



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

Prishtina, on 31 May 2021
Ref.no.:RK1801/21

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI03/21

Applicant

Rrahim Ramadani

**Constitutional review of Judgment AC-I-15-0211-A0001 of the Appellate
Panel of the Special Chamber of the Supreme Court of Kosovo, of 3
September 2020**

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 Rrahim Ramadani, residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant requests constitutional review of the Judgment [AC-I-15-0211-A0001] of the Appellate Panel of the Special Chambers of the Supreme Court (hereinafter: the Appellate Panel), of 3 September 2020.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decision. The Applicant has not specified what rights and freedoms guaranteed by the Constitution he claims to have been violated by the challenged decision.

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 Court

5. On 8 January 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 18 January 2021, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani (members).
7. On 22 January 2021, the Court notified the Applicant of the registration of the Referral and requested him to submit to the Court i) The Judgment [DHPGJS,C-IV-13-1020] of the Specialized Panel of the Special Chamber of the Supreme Court (hereinafter: the Specialized Panel), of 22 September 2015, and ii) to clarify his Referral before the Court.
8. The Applicant did not respond to the request of the Court.
9. 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

10. The Applicant, in the capacity of Applicant, submits a referral to the Court for the fifth time. He previously filed referrals KI 141/14, KI129/15, KI70/17 and 17/20, which is still being reviewed before the Court. However, in the current Referral KI 03/21, the challenged subject matter is the Judgment [AC-I-15-0211-A0001] of the Appellate Panel, of 3 September 2020, which in the above mentioned referrals was not subject matter.

11. Based on the case files, it follows that the Applicant and Rr.A., on 20 August 2007, addressed to the Privatization Agency of Kosovo (hereinafter: PAK) a request for payment of debt related to their claim for monetary compensation regarding the claim that in 1989, they had made payment for a commodity in the amount of 2,700 Euro to the Socially Owned Enterprise "19 Qershori", based in Podujeva, but they had never received it.
12. On 30 May 2013, the Liquidation Authority of the PAK, through Decision [nr.PRNo28-0243], rejected the request of Rr.A. as invalid.
13. On 26 June 2013, the Applicant and Rr.A. filed a claim with the Specialized Panel against the above mentioned Decision of the Liquidation Authority of the PAK.
14. On 22 September 2015, the Specialized Panel through Judgment [C-Iv-13-1020] rejected the claim reasoning that the above mentioned Decision of the Liquidation Authority of the PAK was fair and lawful and that the debt compensation claimed by the Applicant and Rr.A., based on Article 371 of Law No. 29/1979 on Contracts and Torts, was already statute-barred.
15. On 19 August 2020, the Applicant requested from the Special Chamber of the Supreme Court to request clarification from the PAK about the non-inclusion of the Applicant in the Decision [nr.PRNo28-0243] of the Liquidation Authority of the PAK, of 30 May 2013.
16. On 21 August 2020, the PAK clarified that non-inclusion of the Applicant in the Decision [nr.PRNo28-0243] of the Liquidation Authority of the PAK, of 30 May 2013, was a technical error, and that the above mentioned Decision of the Liquidation Authority of the PAK also refers to the Applicant.
17. On an unspecified date, the Applicant and Rr.A., filed an appeal with the Appellate Panel, against the Judgment [C-Iv-13-1020] of the Specialized Panel, of 22 September 2015.
18. On 3 September 2020, the Appellate Panel, through the Judgment [AC-I-15-0211-A0001] rejected the appeal of the Applicant and Rr.A. and upheld the Judgment [C-Iv-13-1020] of the Specialized Panel, of 22 September 2015, considering it as fair and lawful. The Appellate Panel in its Judgment reasoned that the factual situation was correctly established and that the Applicant had not provided any new evidence to prove that the Applicant had timely addressed the competent authorities for the realization of this right.

Applicant's allegations

19. The Applicant has not specifically clarified before the Court what rights and freedoms guaranteed by the Constitution he claims to have been violated by the challenged decision.
20. The Applicant before the Court states, *"I think that the first violation is that they intentionally are acting to damage poor citizens. Why all institutions should misuse my property. I have only one invoice, I do not know what other evidence*

is required when you pay for a commodity, you document it only with the invoice until you receive your commodity”.

21. The Applicant, lastly, requested from the Court *“to manage to return to me my money that I have paid to the factory “15 qershori” in Podujeva”.*

Admissibility of the Referral

22. The Court first examines whether the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure have been met.

23. In this regard, the Court refers to paragraph 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

“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. The Court further examines whether the Applicant has fulfilled the admissibility requirements, which are further prescribed in the Law. In this regard, the Court first refers to Article 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) 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.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

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”.

Article 49 (Deadlines)

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a Court decision [...].”

25. 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, in addition to specifying the concrete act of the public authority being challenged, the parties also must accurately clarify what rights and freedoms they claim have been violated. In the circumstances of the present case, the Court notes that the Applicant, despite the Court's requests for clarification, has not submitted to the Court the requested documentation, based on which his referral before the Court would adequately clarify the factual circumstances of his case as well as his claims regarding his rights and fundamental freedoms which he claims have been violated.
26. In this context, the Court recalls that it had received the Referral of the Applicant on 8 January 2021. Considering that the Referral was incomplete, pursuant to 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 initially requested from the Applicant to submit to the Court the Judgment [C-IV-13-1020] of the Specialized Panel, of 22 September 2015, and requested from the Applicant to clarify his Referral before the Court. The Applicant did not respond to the request of the Court
27. 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”.

[...]

28. 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 to supplement and clarify his Referral, unsuccessfully.
29. The Court reiterates that the circumstances of the present case relate to a claim of the Applicant for compensation of a debt in the amount of 2.7000 Euros, against N.SH “19 Qershori” where the Applicant alleges that in 1989 he had paid for a commodity and never received it. The Applicant had initially addressed the PAK, which had rejected his claim. He then addressed to the Specialized Panel with a claim against the decision of the PAK and the Specialized Panel had rejected the complaint as ungrounded reasoning that the claim was already statute-barred. After the appeal of the Applicant to the Appellate Panel, the latter rejected the appeal and upheld the Judgment of the Specialized Panel.
30. Only the Judgment [AC-I-15-0211-A0001] of the Appellate Panel, of 3 September 2020, was submitted to the Court, while, despite the request of the Court of 22 January 2021, the other relevant documents were submitted to the Court, including

(i) the Judgment [DHPGJS,C-IV-13-1020] of 22 September 2015 of the Specialized Panel; and (ii) the Applicant has not clarified the Referral before the Court.

31. 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 and claim can be effectively addressed by the Court. In cases where the Applicants do not respond to the Court's requests for clarification and supplementation of the Referral, the Court summarily rejects these Referrals. (See cases of the Court, KI90/20, *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*).
32. Under the circumstances when a referral filed with the Court is incomplete or unclear, despite the Court's requests to the Applicant to supplement or clarify the Referral, the Courts find that the referral of the Applicant does not meet the procedural criteria for further review because it is incomplete and unclear, as set forth in paragraph (5) of Rule 25 of the Rules of Procedure.
33. Therefore, finally, pursuant to 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, 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

Safet Hoxha

Arta Rama-Hajrizi

pje e vërtetuar
Overena kópja
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