case, the Court notes that the Applicant, despite the Court's requests for clarification, (i) has not clarified before the Court the act of the public authority he is challenging; (ii) has not clarified what rights and fundamental freedoms guaranteed by the Constitution he claims to have been violated; and (iii) has not submitted to the Court the relevant documentation.

23. In this regard, the Court recalls that the first letter of the Applicant, sent from Germany by mail, was received on 4 February 2021. Considering that the Referral was unclear, the next day, namely on 5 February 2021, in accordance with paragraph 4 of Article 22 of the Law and points (f), (g) and (h) of paragraph (2) of Rule 32 of the Rules of Procedure, the Court, by e-mail, requested the Applicant, in accordance with paragraph 7 of Article 113 of the Constitution and Articles 47 and 48 of the Law, to (i) specify the act of public authority being challenged before the Court; (ii) accurately clarify what rights and fundamental freedoms he claims to have been violated through the relevant act of public authority; and (iii) submit the filled in referral form to the Court, by also attaching additional documents relating to the decisions of the public authority he is challenging.
24. On 8 February 2021, the Applicant sent an e-mail to the Court, but did not provide the clarification requested by the Court. Consequently, the Court registered the Applicant's Referral as a new case and on 12 February 2021 once again addressed the Applicant notifying him of the registration of the case and repeating the requests as in the letter sent on 5 February 2021. The Applicant repeated by e-mail his claims, but did not provide any of the clarifications requested by the Court through two consecutive requests.
25. In this regard, the Court refers to paragraph (5) of Rule 35 (Withdrawal, Dismissal and Rejection of Referrals) 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".

[...]

26. 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, however, although the Applicant replied, repeating his claims, he did not respond to any of the specific requests of the Court, as explained under the proceedings before the Court herein.

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 summarily rejects such referrals. (See, *inter alia*, the cases of Court KI60/20, Applicant: *The Council of Islamic Community*, Decision to Reject the Referrral, of 18 February 2021, paragraph 36; KI90/20, Applicant *Arben Boletini*, Decision to Reject the Referral, of 9 December 2020, paragraph 25, and cases No. KI78/20, KI79/20 and KI80/20, Applicant *Hilmi Aliu and others*, Decision to Reject the Referral, of 7 December 2020, paragraph 33 and the references used therein).
29. 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 22, 47 and 48 of the Law, and Rule 35 (5) of the Rules of Procedure, on 5 May 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

**Kopje e vërtetuar
Overena kopia
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