



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

Prishtina, on 14 July 2014
Ref.no.:RK674/14

RESOLUTION ON INADMISSIBILITY

in

Case no. KI30/14

Applicant

**Zymrije Haxhimusa, Ekrem Abazi, Ferinaze Isufi, Avdullah Hoxha and
Hyzri Delolli**

**Request for constitutional review of the Notification of the Ministry of
Public Administration of the Republic of Kosovo, No. 4278, of 29
August 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Ms. Zymrije Haxhimusa, with residence in village Doganaj, Municipality of Ferizaj; Mr. Ekrem Abazi, with residence in Viti; Ms. Ferinaze Isufi, with residence in Prishtina; Mr. Avdullah Hoxha, with residence in Pleshina, Municipality of Ferizaj; and Mr. Hyzri Delolli, with residence in village Zaskok, Municipality of Ferizaj (hereinafter: the Applicants).

Challenged decision

2. The Applicants challenge the Notification of the Ministry of Public Administration, no. 4278, of 29 August 2013 (hereinafter: the MPA).

Subject matter

3. The subject matter of the Referral is the constitutional review of Notification of MPA, no. 4278, of 29 August 2013, regarding the Applicants' allegations for violation of Article 45. 1 [Freedom of Election and Participation]; Article 49 [Right to Work and Exercise Profession]; and Article 73 [Ineligibility] of the Constitution, and substantial violations of the provisions of the procedural law, erroneous and incomplete determination of factual situation and violation of the material law.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution); Articles 20 and 47 of the Law on the Constitutional Court of the Republic of Kosovo, no. 03/L-121 (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 12 February 2014, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 March 2014 the President of the Court, by Decision no. GJR. KI30/14, appointed Judge Altay Suroy as Judge Rapporteur, and by Decision no. KSH. KI30/14, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Prof. Dr. Enver Hasani.
7. On 4 March 2014, the Applicants submitted the additional documents.
8. On 8 April 2014, the Court notified the Applicants of the registration of Referral and requested from them to complete it with relevant documents.
9. On 22 April 2014, the Applicants submitted the filled Form of Referral, but did not attach any relevant documents.
10. On 23 April 2014 the Court notified the MPA, namely the permanent secretary, of the registration of Referral and requested additional documents.
11. On 28 April 2014, the MPA submitted additional documents related to the case.
12. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding the allegations raised against him.
13. On 26 June 2014, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court the inadmissibility of Referral.

Summary of facts

14. The Applicants of this Referral, in the last local elections, organized by the Central Election Commission (CEC), were elected members of the municipal assemblies, in different municipalities of the Republic of Kosovo. The Applicants, at the same time, work as civil servants in different institutions of the Republic of Kosovo.
15. On 29 August 2013, the MPA, by Notification no. 4278, of 29 August 2013, informed all civil servants, regarding the rights and obligations under the Law on Civil Service of the Republic of Kosovo, who would conditionally like to run in the municipal elections of 2013, organized by the Central Election Commission of the Republic of Kosovo.
16. On 2 December 2013 the Applicants, after the elections ended, returned to their working places and received the monthly salary for December. Later, as they claim, the MPA removed them from the payroll for January 2014, due to their election as the members of the municipal assemblies in different municipalities of the Republic of Kosovo.

Applicants' allegations

17. The Applicants request from the MPA to be introduced into the payroll system, as servants, since, as they allege that they have been unjustly removed from the payroll since January 2014. The Applicants allege that by this action, the right to work and salary, as well as the right to elect and be elected, have been violated.
18. The Applicants allege that their removal from the payroll for 2014 is unlawful. They claim: *"we, the appellants, have participated in the last local elections, which were organized by the Central Election Commission (CEC) of the Republic of Kosovo and we were elected as members of municipal assemblies. We belong to different political entities, but in our working places, where we work, we were verbally notified that the MAP has removed us from the payroll for January, since we have been elected as members of the municipal assemblies, with a justification that we have to resign from the working place, where we have worked until now and where we have been employed"*.
19. Furthermore, they allege that *"the substantial violations of the procedural provisions consist in the fact that the last local elections were held according to the Law No. 03/L-072, which law applies only for civil servants in the municipalities and we have been certified by CEC. Therefore, according to the provisions of this Law, only the civil servants, who are employed in the Municipal Assemblies, should resign from their working places, because there is the conflict of interest. The Administrative Direction No. 01/2010 MAP-No. 01/2010 MLGA, Article 2, para. 1, paragraphs from 1.1, 1.2, 1.3, 1.4 including 1.5, when to this is added also the Law No. 03/L-149 on Civil Servants of the Republic Kosovo, Article 17, para. 4, which Article explicitly states, we quote "Civil Servants elected in municipal and central elections have a right to apply and compete with other candidates for any vacant position in civil service."*

20. The Applicants claim that even before these local elections they were elected as members of the municipal assembly for several consecutive mandates, so that they request to be allowed to exercise this function, and also continue to work as civil servants in the central administration.

Admissibility of the Referral

21. The court examines beforehand whether the Applicants have fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
22. In the present case, the Applicants are natural persons, who base their referral on Article 113.7 of the Constitution.
23. In this respect, Article 113, paragraph 7, of the Constitution provides:

“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”.
24. From the case file the Court notes that the Applicants appeal the decision of the MPA, by which they allege that they were unjustly removed from the payroll for January 2014. The Applicants were elected as members of the municipal assembly in different municipalities of the Republic of Kosovo and are certified by the CEC. They allege that their removal from the payroll in the places where they work is contrary to the law and does not apply for them, but only for civil servants who are in a conflict of interest under the law.
25. However, the Court finds that the Applicants have failed to show that they have exhausted all legal remedies available under applicable law.
26. In this respect, before submitting their Referral to the Constitutional Court, the Applicants should have exhausted all possibilities in the administrative procedure, namely to look for the solution of their case within the MPA and then to the competent court, namely the Department of Administrative Affairs.
27. The Court wishes to reiterate that the principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, in order to prevent violation of the Constitution, or if any, to remedy such violation of a fundamental right. Otherwise, the Applicant is liable to have his/her case declared inadmissible by the Constitutional Court, when failing to avail himself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. The rule is based on the assumption that the legal order of Kosovo shall provide effective legal remedies for the violation of constitutional rights (see, Resolution on Inadmissibility, Case KI142/13, of 22 October 2013, *Fadil Maloku v. Decision of the President of the Republic of Kosovo* No. 686-2013, of 6 September 2013).
28. For the reasons above, the Court concludes that the Applicants’ Referral does not meet procedural requirements for admissibility, since the Applicants have not exhausted all effective legal remedies provided by law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure, on 26 June 2014, unanimously

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- 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



Altay Suroy



President of the Constitutional Court



Prof. Dr. Enver Hasani