



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

---

Prishtina, 26 May 2014  
Ref.no.:VTK 631/14

## **DECISION TO STRIKE OUT THE REFERRAL**

in

**Case No. KI223/13**

Applicant

**Xhafer Murati**

**Constitutional review of an unspecified decision  
of the public authority**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge and  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Applicant is Mr. Xhafer Murati from Podujeva.

## **Challenged decision**

2. The Applicant does not specify what decision of the public authority he challenges, although he alleges that his rights, guaranteed by the law and the Constitution, have been violated.

## **Subject matter**

3. The subject matter is the alleged exercising of the right to 20% share from the privatization of SOE „Ramiz Sadiku“ (hereinafter: SOE „Ramiz Sadiku“). The Applicant does not specify the articles of the Constitution that have been violated.

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 56 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 10 December 2013, the Applicant filed his Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 13 January 2014, the President of the Court, by Decision no. GJR. KI223/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Decision no. KSH. KI223/13, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Almiro Rodrigues.
7. On 27 January 2014, the Court by letter [ref. no.: 118/14], notified the Applicant of the registration of Referral and requested from him to submit to the Constitutional Court the relevant decisions of the public authorities.
8. No response has been received from the Applicant.
9. On 2 April 2014, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on inadmissibility of the Referral.

## **Summary of facts**

10. On 10 December 2013, the Applicant submitted to the Court the Referral, by using „the Referral Form for filing the Referral“. As to the description of facts, he only stated that „*he wants to be paid 20% share from the privatization of SOE „Ramiz Sadiku“*“. Regarding justification of Referral and alleged breaches of the Constitution, he only stated: „ *I am not certain on the accuracy of the*

*Constitutional Articles, however I believe my right to work has been violated, because the worker's rights are guaranteed by the Constitution and the Law.*

Finally, the Applicant in statement of the relief sought wrote only: *"I want to realize my right on 20% that I am entitled to as a former employee of the company "Ramiz Sadiku."*

11. The Applicant attached: Decision on establishment of employment relationship, Insurance registration, Decision on personal income, Decision of enterprise „Ramiz Sadiku“and Certificate on regulation of military obligation.
12. On 27 January 2014, the Court requested from the Applicant to complete and clarify the Referral. In the notification, the Applicant was notified that if he does not submit required information and documents, the Court will not be able to consider the Referral.

### **Applicant's allegations**

13. The Applicant alleges that:

*"I seek 20% of the payment that company Ramiz Sadiku did not pay to me under the pretext that the time limit to submit the documents has expired. However in my opinion the time limit was too short and I was abroad and could not submit the documents."*

14. The Applicant further alleges that:

*"I am not certain on the accuracy of the Constitutional Articles, however I believe my right to work has been violated, because the worker's rights are guaranteed by the Constitution and the Law".*

15. The Applicant requests from the Court:

*"I want to realize my right on 20% that I am entitled to as a former employee of company "Ramiz Sadiku" because my former colleagues have received it but I was not even taken into consideration for the 20%. Therefore with a lot of understanding I request that my right is also realized and my referral is approved by me."*

### **Admissibility of the Referral**

16. The Court assesses beforehand whether the Applicant has met all the admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.
17. In this respect, the Court refers to Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution, which provides:

*"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."*

18. The Court also refers to Article 48 of the Law, which provides:

*“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.”*

19. The Court also takes into account Rule 29 (2) [Filing of Referrals and Replies] of the Rules of Procedure, which provides that:

*“(…)*

*(2) The referral shall also include: (a) the name and address of the party filing the referral; (b) the name and address of representative for service, if any; (c) a power of Attorney for representative, if any; (d) the name and address for service of the opposing party or parties, if known; (e) a statement of the relief sought; (f) a succinct description of the facts; (g) the procedural and substantive justification of the referral; and (h) the supporting documentation and information.*

*(3) Copies of any relevant documents submitted in support of the referral shall be attached to the referral when filed. If only parts of a document are relevant, only the relevant parts are necessary to be attached.”*

20. In addition, the Court takes into account Rule 32 (4) of the Rules of Procedure, which provides:

*„The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.“*

21. The Court notes that the Applicant has failed to provide and submit any information and documents, showing what rights and freedoms were violated by what public authority, what was the procedure of the exhaustion of legal remedies and what are the main allegations and on which basis they are substantiated.

22. The Court notes that this so-called „Referral“ appears in the Referral Form approved by the Court, for the complaints against violations of the constitutionally protected rights by public authorities. However, the Referral does not show the respective information and relevant evidence, in order that the Court would assess the admissibility requirements.

23. The admissibility requirements are provided in the Constitution and further specified in the Law and the Rules of Procedure, as stated above.

24. However, the Applicant has not specified what rights and freedoms have been violated and what act of public authority he challenges. In fact, he has not either provided the information or explanation of violations of the constitutionally guaranteed rights, nor the act of the public authority, which is the subject of review.

25. Furthermore, the Applicant has neither substantiated the case, in which he considers himself as a victim of violation of the Constitution (See *Scordino v.*

*Italy* (no. 1) [GC], § 179.), nor he has attached necessary supplementing information and documents.

26. In fact, the proceedings before the Constitutional Court are adversarial in nature. It is therefore for the Applicant to substantiate his factual arguments (by providing the Court with the necessary factual evidence) and also legal arguments (explaining why and how, in his view, the constitutional provisions are breached). The Court is responsible for establishing the facts; it is up to the Applicant to provide active assistance by supplying it with necessary supporting information and relevant documents.
27. Bearing all the foregoing in mind, it is not up to the Court to build the case on behalf of the Applicant. On the contrary, it is up to the Applicant, who should address the Court in accordance with all requirements on admissibility of the Referral.
28. In addition, the Applicant is under the obligation to exhaust all legal remedies provided by law, as stipulated by Article 113.7. The purpose of the exhaustion rule is, in the case, allowing the public authorities, including the courts, the opportunity of preventing or rectifying an alleged violation of the Constitution. The exhaustion rule is operatively intertwined with the subsidiary character of the constitutional justice procedural framework (See, *Selmouni v. France* [GC], § 74; *Kudla v. Poland* [GC], § 152; *Andrasik and Others v. Slovakia* (dec.).
29. Thus the principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, either administrative or judicial, in order to prevent the violation of the constitution or, if any, to remedy such violation of a fundamental right.
30. In the case at issue, the Applicant has not shown that he has exhausted all legal remedies, provided by the regular legal system.
31. The Court recalls that it has submitted a letter to the Applicant, with a note that that if he does not provide the requested information and documents, the Court will not be able to consider the Referral. The Court further stated that the Applicant did not respond to the letter.
32. In sum, the Court considers that this "Referral" does not pass the minimal threshold to be considered as a Referral, by which the case above should be referred. In addition, the Court further finds that it is legitimate to assume that the Applicant is no longer interested in further processing of his Referral.
33. In addition, the way „the Referral“ has been filed could be seen, in a strict approach, as an abuse of the right to complain. The Constitutional Court is bound by Article 53 [Interpretation of Human Rights Provisions] of the Constitution which establishes that "*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.*"
34. In fact, the European Court of Human Rights established that "*any conduct of an applicant that is manifestly contrary to the purpose of the right of*



*individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application". (See *Mirolubovs and Others v. Latvia*\*, §§ 62 and 65).*

35. However, the Court considers that, at this stage, it is not advisable to adopt such a strict approach; however, it is important for the Applicant to be aware of, as it looks like the Applicant misapprehended the role of the Constitutional Court and the nature of the constitutional justice legal working frame as established by the Constitution, the Law and the Rules of Procedure.
36. In reviewing this referral, the Court came to the conclusion that upon receipt of documents in these kinds of referrals, where the Applicant is obviously legally ignorant party, the legal advisors should instruct the party to professional assistance in filling in the referral form.
37. In sum, the Court concludes that there is no case or dispute that should be considered in the abovementioned "Referral" and, accordingly, there is no reason for further proceedings in accordance with Rule 32 (4) of the Rules and the Referral should be declared inadmissible.

### **FOR THESE REASONS**

Pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 32 (4) of the Rules of Procedure, the Constitutional Court of Kosovo, in its session held on 2 April 2014, unanimously:

### **DECIDES**

- I. TO STRIKE OUT 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**



Kadri Kryeziu



Prof. Dr. Enver Hasani