



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

Prishtina, on 24 June 2019  
Ref. no.: RK 1374/19

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. KI203/18**

Applicant

**Afrim Salihu**

**as an alleged representative of L. K.**

**Constitutional review of Decision AC-I-18-0022 of the Special Chamber  
of the Supreme Court on Privatization Agency of Kosovo Related Matters  
of 22 February 2018**

### **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 Afrim Salihu, a lawyer from Prishtina, who claims to be an alleged representative of L. K. (hereinafter: the alleged representative).

## **Challenged decision**

2. The alleged representative challenges Decision [AC-I-18-0022] of 22 February 2018 of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Decision, which, according to the allegations of the alleged representative, violates the fundamental rights and freedoms of L.K. guaranteed 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, Articles 22 [Processing Referrals] and 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 of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 26 December 2018, the alleged representative submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 8 January 2019, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel, composed of Judges: Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
7. On 16 January 2019, the Court notified the alleged representative about the registration of the Referral and based on Article 21 (Representation) of the Law and Rule 32 of the Rules of Procedure, requested him to submit to the Court the power of attorney for representation in the proceedings before the Court and requested him to complete the referral form.
8. On 29 January 2019, the letter submitted to the alleged representative was returned to the Court from the postal service, as the latter was not found at the address he had previously left to the Court.
9. On 28 February 2019, the Court by electronic mail resent the letter to the alleged representative and requested him to submit to the Court the power of attorney for representation in the proceedings before the Court and to complete the referral form.
10. On 6 March 2019, the alleged representative submitted to the Court by e-mail the referral form, but not the power of attorney for representation requested by the Court.

11. On 27 May 2019, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court to summarily reject the Referral.

### **Summary of facts**

12. The Court does not refer to the facts of this case, as the Referral was filed by an alleged representative who did not prove to have a power of attorney to file the Referral with the Court on behalf of L. K.

### **Applicant's allegations**

13. Since the Referral was submitted by an alleged representative who, despite the requests of the Court, did not submit a valid power of attorney to the Court, the latter would not refer to the allegations allegedly belonging to L.K. in the absence of a formal power of attorney to do so.

### **Admissibility of the Referral**

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

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

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

17. In addition, the Court refers to Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure, which establishes:

*“[...]”*

*(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”.*

18. In this regard, the Court recalls that the Referral was submitted by a lawyer who claims to be authorized to represent L.K. before the Court and who, despite the requests of the Court of 16 January 2019 and 28 February 2019, did not submit to the Court a power of attorney which would prove that the Applicant is authorized by L.K. to represent the latter before the Court.
19. Failure to submit a valid power of attorney to the Court makes it impossible for the Court to review a Referral pursuant to Article 21 of the Law and Rule 32 of the Rules of Procedure.
20. In the light of these facts, the Court also refers to Rule 35 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provides:

*“[...] (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. [...]”.*
21. In this respect, the Court concludes that the Referral is incomplete and is not clarified because the Applicant did not submit to the Court a valid power of attorney for representation of the party which he claims to represent before the Court. (See, cases of the Court No. KI23/18, Applicant, *Ismet Kërçagu*, as alleged representative of A. K., M. K., B. K., F. K. and A. K, Decision to reject the Referral of 7 February 2019, No. KI16/18, Applicant, *Sahit Musa*, as alleged representative of K.N., Decision to reject the Referral of 31 December 2018; and Case No. KI30/18, Applicant, *Sahit Musa*, as alleged representative of N. H., XH. H. and S. H., Decision to reject the Referral of 11 June 2018).
22. Therefore, based on Rule 35 (5) of the Rules of Procedure, the Court finds that the Applicant's Referral is to be summarily rejected.

## FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 22.4 and 47.1 of the Law and Rule 35 (5) of the Rules of Procedure, on 27 May 2019, unanimously

## DECIDES

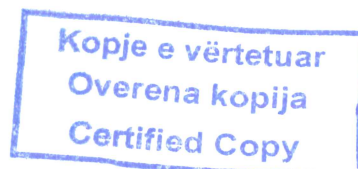
- I. TO REJECT the Referral;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately

**Judge Rapporteur**

**President of the Constitutional Court**

Gresa Caka-Nimani

Arta Rama-Hajrizi



*This translation is unofficial and serves for informational purposes only.*