



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

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Prishtina, 30 November 2020  
Ref. no.:RK 1654/20

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

**DECISION TO REJECT THE REFERRAL**

in

**Case No. KI127/20**

Applicant

**Kadri Berisha**

**Constitutional review of Decision of the Special Chamber of the Supreme  
Court of the Republic of Kosovo on Privatisation Agency of Kosovo  
Related Matters**

**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 Kadri Berisha from Prishtina (hereinafter: the alleged representative), who alleges to be a representative of person D.P. from Bërnica e ulët in Prishtina.

## **Challenged decision**

2. The alleged representative challenges the constitutionality of Decision of the Appellate Panel of the Special Chamber of the Supreme Court of the Republic of Kosovo on Privatisation Agency of Kosovo Related Matters (hereinafter: the Special Chamber).

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Decision, whereby the alleged representative alleges – in substance rather than explicitly – that the rights of person D.P., guaranteed by Article 31 [Right to Fair and Impartial Trial], and Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7 of Article 113 of the Constitution, Article 22 (Processing Referrals) and Article 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 25 August 2020, the alleged representative submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 9 September 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
7. On 17 September 2020, the Court notified the alleged representative of the registration of the Referral and requested him to submit, within 15 (fifteen) days, the power of attorney proving that he is a representative of person D.P.
8. On 6 October 2020, the alleged representative notified the Court: (i) that he had tried but failed to contact person D.P. in order to obtain the power of attorney; (ii) that he had addressed person GJ.P., brother of person D.P., in order to inform the latter about the power of attorney; and, (iii) that the Court oblige person GJ.P. to notify person D.P. *“if he is interested about the case, to appear in person before the Court.”*
9. On 11 November 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. The Court does not refer to the facts of this case, as the Referral was filed by an alleged representative who did not prove to have a power of attorney to represent person D.P., (see the case of Court No. KI104/19, *Applicant “Ena”*, Decision to Rejection the Referral, of 16 January 2020, paragraph 10).

## Applicant’s allegations

11. Since the Referral was filed by an Applicant who did not submit a power of attorney, the Court will not present the allegations that allegedly belong to person D.P. (see KI104/19 *Applicant “Ena”*, cited above, paragraph 11).

## Admissibility of the Referral

12. 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.
13. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

*“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 Articles 21 [Representation] and 22 (4) of the Law, which stipulate:

*“During the process in the Constitutional Court, parties are either represented in person or by a person authorized by the party.*

*4. If the referral or reply to the referral is not clear or is incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for clarifying or supplementing the respective referral or reply to the claim. The Judge Rapporteur may request additional facts that are required to assess the admissibility or grounds for the claim.”*

15. In addition, the Court refers to Rule 32 (2) (c) and (3) [Filing of Referrals and Replies] of the Rules of Procedure, which establishes:

*“[...]*

*(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. The Court recalls that the Referral was submitted by Kadri Berisha who alleges to represent person D.P. The Court notes that Kadri Berisha did not attach to the case file a valid power of attorney for representation.
17. The Court further recalls that it had asked the alleged representative to submit to the Court the relevant valid power of attorney, but he had responded with a meaningless letter and request (see paragraph 8 above).
18. The Court considers that failure to submit a valid power of attorney makes it impossible to review the Referral pursuant to Article 113 (1) (7) of the Constitution, Article 21 of the Law and Rule 32 of the Rules of Procedure.
19. In this regard, the Court concludes that the Referral is incomplete and is not clarified because the alleged representative did not submit to the Court a valid power of attorney for representation of person D.P. (see the cases of Court KI104/19, *Applicant “Ena”*, cited above; KI23/18, *Applicant Ismet Kërçagu*, Decision to Reject the Referral, of 7 February 2019; KI16/18, *Applicant Sahit Musa*, Decision to Reject the Referral, of 31 December 2018; KI30/18, *Applicant Sahit Musa*, Decision to Reject the Referral, of 10 May 2018; and KI203/18, *Applicant Afrim Salihu*, Decision to Reject the Referral, of 26 June 2019).
20. 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 of the ECtHR, *Angelique Post v. The Netherlands*, Decision on Inadmissibility, of 20 January 2009).
21. In light of the above, 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. [...]”*
22. The Court considers that the alleged representative did not provide information and did not submit documents as required by the relevant constitutional and legal provisions on representation.
23. Consequently, pursuant to Article 113 (1) (7) of the Constitution, Articles 21 and 47 of the Law and Rule 35 (5) of the Rules of Procedure, concludes that the Referral of the alleged representative is to be summarily rejected.

## **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 21, 22.4 and 47 of the Law, and Rule 35 (5) of the Rules of Procedure, on 11 November 2020, unanimously

## **DECIDES**

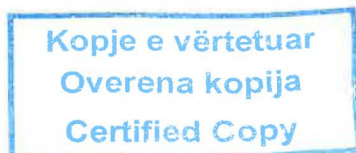
- I. TO REJECT the Referral;
- II. TO NOTIFY this Decision to the parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Radomir Laban

Arta Rama-Hajrizi



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