



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 20 September 2021

Ref. No.: RK 1847/21

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI118/21

Applicant

Vedat Bahtiri

Constitutional review of unspecified act of the public authority

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Bajram Ljatifi, Deputy President
Selvete Gërxhaliu-Krasniqi, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Vedat Bahtiri, residing in the village of Dobrajë e Madhe, Municipality of Lipjan (hereinafter: the Applicant).

Challenged decision

2. The Applicant does not challenge any concrete act of any public authority.

Subject matter

3. The subject matter of the Referral is the constitutional review of unspecified acts of public authorities.
4. The Applicant has not accurately clarified what fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) he alleges to have been violated by an 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 on the Constitutional Court of the Republic of Kosovo no. 03/L-121 (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

6. On 28 June 2021, the Applicant submitted the Referral to the Court.
7. On 8 July 2021, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Safet Hoxha (presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
8. On 14 July 2021, the Court requested from the Applicant to specify which decision he is challenging, and to submit the same to the Court as well as to clarify before the Court which rights and freedoms he alleges to have been violated.
9. On 23 August 2021, the Applicant submitted to the Court additional documents relating to his case, respectively, the Minutes of the Ministry of Internal Affairs/Regional Police Directorate in Prishtina "On Witness Interview" as well as the data on his bank account.
10. On 10 September 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court to summarily reject the Referral.

Summary of case facts

11. On the basis of the case file it results that on 1 March 2016, the Ministry of Finance-Kosovo Customs (hereinafter: Kosovo Customs), by Decision [08.1.2.2015-268/2] had ascertained that the Applicant is responsible for committing a customs offence under Article 277 in conjunction with Article 276

of the Customs and Excise Code. *[Court's Note: All Decisions enclosed by the Applicant to the Referral are incomplete and of a very poor visibility/resolution]*

12. On 16 November 2016, the Basic Court in Prishtina- Branch in Lipjan, through Decision [E-37910] found the Applicant guilty of having committed the customs minor offence under Article 277 in conjunction with Article 276 of the Customs and Excise Code, and obliged the Applicant to pay the fine in the amount of 1,100.00 Euros to the Kosovo Customs bank account.
13. Further, on an unspecified date, Kosovo Customs submitted a Proposal for Enforcement to the Private Enforcement Agent, against the Applicant relating to the amount of 1,100 Euros in the name of the customs minor offence.

Applicant's allegations

14. The Applicant has not challenged any concrete act of any public authority and has not clarified exactly what fundamental rights and freedoms guaranteed by the Constitution he claims to have been violated by any act of any public authority.
15. The Applicant in his Referral states that *"I am faced with injustice of the Court, Customs/Inspection and I am a civilian invalid of the Kosovo war, I receive a pension of 136.25 Euros per month and the Customs have punished me with enforcement and my bank account has been several times blocked by the Private Enforcement Agent [AB] who has forced me to take a loan and has managed to successfully do it [...] I have continuously tried to get a lawyer for this case but no one took over my case me because they are aware that they can't go against the Kosovo Customs."*
16. Finally, the Applicant addresses the Court by stating: *"1. I ask for justice and the compensation of damages and indemnification, 2. I demand respect for the constitutionality of the Republic of Kosovo, 3. I demand respect for my contribution because my contribution has brought freedom to this state [...]."*

Admissibility of the Referral

17. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
18. In this respect, 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.”

19. Moreover, the Court also refers to the admissibility criteria, as provided by Law. In this respect, the Court first refers to Articles 47 [Individual Requests], 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.”

20. In assessing whether the Applicant fulfils the constitutional and legal criteria for constitutional review of his Referral, the Court recalls that on the basis of Article 113 of the Constitution, individuals are authorized to refer violations by “public authorities” of their fundamental rights and freedoms guaranteed by the Constitution, after having exhausted the legal remedies provided by law. The same criterion is also defined 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 a violation of his fundamental rights and freedoms.
21. Moreover, Article 48 of the Law specifically obliges the applicants to accurately clarify the specific act of the public authority which they are challenging. The same article also obliges the applicants to clarify exactly what fundamental rights and freedoms they claim to have been violated.
22. In the circumstances of the present case, the Applicant: a) has neither specified the act of the public authority which he is challenging and b) nor has he accurately clarified what rights and freedoms he claims to have been violated by this act. Consequently, the Applicant's Referral does not meet the admissibility criteria set out in the Constitution and the Law.
23. In such cases, of incomplete claims, which as such result in non-fulfilment of the constitutional and legal criteria of admissibility, the Law and the Rules of Procedure determine the procedure to be followed by the Court in order for the Applicant to given 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 stipulate:

Article 22
[Processing Referrals]

“[...]

4. If the referral [...] is not [...] or 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;

[...]

24. In this respect, the Court recalls that it had received the Applicant's Referral on 28 June 2021. Taking into consideration that the Referral was incomplete, on 14 July 2021, pursuant to paragraph 4 of Article 22 of the Law, the Court requested from the Applicant to supplement his Referral, by: a) specifying the acts of the public authorities which he is challenging; b) accurately clarifying his allegations for violation of fundamental rights and freedoms guaranteed by the Constitution; and c) submitting the copies of documents and other information supporting his claims.
25. The Applicant failed to respond to the specific requests of the Court for clarification, but on 23 August 2021 he submitted to the Court additional documents, respectively the Minutes of the Ministry of Internal Affairs/Regional Police Directorate in Prishtina “On Witness Interview” as well as the data on his bank account.
26. In this respect, and taking into account that the Applicant's Referral as submitted to the Court does not fulfil the admissibility criteria established in the Constitution and the Law, and also that despite requests by the Court to supplement or clarify his Referral, the Applicant has failed to supplement or clarify his Referral, the Court may summarily reject the Referral based upon its Rules of Procedure. In this regard, the Court refers to Rule 35 of the Rules of Procedure, which provides 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 [...].”

27. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on the applicants, who have a direct interest to have their claims and allegations effectively addressed by the Court. In cases when the applicants do not respond to the requests of the Court for clarification and supplementation of the Referral, the Court summarily rejects these referrals as unclear and incomplete, and consequently does not examine the applicant's allegations. (See, the case KI48/17, *Sladana Radojković-Marinković*, Constitutional Court, Decision to Reject the Referral, of 4 December 2017, paragraph 21).
28. Therefore, the Court considers that the Applicant's Referral does not meet the procedural criteria for further review, due to its non-completion with supporting documentation, as requested by the Court, pursuant to Article 22.4 of the Law and Rule 32 (2) (h) of the Rules of Procedure.
29. Therefore, pursuant to Article 113.7 of the Constitution, Articles 47 and 48 of the Law, and Rule 35 (5) of the Rules of Procedure, the Court concludes that the Applicant's Referral must be summarily rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to 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 10 September 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

Radomir Laban

**Kopje e vërtetuar
Overena kopija
Certified copy**

Gresa Caka-Nimani

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