



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

---

Prishtina, on 3 August 2020  
Ref.No.:RK 1597/20

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI113/19**

Applicant

**Islam Qerimi**

**Request for constitutional review of Article 3 [Notary authorizations and notary deeds] of Law No. 06/L-010 on Notary and its interpretation**

**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 Islam Qerimi (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), to interpret Article 3 [Authorizations of notaries and notary deeds], of Law No. 06/L – 010 on Notary (hereinafter: Law on Notary), of 26 December 2018.

## **Subject matter**

3. The subject matter is the constitutional review of Article 3 [Authorizations of notaries and notary deeds] of the Law on Notary, and at the same time the Applicant's request for interpretation of the same article, which, according to the Applicant, violates his right guaranteed by Article 3 [Equality Before the Law], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. The Referral is based on Article 113 (1) and (7) 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 Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 2 July 2019, the Applicant submitted the Referral to the Court.
6. On 3 July 2019, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Nexhmi Rexhepi.
7. On 24 July 2019, the Court notified the Applicant about the registration of the Referral.
8. On the same date, the Court sent a copy of the Referral to the Assembly of the Republic of Kosovo (hereinafter: the Assembly), the Ministry of Justice and the Notary Chamber, as interested parties. The Court gave them a deadline until 6 August 2019 to submit their comments, if any. The Court did not receive any comments regarding this Referral.
9. On 9 July 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

10. On 23 November 2018, the Assembly approved the Law on Notary. Article 78 [Entry into Force] of the Law in question, stated that the law shall enter into

force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo (hereinafter: the Official Gazette).

11. On 26 December 2018, the Law on Notary was published in the Official Gazette.
12. On 2 July 2019, the Applicant submitted his Referral to the Court.

### **Applicant's Referral**

13. The Applicant alleges that Article 3 [Notary Authorizations and Notary Deeds], of the Law on Notary, violates his rights guaranteed by Article 3 [Equality Before the Law] of the Constitution.
14. The Applicant initially clarifies that, *"Based on the Law on Business Organizations Law No. 06/L-016, we are registered with the Business Registration Agency, with no. 810055378, the business name is "Law Tech" l.l.c. Our activities are client counseling in the field of Legal, Civil, Economic and Administrative [...]"*.
15. In this regard, the Applicant requests the Court to interpret the Law on Notary, answering some specific questions as follows:
  - (i) *"Can a Legal Consultation Office registered with the KBRA or a Law Office registered with the Chamber of Advocates draft real estate contracts, and what types of contracts can be drafted?"*
  - (ii) *Can it represent its client in an Administrative Body, and can it represent based on the Authorization given by the Client, to represent in a civil, administrative, economic dispute, before the competent court?*
  - (iii) *Authorization given by the client for the Legal Office "Law Tech", is it valid even without being certified by a notary;*
  - (iv) *What activity can a Legal Office Licensed by the Ministry of Trade and Industry exercise?"*
16. The Applicant states that according to the Constitution, *"we are all equal before the law, and if none of the articles of the mentioned laws specifies that the exclusive competence for drafting the abovementioned documents belongs to the notary, or that compensation for persons other than lawyers is prohibited as claimed by the Kosovo Chamber of Private Enforcement Agents, then free competition is violated and the constitutional provision that we are all equal before the Law such as Article 3 of the Constitution is violated"*.
17. Further, the Applicant states that if he is allowed to register a law office and pay the taxes that are prescribed by law, then *"I do not understand how the laws in force can be interpreted differently, where no provision stipulates that the exclusive competence of the notary is the drafting of real estate contracts"*. This, according to the Applicant, *"constitutes a monopoly of the Kosovo Chamber of Notaries, and also where the importance of the Lawyer or Legal Consultant remains."*

18. The Applicant requests clarification whether the legal office he represents can represent its clients in an administrative body and can it, based on the authorization given by the client, represent him in a civil, administrative, economic dispute, before the competent courts.
19. The Applicant further asks whether the authorization given by the client for the legal office is valid even without being certified by a notary. He also states that *"according to the Chamber of Private Enforcement Agent, a law office cannot be compensated for drafting the enforcement proposal, and that the latter cannot be compensated, but it must be a lawyer, while the law does not state such a thing anywhere"*.
20. In the part of the form in which it should be explained whether there was any other legal remedy that the Applicant was able to exhaust, the Applicant responded by stating that *"there is no possibility of interpretation other than the Constitutional Court for these laws, this request is a bit unique but it is the only way to clarify this very sensitive issue, as we have a problem in exercising our work, which is guaranteed by law."*
21. Finally, the Applicant addresses the Court with the following request:

*"I want this letter to clarify what competencies notaries have, what competencies the lawyer has, and whether a Legal Office registered with the Ministry of Trade and Industry, can represent clients in civil disputes before the state administration and courts of jurisdiction, in case of the drafting of the enforcement proposal, can it be compensated for the same at the moment of execution of the proposal by the private enforcement agent? And the authorization given for representation by the client, the form of authorization drafted by the Office for Legal Consultation, does it need notarization or does it have the same validity."*

### **Admissibility of the Referral**

22. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.
23. 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".*

*8. The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a*

*judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court's decision on that case depends on the compatibility of the law at issue.*

24. The Court also refers to Articles 47 [Individual Requests] and 49 [Deadlines] of the Law, which stipulate:

Article 47  
[Individual Requests]

- 1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
- 2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.*

Article 49  
[Deadlines]

*The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.*

25. The Court further assesses whether the criteria set out in Rule 39 (1) (a) of the Rules of Procedure are met, which stipulates that:

*“(1) The Court may consider a referral as admissible if:*

*(a) the referral is filed by an authorized party”.*

26. The Court first notes that the Applicant challenges the constitutionality of the Law on Notary. He claims that Article 3 [Notary authorizations and notary deeds], of the Law on Notaries, harms free competition and equality before the law. In this regard, he argues that “[...]if no article of the mentioned laws specifies that the exclusive competence for drafting the abovementioned documents belongs to the notary, or that the compensation for persons other than lawyers is prohibited as claimed by the Kosovo Chamber of Private Enforcement Agents, then free competition is violated and constitutional provisions that we are all equal before the Law are violated”. In this regard, he requests the Court to interpret the Law on Notary answering a number of his questions (all of which are extensively reflected in the Applicant's allegations).
27. Pursuant to the relevant constitutional provisions, which serve as the basis for the assessment of this Referral, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which determines who are the

authorized parties that are entitled to request constitutional review of laws. In this regard, the Court notes that, according to Article 113 of the Constitution and the relevant provisions of the Law and the Rules of Procedure, individuals are not authorized to submit to the Constitutional Court the referrals that are of *actio popularis* nature. The only way natural or legal persons can challenge the constitutionality of a law before the Constitutional Court through Article 113.7 of the Constitution and Articles 47 and 49 of the Law is if they prove that their referral is not of an “*actio popularis*” nature - but that they have been directly or indirectly affected by a “law” in the absence of any act, decision or measure implementing that law. In the circumstances of the present case, as will be explained below, this is not the case.

28. In this regard, the Court draws attention to its consolidated case law, regarding the interpretation of Article 113 of the Constitution, which states that persons, natural or legal, have no right to challenge *in abstracto* normative acts of a general nature (See cases of the Constitutional Court: KI05/17 Applicant *Osman Syllanaj*, Resolution on Inadmissibility of 20 November 2017; KI102/17 Applicant *Meleq Ymeri*, Resolution on Inadmissibility of 10 January 2018; KI196/18 Applicant *Dardan Bunjaku*, Resolution on Inadmissibility of 23 April 2019).
29. Thus, according to the case law of this Court, the Constitution does not provide for a possibility that individuals can complain *in abstracto* in the Constitutional Court for an unconstitutionality of a Law. The individuals may file constitutional referral regarding actions or failure to act by public authorities only within the scope provided by Articles 113.1 and 113.7 of the Constitution, which requires the Applicants to show that they are: (1) authorized parties, (2) directly affected by a concrete act or failure to act by public authorities, and (3) that they have exhausted all legal remedies provided by law (See the case of the Constitutional Court KI102/17 Applicant *Meleq Ymeri*, cited above, paragraph 20).
30. Therefore, the Court notes that it cannot answer the questions and doubts of the applicability of the Law on Notary, which the Applicant has submitted, in the abstract, through his Referral.
31. With regard to the Law on Notary, the Court notes that it has already considered a case where it was required “*Constitutional review of Article 32 (paragraph 1), Article 41 (paragraphs 1.3 and 1.4) and Article 76 (paragraph 2), in conjunction with Article 2 (paragraph 7) and Article 22 (paragraph 1.3) of Law no. 06/L-010 on the Notary*”. The Referral was filed by the Ombudsperson and the Court rendered a Judgment in this case, after finding that the Ombudsperson was an authorized party to challenge the constitutionality of these articles of the Law on Notary (See case KO65/19, Applicant the Ombudsperson, Judgment of 29 July 2019).
32. Therefore, the Applicant’s Referral is to be declared inadmissible because it has not been submitted by an authorized party, as established in paragraphs 1 and 7 of Article 113 of the Constitution, Article 47 of the Law and Rule 39 (1) (a) of the Rules of Procedure.



## **PËR KËTO ARSYE**

The Constitutional Court of Kosovo, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rule 39 (1) (a) of the Rules of Procedure, in its session held on 9 July 2020, unanimously

### **DECIDES**

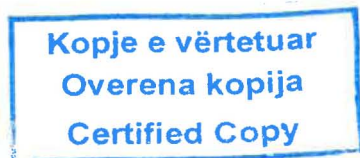
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Bekim Sejdiu

Arta Rama-Hajrizi



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