



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

Prishtina, on 02 November 2020
Ref. No.:RK1634/20

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI242/19

Applicant

Bejtush Isufi

as the alleged representative of Company R. I. GMBH

**Constitutional review of Judgment AC-I-13-0067-A0001 of the Appellate
Panel of the Special Chamber of the Supreme Court on Privatization
Agency of Kosovo Related Matters, of 22 gushtit 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 Bejtush Isufi, a lawyer from Prishtina, who is alleged to be the representative of Company R. I. GMBH based in Hamburg (hereinafter: the alleged representative).

Challenged decision

2. The alleged representative challenges the Judgment AC-I-13-0067-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters, of 22 August 2019 (hereinafter: the Appellate Panel of the SCSC).

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged judgment, which as claimed by the alleged representative of the Company R. I. GMBH, has violated the fundamental rights and freedoms protected 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 the 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 30 December 2019, the alleged representative submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 9 January 2020, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
7. On 20 January 2020, 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 a valid power of attorney for representation in the proceedings before the Court.
8. The alleged representative did not respond to the Court's request.
9. On 31 August 2020, the Court reiterated the request addressed to the alleged representative, requesting once again from him, based on Article 21 [Representation] of the Law, to submit to the Court the power of attorney for representation in the proceedings before the Court.

10. On 11 September 2020, the alleged representative submitted a letter to the Court requesting an extension of the deadline for submitting the power of attorney for representation alleging that “As our client is based in Germany and due to communication difficulties as a result of Covid-19 virus and the 7-day deadline that was not sufficient for the registered mail to reach Kosovo, we kindly ask for your understanding for extending the deadline for another 7 days so that we can forward the documents to you as soon as we receive them but no later than the next week. The alleged representative has attached to his letter a power of attorney of a third person, which is not related to the case before the Court.
11. The alleged representative failed to submit to the Court the power of attorney for representation, within the time limit requested by him.
12. On 7 October 2020, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court to reject the Referral.

Summary of facts

13. The Court does not refer to the facts of this case, since the Referral was filed by an alleged representative, who did not prove to possess a power of attorney to file this Referral to the Court on behalf of Company R. I. GMBH.

Applicant’s allegations

14. As the Referral was filed by an alleged representative who, despite the requests of the Court, did not submit a valid power of attorney to the Court, the Court will not refer to the allegations allegedly belonging to R.I. GMBH, in absence of a formal power of attorney to do so.

Assessment of the admissibility of the Referral

15. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the 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 sets out:

[...]

(2) The referral shall also include:

[...] (c) a power of Attorney for the representative; [...].

(3) Of a party is represented, the representative shall submit with referral a valid power of attorney for the referral to the Court”.

19. In this respect, the Court recalls that the Referral was filed by a lawyer who claims to be authorized to represent the Company R.I. GMBH in Court and who, despite the request of the Court of 20 January 2020 as well as the repetition of the said request on 31 August 2020, has failed to submit to the Court the authorization which would prove that the alleged representative was authorized by the Company R.I. GMBH to represent it before the Court.
20. Failure to submit a valid power of attorney to the Court prevents the Court from considering a referral in accordance with Article 21 of the Law and Rule 32 of the Rules of Procedure.
21. 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. [...]”.

22. In this respect, the Court concludes that the Referral is incomplete and is not clearly stated because the alleged representative had not submitted to the Court the valid power of attorney to represent the party which he claims to represent before the Court. (See the case of the Constitutional Court, in case 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, see also the 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., SH.Z. and XH.Z.*, Decision to Reject the Referral, of June 11, 2018).
23. Consequently, the Court, pursuant to Rule 35 (5) of the Rules of Procedure, finds that the Referral must 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 7 October 2020, unanimously

DECIDES

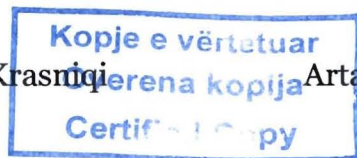
- I. TO REJECT the Referral;
- II. TO NOTIFY this Decision to the parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi



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