



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

Prishtina, 5 June 2017
Ref. No.:RK 1082/17

DECISION TO REJECT THE REFERRAL

in

Case No. KI144/16

Applicant

Sali Gerqina

Constitutional review of the challenged decisions of regular courts

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 Sali Gerqina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges decisions of regular courts (three court instances), but he has not attached those decisions to the Referral.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged decisions, which allegedly violated the rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 29 [Right to Liberty and Security], 30 [Rights of the Accused], 31 [Right to Fair and Impartial Trial] and 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 of the European Convention on Human Rights (hereinafter: the Convention).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 12 December 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 16 January 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Arta Rama-Hajrizi and Selvete Gërxhaliu-Krasniqi.
7. On 8 February 2017, the Court notified the Applicant about the registration of the Referral and requested him to supplement the Referral with the supporting documentation.
8. On 13 February 2017, the Post of Kosovo informed the Court that the address of the Applicant (Str. "Aleksandër Mojsiu", No. 20) is unknown.
9. On 23 March 2017, the Court attempted to send again the letter of 8 February 2017 to the Applicant. However, the attempt was unsuccessful because the Post of Kosovo, on 27 March 2017, informed the Court that the address of the Applicant was unknown.
10. On 3 May 2017, the Review Panel reviewed the report of Judge Rapporteur and recommended to the Court to summarily reject the Referral.

Brief summary of facts

11. The Applicant merely mentions some decisions of the regular courts, by which he alleges to have been violated his rights guaranteed by the Constitution and international conventions, but he has not attached those decisions to the Referral.

Applicant's allegations

12. The Applicant alleges that the regular courts violated his rights guaranteed by the Constitution and the Convention because they wrongly qualified the nature of the criminal offense, due to the fact that under Article 374.1 in conjunction with Article 22 paragraph (1) item (75) of CPCRK, the criminal offense is considered a serious crime and it should have been dealt with by the Serious Crimes Prosecutor and by the pre-trial judge of the Serious Crimes Department of the Basic Court in Gjakova and not by the general prosecutor and a pre-trial judge of the General Department of that court. This violation according to the Applicant was not noticed nor even assessed by the Court of Appeal and by the Supreme Court after the exercise of legal remedies.

Admissibility of the Referral

13. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
14. Therefore, the Court refers to paragraph 4 of Article 22 of the Law: *"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 (...)."*
15. In addition, the Court refers to Rule 29 item (2) [Filing of Referrals and Replies] and Rule 32 item (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provide:

29 (2) "The referral shall also include::

[...]

(h) the supporting documentation and information.

[...]

32 (5) The Court may summarily reject a referral if the referral is incomplete or not clearly stated (...)."

16. The Court recalls that the Applicant alleges that the regular courts violated his rights guaranteed by Articles 22, 29, 30, 31 and 53 of the Constitution, and Article 6 of the Convention due to wrong qualification of the criminal offense.
17. Pursuant to the abovementioned provisions, the Court cannot take into account the Applicant's allegations, as the Referral is incomplete because the

challenged court decisions have not been attached to it (see: Decision to reject the Referral of the Constitutional Court, in Case KIO3/15, Applicant *Hasan Beqiri*, of 13 May 2015, paragraphs 14, 15, 17, 19, 20 and 21, and Case KIO7/16, Applicant *Rifat Abdullahi*, 14 July 2016, paragraph 22).

18. The Court, through regular post service, tried twice to communicate with the Applicant for the purpose of completing the Referral with the supporting documentation, however, the communication was impossible since the address of the Applicant, as stated in the case file, was unknown.
19. The Court notes that the Applicant has not provided another address or contact number as an alternative to be contacted. In this context, the Court notes that the burden of liability for the failure to complete the Referral with supporting documentation falls on the Applicant.
20. In sum, the Court considers that the Applicant's Referral does not meet the formal requirements for further consideration, due to non-completion of the Referral with the supporting documentation.
21. Therefore, in accordance with Article 22.4 of the Law, Rule 29 (2) (h) and Rule 32 (5) of the Rules of Procedure, the Court concludes that the Applicant's Referral is to be rejected as inadmissible.

FOR THESE REASONS


The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 22.4 of the Law and Rules 29 (2) (h) and 32 (5) of the Rules of Procedure, on 3 May 2017, unanimously

DECIDES


- I. TO summarily 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. This Decision is effective immediately;

Judge Rapporteur

President of the Constitutional Court



Altay Suroy



Arta Rama-Hajrizi