



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 11 June 2018
Ref. No.: RK 1273/18

DECISION TO REJECT THE REFERRAL

in

Case No. KI51/18

Applicant

Sahit Musa

as alleged representative of V.Z., P.Z., A.Z., A.Z., Sh. Z. and Xh. Z.

**Constitutional review of
Notification KMLC.no. 60/14 of the State Prosecutor,
of 22 July 2014**

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. Sahit Musa, a lawyer from Viti (hereinafter, the “representative”), claiming to act on behalf of V.Z., P.Z., A.Z., A.Z., Sh. Z. and Xh. Z.

2. However, the “representative” did not submit any power of attorney, only referring that V.Z., P.Z., A.Z., A.Z., Sh. Z. and Xh. Z., have authorized him to file a Referral before the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).

Challenged decision

3. The challenged decision is the Notification KMLC.no. 60/14 of the State Prosecutor, dated 22 July 2014.

Subject matter

4. The subject matter is the request of the “representative” that the Court assesses the constitutionality of the challenged decision.

Legal basis

5. The Referral would be based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the 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 Court

6. On 4 April 2018, the “representative” submitted by mail the Referral to the Court, allegedly on behalf of V.Z., P.Z., A.Z., A.Z., Sh. Z. and Xh. Z.. He submitted this Referral with a power of attorney dated of 10 January 2010 and signed only by V.Z..
7. On 6 April 2018, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Bekim Sejdiu.
8. On 13 April 2018, the Court informed the “representative” of the registration of the Referral and requested him to complete the Referral Form and to submit and update a power of attorney, within 15 (fifteen) days.
9. To this date, the “representative” did not submit the requested information and documents. The receipt received from the postal services shows that the “representative” received the Court’s notification on 16 April 2018.
10. On 30 May 2018, 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 facts

11. The Court does not refer to the facts of this case since the Referral was submitted by a unauthorized representative who has not proved to have the

power of attorney to submit this Referral on behalf of V.Z., P.Z., A.Z., A.Z., Sh. Z. and Xh. Z..

Applicant's allegations

12. The Court does not refer either to the allegations presumed to be of V.Z., P.Z., A.Z., A.Z., Sh. Z. and Xh. Z. as the Referral was filed by an alleged representative without a power of attorney.

Admissibility of the Referral

13. The Court first examines whether the Referral meets the admissibility requirements established in the Constitution, and as further provided in the Law and foreseen in the Rules of Procedure.

14. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] paragraph 7 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.

15. The Court also refers to Article 21 [Representation] of the Law, which provides that:

During the process in the Constitutional Court, parties are either represented in person or by a person authorized by the party.

16. In addition, the Court refers to Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure, which stipulates:

[...]

(2) The Referral shall also include:

[...] (c) a power of Attorney for representative; [...].

(3) If a party is represented, the representative shall submit with the Referral a valid power of attorney for the Referral to the Court.

17. The Court recalls that the Referral was submitted by an attorney who assumes to be authorized to represent V.Z., P.Z., A.Z., A.Z., Sh. Z. and Xh. Z..
18. The Court also recalls that it requested the unauthorized representative to complete and submit the Referral Form, and also to submit a power of attorney.
19. However, the unauthorized representative did not submit the requested documents.

20. In that respect, the Court further refers to Rule 32 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which foresees:

[...] (5) 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. [...].

21. The Court considers that the unauthorized representative did not submit the documents as requested by the Court.
22. Therefore, the Court concludes that the Referral is incomplete and not clearly stated.
23. Moreover, the Court notes that the unauthorized representative challenges the Notification KMLC.no. 60/14 of the State Prosecutor dated 22 July 2014 and filed the Referral on 4 April 2018, meaning more than three years later.
24. In this regard, the Court considers that the Referral was not submitted within the deadline of four months prescribed by Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.
25. In sum, 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, in accordance with Article 113 (7) of the Constitution, Article 20 of the Law, and Rules 29 (2) and (3), and 32 (5) of the Rules of Procedure, on 30 May 2018, unanimously

DECIDES

- I. TO SUMMARILY REJECT the Referral;
- II. TO NOTIFY this Decision to the unauthorized representative;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Almiro Rodrigues



President of the Constitutional Court



Arta Rama-Hajrizi