



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

Prishtina, on 22 December 2020
Ref.No:RK 1676/20

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI157/20

Applicant

Naser Peci as the alleged representative of the person S. B.

**Constitutional review of the Decision
of the Court of Appeals of Kosovo**

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 Naser Peci, a lawyer from Prishtina (hereinafter: the alleged representative), who claims to be the representative of the person S. B.

Challenged decision

2. The alleged representative challenges the Decision of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals).

Subject matter

3. The subject matter of the referral is the constitutional review of the challenged decision, which allegedly has violated the rights of the person S.B., guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR).

Legal basis

4. The Referral is based on paragraph 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 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 12 October 2020, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), received by mail service the referral of lawyer Naser Peci submitted at the post office on 9 October 2020.
6. On 2 November 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Gresa Caka-Nimani and Safet Hoxha (members).
7. On 10 November 2020, the Court notified the person S.B. and the alleged representative [lawyer Naser Peci] about the registration of the Referral, and requested a clarification from the person S.B. whether the person S.B. represents himself before the Court or he is represented by lawyer Naser Peci. The Court also requested that, in case the person S.B. is represented by lawyer Naser Peci, additional documents, namely the power of attorney for representation before the Constitutional Court, must be submitted.
8. On 12 November 2020, on the basis of the acknowledgments of receipt the Court found that the person S.B. and lawyer Naser Peci have received the request for additional documents in a regular manner.
9. On 14 December 2020, the Court, after having looked into the documents of the original case file KI157/20, found that there was no response received either from the person S.B. or the alleged representative, lawyer Naser Peci regarding the aforementioned request for additional documents.

10. On 17 December 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

11. The Court recalls that the Referral KI157/20 was submitted by mail service on in the name of the person S.B. but it does not contain the signature of the person S.B, and it contains attachments to the Referral form which were signed and stamped by the lawyer Naser Peci [the alleged representative], who had represented the person S.B. also before regular courts. Since neither the alleged representative nor the person S.B. have provided clarifications regarding the request for additional information sent by the Court on 10 November 2020, which the person S.B. and lawyer Naser Peci have duly received on 12 November, the Court does not refer to the facts of this case.

Applicant's allegations

12. The Court also does not refer to the allegations which as alleged pertain to the person S.B., due to the clarifications provided in paragraph 11 of the present Decision.

Assessment of the admissibility of the Referral

13. The Court first examines whether the Referral has fulfilled the admissibility criteria established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.

14. 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”.

15. The Court also refers to Article 21 [Representation] of the Law, which stipulates:

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

16. In addition, the Court refers to Rule 32 [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.”*

17. The Court recalls that the Referral was submitted by mail with the lettering but not with the signature of the person SB on the Referral Form, and to the Referral form were enclosed attachments which contained the stamp and the signature of the lawyer [the alleged representative] who has represented the person S.B. also before the regular courts.
18. The Court recalls that on 10 November 2020 it addressed a letter to the person S.B. and at the same time notified the alleged representative, seeking clarification whether (i) the person S.B. is representing himself before the Court, or (ii) he is being represented by the alleged representative [lawyer Naser Peci]. The Court also clarified that the respective power of attorney would have to be submitted in case the person S.B. wants to be represented by lawyer Naser Peci. Based on the acknowledgments of receipt, it is noted that the alleged representative and the person S.B. had received the letter sent by the Court on 12 November 2020, but until 14 December, they failed to respond.
19. In this regard, the Court consequently refers also 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.*
[...].”
20. The Court first notes 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 ECtHR case, *Angelique Post v. The Netherlands*, Decision in relation to Admissibility, of 20 January 2009, see also KI127/20, Applicant *Kadri Berisha*, Decision to Reject the Referral, of 1 December 2020, paragraph 20).
21. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on the applicants, who have a direct interest to have their allegations effectively addressed by the Court. In cases where the applicants do not respond to the requests of the Court for clarification and supplementation of the Referral, the Court summarily rejects these referrals. (See, inter alia, the cases of Court KI04/20, Applicant *Lulzim Sadiku*, Decision to Reject the Referral, of 18 June 2020, paragraph 25; KI127/20 cited above, paragraph 19).
22. The Court considers that neither the alleged representative nor the person S.B. have provided information regarding the request sent by the Court on 10 November 2020. Therefore, the Court concludes that the Referral is incomplete

(see, the Cases of the Court: Decision to Reject the Referral in case KI04/20, cited above, paragraph 26; Decision to Reject the Referral in case KI127/20, cited above, paragraph 22).

23. In sum, the Court finds that the Referral must be summarily rejected in accordance with 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, in the sessions held on 17 December 2020, unanimously

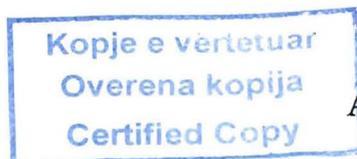
DECIDES

- I. TO summarily 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

This translation is unofficial and serves for informational purposes only.