



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

Prishtina, on 28 October 2016
Ref. no.:RK985/16

DECISION TO REJECT THE REFERRAL

in

Case No. KI07/16

Applicant

Rifat Abdullahi

**Request for constitutional review of a Resolution on Inadmissibility of
the Constitutional Court of the Republic of Kosovo**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Rifat Abdullahi, a lawyer from Ferizaj, who is allegedly a representative of A. A. (hereinafter: the Applicant).

2. The Applicant did not submit any valid power of attorney before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), proving that A. A. has authorized him to file a Referral before the Court.

Challenged decision

3. The Applicant challenges, on behalf of A. A., a Resolution on Inadmissibility of the Constitutional Court.

Subject matter

4. The subject matter is the request of the Applicant that the Court, on behalf of A. A., assesses the constitutionality of the challenged decision.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (5) 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 12 January 2016, the Applicant submitted on behalf of A. A., the present Referral to the Court. He submitted this Referral with a power of attorney of 2014, which has already been used before the Court in another case.
7. On 12 February 2016, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur. On the same date, the President of the Court appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
8. On 23 February 2016, the Court informed the Applicant about the registration of the Referral, and requested that he submits the power of attorney within 15 (fifteen) days of the receipt of the letter, showing that A. A. has authorized him to represent him before the Court.
9. On 29 February 2016, the Applicant submitted again to the Court the power of attorney of 2014, which has already been used for submission of a previous referral of A. A. to the Court.
10. On 3 March 2016, the Court informed the Applicant that he should submit a new power of attorney to the Court, because the submitted power of attorney is not valid, as it has already been used for another case which was reviewed by the Court. The latter gave him a deadline of 7 (seven) days to submit the requested power of attorney.
11. On 7 March 2016, the Applicant responded to the letter of the Court, however he did not submit the requested power of attorney. In the letter addressed to

the Court, he stated: “As it is about the same matter of 2014 [...] I think that a new power of attorney is not necessary, however, after I talk to the detainee A. A. with the Court permission and to his family, I will respond to your request [...].”

12. Up to date, the Applicant did not submit a valid power of attorney requested by the Court, although the deadline set by the latter has expired.
13. On 14 July 2016, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral, namely its rejection in accordance with Rule 32 (5) of the Rules of Procedure.

Summary of facts

14. The Court is not authorized to refer to the facts of this case since the Referral was submitted by an Applicant who has not proved to have the power of attorney to submit this Referral on behalf of A. A.

Applicant’s allegations

15. Since the Referral was filed by an Applicant who did not submit a valid power of attorney before the Court, the latter shall not refer to the allegations which are presumed to be of A. A. in absence of a formal power of attorney to do that.

Admissibility of the Referral

16. The Court first examines whether the Referral meets the admissibility requirements laid down in the Constitution, as further specified in the Law and Rules of Procedure.

17. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] paragraph 7 of the Constitution, which establishes:

“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.”

18. The Court also refers to Article 21 [Representation] of the Law, which provides that:

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

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

“[...] (2) The Referral shall also include:

[...] (c) a power of Attorney for 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.”

20. The Court notes that despite its requests to submit a new valid power of attorney before the Court, the Applicant did not submit the requested document. He insisted that *“the power of attorney dated 20.08.2014 is valid”* because *“it is about the same matter of 2014.”*

21. In light of these facts, the Court further refers to Rule 32 (5) [Withdrawal, Dismissal and Rejection of Referrals] of the Rules of Procedure, which provides:

“[...] (5) The Court may 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. In accordance with this rule, the Court finds that the Referral is incomplete because the Applicant did not submit the power of attorney indicating that A.A. has authorized him to submit a Referral to the Court on his behalf. Despite the requests of the Court, the Applicant has not completed the submitted Referral with the necessary documents requested by the Court.

23. In sum, the Court concludes that the Referral is to be summarily rejected in accordance with Rule 32 (5) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113.7 of the Constitution, Article 21 of the Law, and Rules 29 and 32 (5) of the Rules of Procedure, on 14 July 2016, 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Selvetë Gërxhaliu-Krasniqi



President of the Constitutional Court

Arta Rama-Hajrizi

