



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

Prishtina, on 1 June 2020
Ref. No.:RK 1572/20

This translation is unofficial and serves for information purposes only

DECISION TO REJECT THE REFERRAL

in

Case No. KI02/20

Applicant

Skender Musa
as the alleged representative of person E. Z.

**Constitutional review of Judgment Pml. no. 245/2019 of the Supreme
Court of Kosovo, of 17 September 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 Skender Musa, a lawyer from Prishtina, who claims to represent the person E. Z. (hereinafter: the alleged representative).

Challenged Decision

2. The alleged representative challenges the Judgment Pml. no. 245/2019 of the Supreme Court of Kosovo, of 17 September 2019.

Subject Matter

3. The subject matter of the Referral is the constitutional review of the challenged judgment, which allegedly violates the constitutional rights and freedoms of the person E.Z. guaranteed by Articles 3 [Equality before the Law], 31. [Right to a Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

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 the Law No. 03/L-121 on the Constitutional Court (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).

Proceedings before the Constitutional Court

5. On 10 January 2020, the alleged representative submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 January 2020, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (presiding), Bajram Latifi and Radomir Laban (members).
7. On 28 January 2020, the Court informed the alleged representative about the registration of the Referral and requested from him to supplement the Referral with additional information, namely to provide the Court with a power of attorney whereby the person E.Z. authorized the alleged representative to represent him before the Court.
8. On the basis of the acknowledgment of receipt, the Court noted that the alleged representative had received the Court's letter on 30 January 2020.
9. The alleged representative did not respond to the Court's request.
10. On 26 February 2020, the Court sent a second letter to the alleged representative requesting from him again to submit the power of attorney authorizing him to represent the person E.Z. before the Court.
11. The alleged representative did not respond to the Court's request.

12. On 29 April 2020, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the rejection of the Referral.

Summary of facts

13. The Court shall not refer to the facts of the present case, given that the Referral was filed by an alleged representative who failed to provide the power of attorney to prove that he is authorized to submit this Referral on behalf of the person E. Z.

Applicant's allegations

14. The Court also does not refer to the allegations which allegedly constitute allegations and statements concerning the person E.Z., given that the Referral was submitted by the alleged representative without a valid power of attorney.

Admissibility of the Referral

15. 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.

16. 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".

17. 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".

18. 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".

19. The Court recalls that the Referral was submitted by a lawyer alleging that he is authorized to represent the person E.Z.
20. The Court also recalls that it has twice addressed the alleged representative with a request asking from him to provide the Court with a power of attorney whereby the person E.Z. had authorized him to represent him before the Court as an authorized representative. More specifically, the Court sent the first letter to the alleged representative on 28 January 2020, which he states to have received on 30 January 2020, but he did not send the requested document to the Court.
21. On 26 February 2020, the Court sent a second letter to the alleged representative, but the alleged representative again failed to submit the requested document to the Court.
22. In this regard, 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.
[...]”.
23. The Court considers that the alleged representative did not provide the information that the Court tried to obtain twice from the alleged representative. Therefore, the Court concludes that the Referral is incomplete (see, the Decision to Reject the Referral in Case KI16/18 of 31 December 2018, as well as Decision to Reject the Referral in Case KI23/18 of 4 February 2019).
24. To sum up, the Court concludes that the Referral should be summarily rejected pursuant to Rule 35 (5) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 7 of the Constitution, Article 20 of the Law and Rule 35 (5) of the Rules of Procedure, on 29 April 2020, unanimously

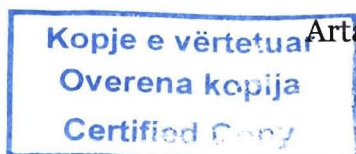
DECIDES

- I. TO DECLARE the Referral inadmissible;
- 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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