



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

Prishtina, on 23 March 2020
Ref. no.:RK 1534/20

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DECISION TO REJECT THE REFERRAL

in

Case No. KI205/19

Applicant

Sahit Musa

as the alleged representative of J.K.

**Constitutional review of Decision Rev.no.197/2019 of the Supreme Court
of Kosovo, of 11 July 2019**

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 Vitia, who allegedly is the representative of J.K. (hereinafter: the alleged representative).

Challenged decision

2. The alleged representative challenges the Decision [Rev.no.197 / 2019] of the Supreme Court of the Republic of Kosovo, of 11 July 2019.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which as alleged by the alleged representative has violated the constitutionally protected rights and freedoms of J.K.

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], 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03 / L-121 (hereinafter: the Law), as well as Rule 32 [Filing of Referrals and Replies] 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 18 November 2019, the alleged representative submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 26 November 2019, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
7. On 19 December 2019, the Court notified the alleged representative about the registration of the Referral and pursuant to Article 21 [Representation] of the Law, requested from him to submit to the Court the power of attorney in the proceedings before the Court as well as requested from him to fill out the Referral form.
8. On 9 January 2020, the alleged representative submitted to the Court the Referral Form and the decisions of the Regular Courts, but not the power of attorney for representation requested by the Court.
9. On 12 March 2020, 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

10. The Court does not refer to the facts of this case since the Referral was submitted by an alleged representative who did not prove to have the power of attorney for representation to file this Referral with the Court on behalf of J.H.

Applicant's allegations

11. Given that the Referral was submitted by an alleged representative who, despite the Court's requests, failed to submit a valid power of attorney before the Court, the Court will not refer to the allegations that allegedly pertain to J.K. in the absence of an official power of attorney to do so.

Admissibility of the Referral

12. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and Rules of Procedure.

13. 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”.

14. 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”.

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

“[...]

(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.”

16. In this respect, the Court recalls that the Referral was submitted by a lawyer who claims to be authorized to represent J.K. in the Court and who, despite the Court's request of 19 December 2019, failed to submit to the Court the power of attorney which would have proved that the Applicant was authorized by J.K. to represent him before the Court.
17. Failure to submit a valid power of attorney to the Court precludes the Court from considering a referral pursuant to Article 21 of the Law and Rule 32 of the Rules of Procedure.

18. In 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. [...]”

19. In this respect, the Court concludes that the Referral is incomplete and not clarified because the Applicant failed to submit to the Court the valid power of attorney to represent the party he claims to represent before the Court. (see, the Constitutional Court Case No. KI23/18, Applicant *Ismet Kërçagu*, as alleged representative of the *A.K., M.K., B.K., F.K. and A.K.*, Decision to Reject the Referral of 7 February 2019, see also Case No. KI16/18, Applicant, *Sahit Musa*, as alleged representative of *K.N.*, Decision to Reject the Referral of 31 December 2018, 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, Case No. KI51/18, Applicant, *Sahit Musa*, as alleged representative of *V.Z., P.Z., A.Z., S. Z. and XH. Z.*, Decision to Reject the Referral, of June 11, 2018).
20. Consequently, the Court, pursuant to Rule 35 (5) of the Rules of Procedure, ascertains that the claim of the alleged representative is summarily rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to 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 12 March 2020, unanimously

DECIDES

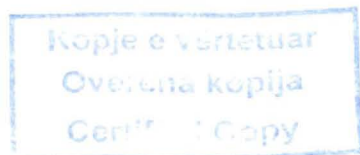
- I. TO REJECT the Referral;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Safet Hoxha

Arta Rama-Hajrizi



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