



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 1 June 2017
Ref. no.:RK 1071/17

DECISION TO REJECT THE REFERRAL

in

Case No. KI109/16

Applicant

Lumni Limaj

**Request for constitutional review of an unspecified decision or act of a
public authority**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Lumni Limaj, with residence in Fushë-Kosovë (hereinafter: the Applicant).

Challenged Decision

2. The Applicant does not challenge any particular decision or act of a public authority, although he refers in general to acts of the Centre for Social Work in Prizren, the Public Prosecution Office in Prizren, and the Basic Court in Prizren by which he alleges he has not been allowed access to his biological daughter.

Subject Matter

3. The subject matter is the constitutional review of the unspecified acts of the above-mentioned public authorities. The Applicant does not specify any rights or freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) that he considers to have been violated.

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 29 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 30 August 2016 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 September 2016 the President of the Court by Decision, GJR. KI109/16, appointed Judge Ivan Čukalović as Judge Rapporteur and by Decision, KSH. KI109/16 appointed the Review Panel composed of Judges, Altay Suroy (presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.
7. On 11 October 2016 the Court informed the Applicant of the registration of the Referral. At the same time, the Court requested the Applicant to clarify the precise decision or act of a public authority which he is challenging, to provide a copy of the challenged decision or act, to specify the alleged violations of his rights, and to submit all information and other relevant documents that support the Referral. In addition, the Applicant was asked to provide a power of attorney for the person listed in the Referral as his representative. The Applicant was asked to provide this information within 15 days of receipt of the Court's letter.
8. The Court did not receive any response from the Applicant.
9. On 03 May 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court to reject the Referral.

Summary of facts

10. The Applicant claims that he is the biological father of a child born in 2005. His name does not appear on the birth certificate.

11. The Applicant states that he is trying to gain access and/or custody of this child.
12. The Applicant claims that he approached the Centre for Social Work in Fushë-Kosovë with his request for access and/or custody of the child.
13. Apparently, the Applicant initiated contested proceedings in the Basic Court of Prizren, registered under number C.no.50/16-02.
14. On 3 March 2016, the Regional Office for Free Legal Aid in Prizren, decided to grant free legal aid to the Applicant for legal representation in case C.no.50/16-02.
15. On 3 March 2016, the Regional Office for Free Legal Aid in Prizren requested the Basic Court in Prizren, Department for General Affairs, to waive the requirement to pay court fees in the Applicant's case C.no.50/16-02, because he was a beneficiary of free legal aid.
16. The Applicant claims that on 12 May 2016, the Prosecution of Prizren made a decision with respect to the Applicant and/or his claims.
17. The Applicant claims that the last decision in his case was made by the Centre for Social Work in Prizren.

Applicant's allegations

18. The Applicant alleges that from the beginning of his attempts to gain access and/or custody of his alleged biological child all public authorities involved have avoided or obstructed his claim.
19. The Applicant requests the resolution of his request for access and/or custody of his alleged biological child.

Assessment of the Referral

20. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure.
21. In this respect, the Court refers to Article 113.1 and 113.7 of the Constitution, which provide that,

*"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."*
22. The Court further refers to Article 48 of the Law, which specifies that,

“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.”

23. In addition, the Court refers to Rule 29 [Filing of referrals and replies] of the Rules of Procedure, which provides, *inter alia*, that,

“(2) The referral shall also include:

[...]

(c) a power of attorney for the representative;

[...]

(f) a succinct description of the facts;

(g) the procedural and substantive justification of the referral; and

(h) the supporting documentation and information.”

24. In the regard, the Court notes that the Applicant has not fulfilled any of the criteria required by the above-mentioned provisions of the Constitution, the Law and the Rules of Procedure.
25. Specifically, the Court notes that the Applicant has not provided any information regarding the concrete decision or act of a public authority that has allegedly violated his rights. The Applicant has also not indicated which of his rights guaranteed by the Constitution have allegedly been violated by a public authority.
26. Furthermore, the Applicant has not: (a) provided a valid power of attorney for his representative; (b) submitted any facts or data concerning his case; (c) presented any procedural or substantive justification of his referral; (d) submitted any supporting information or documentation; and (e) exhausted any legal remedy provided by law.
27. In light of these facts, the Court refers to Rule 32 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provides that,
- “The Court may 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, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous”.*
28. The Court recalls that on 11 October 2016, the Applicant was requested to provide precise information regarding his allegations and the decisions or acts of public authorities which he claims have violated his rights. In addition, the Applicant was requested to provide a power of attorney for his representative, and to provide documents in support of his referral.
29. The Court notes that the Applicant has not responded to this request.
30. In these circumstances, the Court concludes that the present Referral is incomplete and is not clearly stated, despite requests by the Court to the Applicant to supplement and clarify the Referral. Therefore, the referral cannot

be taken for review, as it does not meet any of the procedural requirements stipulated by the Constitution, the Law and the Rules of Procedure.

31. In conclusion, the Court finds that the Referral is to be summarily rejected in accordance with Rule 32 (5) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 116 of the Constitution and Rule 32 (5) of the Rules of Procedure, on 03 May 2017, 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; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Ivan Čukalović

President of the Constitutional Court

Ata Rama-Hajrizi

