



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

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Prishtina, on 9 August 2021  
Ref. No: RK 1833/21

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

## **DECISION TO REJECT THE REFERRAL**

in

**Case No. KI25/21**

Applicant

**Ymer Koro**  
**as the alleged representative of K. Lj and K.B**

**Constitutional review of Judgment XXX of the Supreme Court,  
of 2 October 2020**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërxhaliu-Krasniqi, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge, and  
Nexhmi Rexhepi, Judge

#### **Applicant**

1. The Referral was submitted by Ymer Koro, a lawyer from Prizren, who alleges to be the representative of K. Lj and K.B. (hereinafter: the alleged representative).

## **Challenged decision**

2. The alleged representative challenges the Judgment XXX of the Supreme Court, of 2 October 2020

## **Subject matter**

3. The subject matter is the constitutional review of the challenged judgment, which allegedly violates the constitutional rights and freedoms of persons K. Lj. and K.B. guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo, and 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 on the Constitutional Court no. 03/L-121 (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 3 February 2021, the alleged representative submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 February 2021, 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 (members).
7. On 9 February 2021, the Court notified 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 K. Lj. and K. B. have authorized him to represent them before this Court.
8. On 23 February 2021, the Court received the letter of the alleged representative requesting an extension of the time limit for submitting the power of attorney, by justifying that the we are speaking about specific cases which itself require a longer period of time for securing the power of attorney.
9. On 4 March 2021, the Court sent a letter to the alleged representative granting him an extension of the time limit for submitting the power of attorney to the Court for the representation of K. Lj. and K. B.
10. The alleged representative received the court's letter on 8 March 2021, a fact which is confirmed by the Court on the basis of the acknowledgment of receipt.

11. The alleged representative failed to submit to the court the power of attorney for the representation of K. Lj and K.B., on whose behalf he has allegedly submitted the Referral to the Court.
12. On 17 May 2021, on the basis of paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of the President and Deputy-President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Court Constitutional. Pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and the decision of the Court it was determined that Judge Gresa Caka-Nimani, shall assume the duty of the President of the Court after the conclusion of the mandate of the current President of the Court Arta Rama-Hajrizi, on 25 June 2021.
13. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court KK-SP 71-2/21, Judge Gresa Caka-Nimani assumed the duty of President of the Court, while based on point 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.
14. On 28 June 2021, the President of the Court, Gresa Caka-Nimani, issued the Decision no. K.SH.KI25/21, replacing the previous President Arta Rama-Hajrizi in her role of the presiding judge of the Review Panel with the Judge Gresa Caka-Nimani.
15. On 21 July 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the rejection of the Referral.

### **Summary of facts**

16. The Court does not refer to the facts of the present case, given that the Referral was submitted by an alleged representative who did not prove to possess the power of attorney to submit this Referral on behalf of K. Lj. and K.B. Therefore, the Court in its decision will not even state the number of the judgment of the Supreme Court which is allegedly challenged on behalf of persons K. Lj and K.B.

### **Applicant's allegations**

17. The Court also does not refer to the allegations which allegedly constitute allegations and claims of persons K. Lj and K.B., since the Referral was submitted by the alleged representative without a valid power of attorney.

### **Admissibility of the Referral**

18. 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.



19. 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."*

20. 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".*

21. 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."*

22. Having looked into the case file, the Court noted that there existed a general power of attorney whereby K. Lj and K.B., on 11 February 2010, have authorized the person E.O. from Prizren, to carry out a number of administrative actions at the cadastre in order to collect certain documents relating to the mentioned cadastral parcels, to submit and obtain personal documents for persons K. Lj and K.B. at the competent municipal service, as well as documents for their legal predecessors, to file a claim with the competent court regarding the issue of annulment of a certain decision, as well as to be able to submit regular and extraordinary legal remedies in connection with the decision of the first and second instance court.
23. The Court also noted that the person E.O. from Prizren was authorized by this general power of attorney to transfer all authorizations from the power of attorney to third parties.
24. The Court further finds that on the same day when the persons K. Lj. and K.B. granted their general power of attorney to E.O., the latter has transferred the power of attorney to the person M.P. from Prizren.

25. Moreover, the Court notes that on 23 December 2012, the person M.P. from Prizren has transferred the power of attorney for the representation of K. Lj. and K.B. to the person who in the herein Referral before the Court appears in the capacity of the alleged representative.
26. Consequently, having in mind that there has passed a number of years since the persons K. Lj. and K.B. have granted the general power of attorney to the person E.O., and the fact that the authorizations from the power of attorney were transferred to a larger number of persons, on 9 February 2021 the Court sent a letter to the alleged representative requesting from *"the alleged representative to supplement the Referral with additional information, more exactly to submit to the Court the power of attorney whereby the persons K. Lj. and K.B. have authorized him to represent them before this Court."*
27. The Court recalls that on 23 February 2021, the Court received a letter from the alleged representative requesting, inter alia, that the Court extend the time limit for obtaining the power of attorney for the representation of persons K. Lj. and K.B.
28. On 4 March 2021, the Court sent a letter to the alleged representative granting him an extension of the time-limit for obtaining and submitting the power of attorney for the representation of K. Lj. and K.B. The alleged representative has received the Court's letter of 4 March 2021 on 8 March 2021, a fact which the Court has determined on the basis of the acknowledgment of receipt.
29. The Court, in particular, points out the fact that the alleged representative has failed to submit to the Court the power of attorney for the representation of K. Lj. and K.B. up until the submission of this report to the Review Panel.
30. Having that in mind, the Court further refers to Rule 35 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provides:  
  

*"[...]*  
*(5) 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.*  
*[...]"*
31. The Court considers that the alleged representative did not provide the information that the Court tried to obtain from him despite the fact that it granted him an extension of the time limit for the submission of the power of attorney. 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).
32. 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 39 (5) of the Rules of Procedure, in the session held on 21 July 2021, 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**

Selvete Gërxhaliu-Krasniqi



Gresa Caka Nimani

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