



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

Prishtina, on 22 October 2021
Ref.no.:RK1872/21

This translation is unofficial and serves for informational purposes only.

DECISION TO REJECT THE REFERRAL

in

Case No. KI95/21

Applicant

Nexhat Elshani

As an alleged representative of D. H.

**Constitutional review of Judgment PML. No. 21/2021, of the Supreme
Court of Kosovo, of 25 February 2021**

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 Nexhat Elshani, lawyer from Prizren, who claims to be the representative of D. H. (hereinafter: the alleged representative).

Challenged decision

2. The alleged representative challenges the Judgment [PML. No. 21/2021] of the Supreme Court of the Republic of Kosovo of 25 February 2021.

Subject matter

3. The subject matter is the constitutional review of the challenged Decision, which according to the alleged representative has violated the fundamental rights and freedoms of the D.H, 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, Article 22 [Processing Referrals] 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] 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 14 May 2021, the alleged representative submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), which was registered with the Court on 17 May 2021.
6. 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 Constitutional Court. Pursuant to paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court no. KK-SP 71-2/21, it was determined that Judge Gresa Caka-Nimani, shall assume the duty of President of the Court after the conclusion of the mandate of the current President of the Court Arta Rama-Hajrizi, on 26 June 2021.
7. On 25 May 2021, based on point 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 submitted his resignation from the position of a judge at the Constitutional Court.
8. On 4 June 2021, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Radomir Laban.
9. On 26 June 2021, based on paragraph 4 of Rule 12 of the Rules of Procedure and the Decision of the Court no. 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.

10. On 9 July 2021, the Court notified the alleged representative about the registration of the Referral and pursuant to Article 21 [Representation] of the Law, requested him to submit to the Court the power of attorney for representation in the proceedings before the Court.
11. The alleged representative had not responded to the Court's request within the time limit set by the Court.
12. On 2 August 2021, the Court reiterated the request to the alleged representative, requesting him to submit to the Court the power of attorney for representation in the proceedings before the Court.
13. The alleged representative did not respond to the Court's request to submit the power of attorney to the Court.
14. On 22 September 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court to summarily reject the Referral.

Summary of facts

15. The Court does not refer to the facts of this case, as the Referral was submitted by an alleged representative, who did not prove to have the power of attorney to file this Referral with the Court on behalf of D. H.

Applicant's allegations

16. 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 latter will not refer to the allegations allegedly belonging to D.H., in the absence of a formal power of attorney to do so.

Assessment of the admissibility of the Referral

17. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, foreseen by the Law and further specified by the Rules of Procedure.
18. 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".
19. 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”.

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

“[...]

(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”.

21. In this regard, the Court recalls that the Referral was filed by a lawyer who claims to be authorized to represent D.H., in the Court and who, despite the requests of the Court of 9 July 2021 and the request of 2 August 2021, which the alleged representative received on 13 July 2021 respectively on 4 August 2021, did not submit to the Court the power of attorney which would have proved that the alleged representative was authorized by D.H., to represent him before the Court.
22. Failure to submit a valid power of attorney to the Court precludes the Court from considering a referral pursuant to Article 21 of the Law and Rule 32 of the Rules of Procedure.
23. 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. [...]”.

24. In this respect, the Court concludes that the Referral is incomplete and not clarified because the Applicant failed to submit to the Court the valid power of attorney to represent the party he claims to represent before the Court. (See, case of the Constitutional Court, Case No. KI23/18, *Applicant Ismet Kërçagu, as alleged representative of the A.K., M.K., B.K., F.K. and A.K.*, Decision to Reject the Referral of 7 February 2019, see also 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 11 June 2018).
25. Consequently, the Court pursuant to Rule 35 (5) of the Rules of Procedure, finds that the Applicant’s Referral should be summarily rejected.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 35 (5) of the Rules of Procedure, on 22 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

**Kopje e vërtetuar
Overena kopija
Certified copy**

Gresa Caka-Nimani

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