



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 27 September 2021
Ref. no.:RK1854/21

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI101/21

Applicant

“N.T.Sh. Morina B”

**Constitutional review of Judgment [C. No. 398/09]
of the Basic Court in Gjakova, of 29 October 2015**

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 “N.T.Sh. Morina B”, represented by Yll Xhiha, a lawyer from Gjakova (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment [C. No. 398/09] of the Basic Court in Gjakova (hereinafter: the Basic Court), of 29 October 2015.

Subject matter

3. The subject matter is the constitutional review of the abovementioned Judgment of the Basic Court, whereby the Applicant alleges that his fundamental rights and freedoms guaranteed by Articles 3 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated.
4. The Applicant also requests the imposition of an interim measure.

Legal basis

5. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], 27 [Interim Measures] 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] and Rule 56 [Request for Interim Measures] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 17 May 2021, pursuant to paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and Decision KK-SP.71-2/21 of the Court, it was determined that Judge Gresa Caka-Nimani will take over the duty of the President of the Court after the end of the mandate of the current President of the Court Arta Rama-Hajrizi on 26 June 2021.
7. On 25 May 2021, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Referral of the Applicant, which was submitted by mail service on 21 May 2021.
8. On 25 May 2021, based on item 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of the Rules of Procedure, Judge Bekim Sejdiu resigned as a judge before the Constitutional Court.

9. On 4 June 2021, the President of the Court appointed Judge Remzie Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Gresa Caka-Nimani (Presiding), Selvete Gërxhaliu-Krasniqi and Safet Hoxha.
10. On 9 June 2021, the Court notified the Applicant's representative about the registration of the Referral and requested him to complete the Referral with the following documents and information:
 1. to accurately specify who is the Applicant before the Constitutional Court because the proceedings before the regular courts were conducted against the company "N.T.Sh. Morina B", while Florent Morina is listed in the referral form as the Applicant. Also, the power of attorney for the lawyer is given on behalf of "N.T.Sh. Morina B";
 2. to accurately specify the concrete act of the public authority which you are challenging before the Constitutional Court of the Republic of Kosovo;
 3. to submit to the Court (complete) copies of all decisions related to the Applicant's case that were not submitted with the initial Referral, including the response of the State Prosecutor;
 4. to notify the Court whether in relation to his case, the Applicant has exercised any other legal remedy in connection with which he is awaiting a response. If yes, specify what legal remedy is exercised.
11. On 26 June 2021, pursuant to paragraph (4) of Rule 12 of the Rules of Procedure and Decision KK-SP 71-2/21 of the Court, Judge Gresa Caka-Nimani took over the duty of the President of the Court, while based on item 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi ended the mandate of the President and Judge of the Constitutional Court.
12. On 6 July 2021, the Court sent to the Applicant's representative a repetition of the request for additional information/documents of 9 June 2021.
13. On 15 July 2021, in response to the Referral of the Court, the Applicant's representative submitted to the Court a letter in which he clarified that: *i) the Referral was submitted on behalf of the company "N.T.Sh. Morina B"; ii) the Judgment of the Basic Court [C. No. 398/09] is challenged before the Court; iii) all legal remedies regarding his case have been exhausted.* The Applicant's representative did not submit the full copy of the Judgment of the Court of Appeals, nor the Response of the Office of the Chief State Prosecutor, requested by the Court by the letter of 9 June 2021. Regarding the Response of the Office of the Chief State Prosecutor, he stated that *"Response from the Office of the Chief State Prosecutor was lost by the prior lawyer"*.
14. On 8 September 2021, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court to summarily reject the Referral.

Summary of facts

15. On 8 January 2008, between the Municipality of Gjakova, as a lessor and the Applicant, as a lessee, the market management contract was signed in the village of Rogova where, among other things, cattle, fruits and vegetables, dairy products and clothing would be traded (hereinafter: the Contract). The contract was concluded for a period of one year, namely until 8 January 2009, with the possibility of extension if the consent of both parties is reached, with a monthly rent in the amount of 2,500.00 euro. The contract provided that the termination of the contract could be done with 30 days prior notice, while in case of eventual dispute regarding the contract in question the competent was the Municipal Court (now Basic Court) in Gjakova.
16. On an unspecified date, the Municipality of Gjakova filed a lawsuit with the Basic Court due to non-payment of rent under the abovementioned contract for the months: July, August, September and October 2008, requesting that the Applicant be obliged to pay, on behalf of the lease, the Municipality of Gjakova the amount of 10,000.00 euro, with the respective legal interest.
17. On 29 October 2015, the Basic Court by Judgment [C. No. 398/09] obliged the Applicant to pay to the Municipality of Gjakova, in the name of the unpaid rent, the amount of 10,000.00 euro, with the relevant legal interest.
18. On an unspecified date, the Applicant, filed an appeal against the above Judgment of the Basic Court, with the Court of Appeals of Kosovo (hereinafter: the Court of Appeals), alleging essential violation of the provisions of the contested procedure, incomplete and erroneous determination of factual situation, as well as erroneous application of substantive law.
19. On 9 December 2019, the Court of Appeals, by Judgment [Ac. No. 305/16], rejected as ungrounded the Applicant's appeal, and upheld Judgment [C. No. 398/09] of the Basic Court.
20. On an unspecified date, before the Office of the Chief State Prosecutor the Applicant submitted a proposal to initiate a request for protection of legality in the Supreme Court against the Judgment of the Basic Court [C. No. 398/09] and the Judgment of the Court of Appeals [Ac. No. 305/16]. The Applicant states that regarding the abovementioned proposal, he received a negative response from the Office of the Chief State Prosecutor.

Applicant's allegations

21. The Applicant alleges that Judgment [Ac. No. 305/16] of 9 December 2019 of the Court of Appeals was rendered in violation of his fundamental rights and freedoms guaranteed by Articles 3 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution.

22. The Applicant states that the Judgment of the Basic Court is challenged on the grounds of essential violations of the provisions of the contested procedure, as well as due to the Law on Courts, adding that *“with the Statute of the Municipality of Gjakova, Article 2 par. 2.2 states that “The Municipality of Gjakova [...] has the status of a legal entity, the right to own and administer property, the opportunity to file a lawsuit and to be sued in courts, the right to enter into contracts and the right to hire workers”, while in Article 16 of the Law on Courts the legislator gives the right to Commercial Courts in the subject matter jurisdiction to conduct the procedure or furthermore:” Department for Commercial Matters of the Basic Court of Prishtina is competent for the following issues: 1.1 disputes between local and foreign business organizations regarding their mutual business issues, including the judicial disputes deriving from the Law on Business Organizations”.*
23. In this context, the Applicant states that the Basic Court did not correctly assess the provisions of the Law on Contested Procedure (hereinafter: LCP) and the Law on Courts, as the Basic Court did not have the competence to decide on the case.
24. With regard to the imposition of an interim measure, the Applicant requests *“to impose an interim security measure on the private enforcement agent [GJ.R.] at the number PPP. No. 141/21 which is in the phase of elaboration of the objection and that it is a known fact that the enforcement procedure takes place very quickly, therefore I urgently request that the case is elaborated and our proposal is approved”.*
25. Finally, the Applicant requests the Court to annul *“decisions of the Court in non-subject matter jurisdiction [...] as well as to impose a security measure on the private enforcement agent [Gj.R.]”.*

Admissibility of the Referral

26. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.
27. 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.”*
28. The Court also refers to Article 22 [Processing Referrals] of the Law, which stipulates:

Article 22
[Processing Referrals]

“[...]

4. If the referral [...] is [...] incomplete, the Judge Rapporteur informs the relevant parties or participants and sets a deadline of not more than fifteen (15) days for [...] supplementing the respective referral [...]

[...].”

29. In addition, the Court refers to Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure, which specifies:

[...]

“(2) The referral shall also include:

[...]

(e) a statement of the relief sought;

[...]

(g) the procedural and substantive justification of the referral; and

(h) the supporting documentation and information;

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

[...].”

30. In addition, the Court also refers to Article 48 [Accuracy of the Referral] of the Law, which stipulates:

Article 48
[Accuracy of the Referral]

“In his /her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”

31. Therefore, in assessing whether the Applicant meets the constitutional and legal criteria for constitutional review of his Referral, the Court recalls that Article 48 of the Law specifically obliges the Applicants to accurately clarify the concrete act of the public authority they are challenging and to accurately clarify what rights and freedoms they claim to have been violated. Whereas, Rule 32 (2) (e), (g) and (h) of the Rules of Procedure provides that the Applicants' Referral should also contain the requested legal protection, procedural and substantive reasoning of the Referral as well as supporting information and documentation.
32. In this regard, the Court recalls that the Referral of the alleged representative was received on 25 May 2021. However, the Applicant's Referral was not complete as required by the provisions of the Law and the Rules of Procedure as: i) it was not accurately specified who is the Applicant before the Court

because the proceedings before the regular courts were conducted against the company “NTSh. Morina B”, while Florent Morina is listed in the referral form as the Applicant; *ii*) the concrete act of the public authority challenged before the Court was not accurately specified; *iii*) all decisions related to the Applicant’s case were not submitted or were not submitted in full; as well as *iv*) it was not clarified whether in relation to his case, the Applicant has exercised any other legal remedy regarding which he is awaiting a response, the Court on 9 June 2021 and 6 July 2021, requested the Applicant to supplement the Referral with the abovementioned information and documents.

33. On 15 July 2021, in response to the request of the Court, the Applicant’s representative submitted to the Court a letter in which he clarified that: *i*) the Referral was submitted on behalf of the company “N.T.Sh. Morina B”; *ii*) the Judgment [C. no. 398/09] of the Basic Court is challenged before the Court; *iii*) all legal remedies regarding his case have been exhausted. However, the Applicant’s representative did not submit the full copy of the Judgment of the Court of Appeals, nor the Response of the Office of the Chief State Prosecutor, requested by the Court by the letter of 9 June 2021, repeated through the letter of 6 July 2021. Regarding the Response of the Office of the Chief State Prosecutor, he stated that *“The response from the Office of the Chief State Prosecutor was lost by the previous lawyer”*.
34. In this regard, the Court considers that despite the specific request of the Court, the Applicant’s representative did not submit all the decisions related to the Applicant’s case, in this case, the (complete) Judgment of the Court of Appeals [Ac. No. 305/16] and the Response of the Office of the Chief State Prosecutor, emphasizing for the latter that *“The response from the Office of the Chief State Prosecutor was lost by the previous lawyer”*.
35. Therefore, according to its Rules of Procedure, the Court, if it finds that the Referral is incomplete or unclear, may summarily reject the Referral. In this regard, the Court refers to Rule 35 of the Rules of Procedure, which sets out as follows:

Rule 35
[Withdrawal, Dismissal and Rejection of Referrals]

“35 (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, [...]”

36. The Court recalls that the burden of building, clarifying and supplementing the Referral falls on the Applicants, who have direct interest, so that their claims and allegations are effectively addressed by the Court. In cases when the Applicants fail to respond to the Court’s request for clarification and supplementation of the Referral, the Court declares these Referrals as unclear and incomplete and, as a result, does not examine the Applicant’s allegations (see the cases of the Constitutional Court: KI137/20, Applicant *Ali Latifi as the alleged representative of M.S.*, Decision to reject the Referral, of 11 November 2020, paragraph 24; KI89/18 *Agim Jashari*, Decision to reject the Referral, of

27 November 2018, paragraph 29; and KI48/17, *Sladana Radojković-Marinković*, the Constitutional Court, Decision to reject the Referral, of 4 December 2017, paragraph 21).

37. Therefore, the Court considers that the Applicant's Referral does not meet the procedural criteria for further review, because it is not completed with supporting documentation, as requested by the Court, based on Articles 21, 22.4 and 48 of the Law and Rule 32 (2) (h) of the Rules of Procedure.
38. Therefore, the Court concludes that the Referral is to be summarily rejected.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 22.4 and 48 of the Law and in accordance with Rules 32 (2) (h) and 35 (5) of the Rules of Procedure, on 8 September 2021, 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

Remzije Istrefi-Peci

Gresa Caka-Nimani

**Kopje e vërtetuar
Overena kopija
Certified copy**

This translation is unofficial and serves for informational purposes only.