



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

Prishtina, on 31 March 2020
Ref. no.:RK 1540/20

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DECISION TO REJECT THE REFERRAL

in

Case No. KI100/19

Applicant

**Bedri Gashi as the alleged representative of
Q.B., F.G., T.M., Z.B. and B.B.**

**Constitutional review of unspecified acts
of public authority**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gérxhaliu-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 Bedri Gashi, a lawyer from Pristina who alleges to represent Q.B., F.G., T.M., Z.B. and B.B. from Klina, (hereinafter: the alleged representative).

Challenged decision

2. The alleged representative challenges 1. The actions of the Prosecutor of the Basic Prosecution in Peja; 2. The actions of the Municipality of Klina and the proceedings being conducted at the Basic Court in Peja - Branch in Klina, consequently no concrete act of any public authority.

Subject matter

3. The subject the matter of the referral is constitutional review of unspecified acts of public authorities.
4. The alleged representative has not clarified precisely what fundamental rights and freedoms guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) he claims to have been violated by an act of a public authority.

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03 / L-121 (hereinafter: the Law) and Rules 32 [Filing of Referrals and Replies] and 35 [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: hereinafter: Rules of Procedure).

Proceedings before the Constitutional Court

6. On 11 June 2019, the alleged representative submitted the Referral to the Constitutional Court of the Republic of Kosovo by mail (hereinafter: the Court).
7. On 17 June 2019, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judges: Bekim Sejdiu (presiding), Gresa Caka-Nimani and Safet Hoxha.
8. On 11 July 2019, the Court sent a letter to the alleged representative informing him about the registration of the Referral and requesting from him to provide to the Court the power of attorney for representation, and to specify precisely which rights were violated and which is the specific act of the public authority that they are challenging.
9. On 19 July 2019, the alleged representative submitted to the Court the general power of attorney dated 26 August 2016. There were also presented some additional comments on the case, which were substantially similar to the Referral submitted on 11 June 2019.
10. On 4 December 2019, the Court reiterated the request for additional documents by the notification that in the event of failure to submit the authorization to the

Court, he Referral would be summarily rejected pursuant to paragraph 5 of Rule 35 of the Rules of Procedure. The alleged representative failed to submit the required clarifications.

11. On 5 February 2020 the Review Panel considered the report of the Judge Rapporteur and unanimously made recommendation to the Court on the inadmissibility of the Referral.

Summary of case facts

12. The case brought before the Court by persons allegedly represented by Lawyer Bedri Gashi concerns the blocking of the neighbourhood road in the Municipality of Klina by their neighbour S.H. This dispute between neighbours under the pretense of falsification of immovable property maps was filed by the alleged representative at: (i) the Municipality of Klina [through a petition filed with the Municipality of Klina for the ‘vacation of usurped property’ on 22 August 2016]; to (ii) the Prosecutor of the Basic Prosecution in Peja A.K. [through a criminal report of 13 July 2015 filed against S.H. and several officials of the Municipality of Klina] and the Basic Court in Peja-Branch in Klina [through the lawsuit C.nr.361 / 14 for a civil litigation, which has not yet been decided].
13. The Court does not refer further to the facts of this case, since the Referral was filed by an alleged representative who did not prove to possess any authorization to file the present Referral.

Applicant’s allegations

14. The alleged representative of the Referral has not challenged any concrete act of any public authority and has failed to precisely clarify which fundamental rights and freedoms guaranteed by the Constitution he claims to have been violated by an act of a public authority.
15. The alleged representative has addressed the Court, seeking a “ review of constitutionality and legality, any observations, advice, opinion, recommendation, ideas, etc. regarding the usurped road of the injured parties, why are not carrying out their duty: 1. A.K., the Prosecutor in Basic Prosecution in Peja – presently the Chief Prosecutor, 2. Municipality of Klina and 3. Court in Klina.”

Admissibility of the Referral

16. 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.
17. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 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 refers to Article 32 [Filing of Referrals and Replies] of the Rules of Procedure, which specifies:

[...]

(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 Bedri Gashi who claims to be authorized to represent Q.B., F.G., T.M., Z.B. and B.B., from Klina. The Court notes that the alleged representative did not attach to the case file a valid power of attorney for the Court.

21. The Court also recalls that it had twice requested from the alleged representative to submit to the Court the respective valid power of attorney, but the latter failed to respond to the Court's requests stated in the letters of 11 July and 4 December 2019.

22. In assessing the fulfillment of the admissibility criteria, the Court notes that the alleged representative: (i) did not bring the power of attorney to the Court; (ii) did not specify or clarify precisely what constitutional rights and freedoms were violated; and (iii) did not challenge any act of any public authority.

23. 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.

24. In this respect, the Court concludes that the Referral is incomplete and not clarified because the alleged representative failed to submit to the Court the valid power of attorney to represent the parties whom he claims to represent before the Court (see Court cases 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 KN, Decision to Reject the Referral of 31 December 2018; No. KI30/18, Applicant, *Sahit Musa*, as the alleged representative of N.H., XH.H and S.H., Decision to Reject the Referral of 10 May 2018 and case KI203/18, Applicant, *Afrim Salihu* as alleged representative of L.K., Decision to Reject the Referral of 26 June 2019).

25. The Court emphasizes that it is necessary for the representatives to prove that they have received specific and clear instructions for representation of the alleged victim within the meaning of Article 113.7 of the Constitution (see the case, *Angelique Post v. The Netherlands*, Application no. 21727/08 ECtHR), , Decision of 20 January 2009).
26. In the light of these facts, the Court further 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. [...].”
27. The Court considers that the alleged representative has failed to provide any information and did not submit documents as requested by the Court.
28. Consequently, the Court, pursuant to Rule 35 (5) of the Rules of Procedure, ascertains that the claim of the alleged representative must be summarily rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 113.7 of the Constitution, Article 22.4 of the Law and Rule 35 (5) of the Rules of Procedure, in the session held on 5 February 2020, unanimously

DECIDES

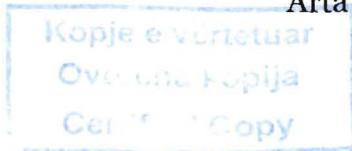
- I. TO REJECT the Referral;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

Bajram Ljatifi

President of the Constitutional Court

Arta Rama-Hajrizi



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