



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

Prishtina, on 12 May 2021
Ref. no.:RK 1776/21

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DECISION TO REJECT THE REFERRAL

in

Case No. KI49/21

Applicant

Fitim Berisha

Request for 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 Fitim Berisha, residing in Fushë Kosova (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 2 March 2021, the Applicant submitted via electronic mail a letter to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court). the Court).
7. On 3 March 2021, the Court requested from the Applicant, via electronic mail, to clarify whether he wants to register the case in the Court, and if yes, to clarify his Referral by filling in the referral form.
8. On 5 March 2021, the Applicant submitted the Referral to the Court.
9. On 8 March 2021, the Applicant submitted to the Court additional documents.
10. On 22 March 2021, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
11. On 31 March 2021, the Court requested from the Applicant to specify which decision he challenges, to submit it to the Court and to clarify before the Court what rights and freedoms he alleges to have been violated.
12. On 1 April 2021, the Applicant submitted to the Court, via electronic mail, a letter repeating the same arguments he had submitted in his initial Referral.
13. On 12 April 2021, the Applicant submitted to the Court a letter, namely a response of the Hospital University and Clinical Service of Kosovo.

14. On 5 May 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

15. The Applicant alleges before the Court that the issues related to the procedure for establishing custody of his daughter were unfair. Subsequently, the Applicant alleges that starting from the Gynecology Clinic in Prishtina, the Center for Social Work in Fushë Kosova and the Ministry of Labor and Social Welfare - Health Inspectorate, have lost the documentation submitted by the Applicant.
16. Based on the files submitted by the Applicant to the Court, namely based on the response of the Hospital University and Clinical Service of Kosovo, it is noted, among other things, that the latter had replied to the Applicant "*with all instructions to following the procedures related to his request*".
17. The Applicant, despite the requests of the Court to clarify his Referral, did not do so and did not attach any relevant document related to the case.

Applicant's allegations

18. The Applicant has not challenged any specific act of any public authority and has not clarified exactly which fundamental rights and freedoms guaranteed by the Constitution she alleges to have been violated through any act of a public authority.
19. The Applicant essentially alleges before the Court that at the Gynecology Clinic in Prishtina, the Center for Social Work and the Ministry of Labor and Social Welfare - Health Department lost the documentation which proves that the Applicant has the right of custody of his minor daughter A.B.
20. The Applicant in his Referral states "*I feel very disappointed with these institutions damaging me in legal proceedings, that they did not accept these statements in the protocol and archive determined by law in their decision-making*".
21. Finally, the Applicant addresses the Court, stating that: "*I request a severe punishment and compensation which is determined by the Court*".

Admissibility of the Referral

22. 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.
23. 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.”

24. 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”.

25. 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 act of a public authority that may have resulted in violation of his rights and fundamental freedoms.
26. 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.
27. In the circumstances of the present case, the Applicant: a) neither specified the act of public authority he is challenging, and b) 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.

28. 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;

[...]

(h) the supporting documentation and information;

[...].”

29. In this regard, the Court recalls that it received the Referral on 5 March 2021. Considering that the Referral was incomplete, on 31 March 2021, pursuant to paragraph 4 of Article 22 of the Law, the Court requested the Applicant to supplement 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.
30. On 1 April 2021, the Applicant replied with a letter to the Court, repeating the same arguments as in his initial Referral, but did not answer to the requests of the Court, namely did not specify which decision she is challenging and what rights and freedoms protected by the Constitution she alleges to have been violated.
31. 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, [...]”.

32. 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, *Slađana Radojković-Marinković*, Constitutional Court, Decision to Reject the Referral, of 4 December 2017, paragraph 21).
33. 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.
34. Accordingly, the Court, pursuant to Article 113.7 of the Constitution, Articles 47 and 48 of the Law and Rule 35 (5) of the Rules of Procedure, concludes that the Referral is to be rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 47 and 48 of the Law, and in accordance with 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

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi



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