



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

Prishtina, 4 July 2014
Ref. no.: VMP 675/14

DECISION ON INTERIM MEASURES

in

Cases No. KI99/14 and KI100/14

Applicants

Shyqyri Syla and Laura Pula

Constitutional Review of the Decisions of the Kosovo Prosecutorial Council related to the selection procedure for the nomination of the candidate for Chief State Prosecutor

composed of:

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

Applicant

1. The Applicants are Mr. Shyqyri Syla (KI99/14), Chief Prosecutor of the Basic Prosecution Office in Mitrovica and Mrs. Laura Pula (KI100/14), Prosecutor in the Office of the Chief State Prosecutor (hereinafter: the Applicants). The Applicants were candidates in the selection procedure for the position of the Chief State Prosecutor.

Challenged Decision

2. The Applicants challenge the selection procedure for nomination of the candidate for Chief State Prosecutor. Applicant (Mr. Shyqyri Sylja, KI99/14), challenges Decision KPK No. 151/2014 of the Kosovo Prosecutorial Council (hereinafter: the KPC) dated 6 June 2014 on nomination of the candidate for the Chief State Prosecutor. Whereas, the Applicant (Mrs. Laura Pula, KI100/14) challenges the Decision, KPK/146/2014 dated 5 June 2014 regarding her request for reconsideration of the final list with candidate's evaluation scores of 31 May 2014.

Subject Matter

3. The subject matter is the constitutional review of the decisions related to selection procedure for nomination of the candidate for the position of Chief State Prosecutor, respectively the Decision of the KPC on the nomination and proposal of the candidate for the Chief State Prosecutor (KPK No. 151/2014, dated 6 June 2014).
4. The Applicants allege that the KPC during the process of selection and nomination of the candidate for the position of the Chief State Prosecutor violated their rights guaranteed by the Constitution, namely Article 3 [Equality before the Law], Article 7 [Values] and Article 24 [Equality before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
5. The Applicant (KI99/14, Mr. Shyqyri Sylja) requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, namely to suspend the appointment procedure of the nominated candidate.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, Articles 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), Rules 54, 55 and 56 (3) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

7. On 12 June 2014, the Applicants individually submitted their Referrals to the Court.
8. On 17 June 2014, the President by Decision GJR. KI99/14 appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President by Decision KSH. KI99/14 appointed the Review Panel composed of Judges: Snezhana Botusharova (presiding), Ivan Čukalović and Arta Rama-Hajrizi.
9. On 17 June 2014, in accordance with Rule 37.1 of the Rules of Procedure, the President ordered the joinder of Referral KI100/14 with Referral KI99/14. By this order, it was decided that the Judge Rapporteur and the composition of the

Review Panel be the same as it was decided by the Decisions (GJR. KI99/14 and KSH. KI99/14) of the President on appointment of the Judge Rapporteur and the Review Panel on 17 June 2014.

10. On 19 June 2014, the Court notified the Applicants of the registration of the Referrals and the joinder of Referrals. On the same date, the Court sent copies of the Referrals to the KPC.
11. On 24 June 2014, the Court sent a copy of the Referral to the President of the Republic of Kosovo.
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 certain allegations raised against him.
13. On 3 July 2014, after having heard the Judge Rapporteur and having discussed the views of the Applicants expressed in their written submissions, the Court decided to grant the Request for Interim Measures pending the publication of the decision of the Court.

Brief Summary of Facts

14. As a result of the internal announcement for the position of the Chief State Prosecutor and the completed selection procedure, the Applicant (Mr. Shyqyri Sylja, KI99/14) was among the three highest ranking candidates and subject for the voting procedure for Chief State Prosecutor nominee.
15. On 6 June 2014, the KPC rendered Decision, KPK. No. 151/2014 on the nomination of the candidate for Chief State Prosecutor.
16. On 13 June 2014, the KPC sent to the President of the Republic of Kosovo the proposal for the appointment of the Chief State Prosecutor nominee.
17. To this date, the President of the Republic of Kosovo has not issued a decree on the appointment of the KPC nominated candidate.

Applicant' request

18. The Applicant (Mr. Shyqyri Sylja, KI99/14) requests the Court as following:

“To annul the election procedure and impose interim measure to stop the appointment decree.”

Request for Interim Measure

19. As stated above, the Applicant (Mr. Shyqyri Sylja, KI99/14) requests from the Court to impose an interim measure, namely to suspend the appointment procedure of the nominated candidate by the President of the Republic of Kosovo.

20. The Court, pursuant to Article 116 [Legal Effect of Decision], paragraph 2 of the Constitution, Article 27 of the Law and Rule 55 (4) of the Rules of Procedure, finds that there is a prima facie case of the Referral and that the Applicant put forward enough convincing arguments that the appointment of the candidate for the Chief State Prosecutor by the President of the Republic of Kosovo may result in unrecoverable damages for the Applicant.
21. Therefore, the request of the Applicant for interim measure is granted.

FOR THESE REASONS

The Court, pursuant to Article 116, paragraph 2 of the Constitution, Article 27 of the Law and Rules 55 (4) and 56 (3) of the Rules of Procedure, unanimously

DECIDES

- I. TO GRANT, interim measures;
- II. TO GRANT interim measures until the Decision of the Court is published and no later than 1 August 2014 from the date of the adoption of this Decision;
- III. TO IMMEDIATELY SUSPEND the appointment procedure of the candidate for the Chief State Prosecutor by the President of the Republic of Kosovo;
- IV. TO NOTIFY this Decision to the Parties;
- V. TO PUBLISH this Decision in accordance with Article 20 (4) of the Law; and
- VI. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Robert Carolan

President of the Constitutional Court



Prof. Dr. Enver Hasani