



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

Prishtina, on 31 December 2018
Ref. No.:RK 1313/18

DECISION TO REJECT THE REFERRAL

in

Case No. KI16/18

Applicant

Sahit Musa
as alleged representative of K.N.

Constitutional review of Judgment PA1. No. 313/16 of the Court of Appeals of 10 May 2016

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral was submitted by Sahit Musa, a lawyer from Viti, who alleges to be the representative of K. N. (hereinafter: the alleged representative).

Challenged decision

2. The alleged representative challenges Judgment PA1. No. 313/16 of the Court of Appeals of 10 May 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which according to the allegations of the alleged representative, has violated the rights of K.N. protected by the Constitution.

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals], Article 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (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).
5. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Court

6. On 6 February 2018, the alleged representative submitted the Referral to the Court.
7. On 8 February 2018, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges: Ivan Čukalović (Presiding), Arta Rama-Hajrizi and Selvete Gërzhaliu-Krasniqi.
8. On 12 February 2018, the Court notified the alleged representative about the registration of the Referral and requested him to supplement the Referral with additional information. A copy of the Referral, pursuant to Article 22.4, was sent to the Court of Appeals.
9. On 16 June 2018, the mandate of judges: Almiro Rodrigues and Snezhana Botusharova ended. On 26 June 2018, the mandate of judges Altay Suroy and Ivan Čukalović ended.
10. On 9 August 2018, the President of the Republic of Kosovo appointed new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.

11. On 22 August 2018, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur.
12. On 16 October 2018, the President of the Court appointed the new Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
13. On 22 November 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court to summarily reject the Referral.

Summary of facts

14. The Court does not refer to the facts of this case, as the Referral was submitted by an alleged representative who did not prove to have the power of attorney to file this Referral on behalf of K.N.

Applicant's allegations

15. The Court also does not refer to the claims allegedly to be of K. N., as the Referral was submitted by an alleged representative without a valid power of attorney.

Admissibility of the Referral

16. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and as further specified in the Law and the Rules of Procedure.
17. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] paragraphs 1 and 7 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.

[...]”.

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

“During the process in the Constitutional Court, parties are either represented in person or by a person authorized by the party”.
19. In addition, the Court also refers to Rule 32 [Filing of Referrals and Replies], paragraphs (2, c) and (3) of the Rules of Procedure, which establish:

[...]

“(2) The referral shall also include:

[...]

(c) a power of attorney for the 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”.

20. The Court recalls that the Referral was submitted by a lawyer who claims to be authorized to represent K. N.
21. The Court also recalls that it requested from the alleged representative to complete the referral form and to submit the relevant valid power of attorney.
22. However, the alleged representative did not submit the requested information and documents.
23. In this respect, the Court further refers to Rule 35 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which foresees:

[...]

“(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, if the referral is repetitive of a previous referral decided by the Court, or if the referral is frivolous.”

[...]

24. The Court considers that the alleged representative did not provide information and did not submit the documents as requested by the Court. Therefore, the Court concludes that the Referral is incomplete.
25. In sum, the Court concludes that the Referral is to be summarily rejected in accordance with Rule 35 (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 Rule 35 (5) of the Rules of Procedure, on 22 November 2018, 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

Safet Hoxha

Arta Rama-Hajrizi



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