



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

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Pristine, 04 April 2012  
Ref. No.: RK 217/12

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI 112/10

Applicant

**Nikollë Kabashi**

**Constitutional Review of the Decrees of the Acting President of the Republic of  
Kosovo, dated 22 October 2010**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

#### **Applicant**

1. The applicant is Mr. Nikollë Kabashi residing in Gjakova.

## **Challenged decision**

2. The Applicant challenges the Decrees of the Acting President of the Republic of Kosovo, of 25 October 2010, made upon the proposal of the Kosovo Judicial Council on the appointment and nomination of the judges at the Municipality of Gjakova.

## **Subject matter**

3. The Applicant requests an assessment of the constitutionality of the Decrees of the Acting President of Kosovo, made upon the proposal of the Kosovo Judicial Council, as being, allegedly, in violation of Article 3 [Prohibition of Torture] of the European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols Nos. 11 and 14 (hereinafter: "ECHR").
4. Furthermore, the Applicant requests the Constitutional Court to impose an interim measure, suspending the execution of the Decrees.

## **Legal basis**

5. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 22 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121) (hereinafter: the "Law") and Rule 56 (2) 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 8 November 2010, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
7. On 16 November 2010, the President, by Order of No.GJR. 112/10, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by Order No.KSH. 112/10, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Almiro Rodrigues.
8. On 20 January 2011, the Referral was communicated to the Kosovo Judicial Council. On the same date, the Referral was also communicated to the Acting President of Kosovo.
9. On 16 May 2011, the Kosovo Judicial Council replied that the Applicant was not recommended by the Independent Judicial and Prosecutorial Commission to be appointed to the position as a judge in the Municipality of Gjakova because the Applicant had fewer points than the rest of the candidates recommended by Independent Judicial and Prosecutorial Commission.
10. On 9 June 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of the facts**

11. In 2009, the Independent Judicial and Prosecutorial Commission (hereinafter: the "IJPC") announced the competition for the selection of the judges and prosecutors of Kosovo.
12. On 1 April 2009, the Applicant applied for the position of a judge to the IJPC.

13. In 2010, the IJPC notified the Applicant that he had not been recommended for any of the positions that he had applied for in phase three of the selection, because other candidates had been more successful (AJP 87907).
14. On 3 November 2010, the Applicant filed a request with the IJPC Review Panel for reconsideration of the decision based on Article 6.1 of Administrative Direction No. 2008/2 Implementing UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo (hereinafter: AD No. 2008/2).
15. On 28 January 2011, the IJPC Review Panel rendered a decision rejecting the request of the Applicant as unfounded. Furthermore, the IJPC Review Panel found that the Applicant has obtained fewer points than the other candidates.

### **Applicant's allegations**

16. The Applicant alleges that the selection of the judges who were appointed at the Municipal Court of Gjakova had not been done based on the rules set out by the IJPC. These rules, according to which candidates are not selected for appointment as judges, are the following:

“ ...

- a. “Candidates who did not participate in the competition;
- b. Appointment of those candidates who have worked in the justice authorities under Milosevic Regime, during 1990-1999;
- c. Appointment of candidates with suspicious record;
- d. Appointment of candidates who are in the verge of pensioning;
- e. Humiliation of candidates, members of families of martyrs by not selecting them; and
- f. Discrimination of candidates, etc.”

...”

17. Furthermore, the Applicant alleges that he had passed all the three phases of the selection.

### **Assessment of admissibility of the Referral**

18. The Applicant complains that the Decrees of the Acting President of Kosovo of 25 October 2010 made upon the proposal of the Kosovo Judicial Council violate Article 3 ECHR.
19. In order to be able to adjudicate the Applicants' complaint, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
20. In this connection, the Court notes that the Kosovo Judicial Council is responsible for recruiting and proposing candidates for appointment to judicial office after the candidates have fulfilled the selection criteria provided by law in accordance with Article 108 of the Constitution.
21. The President of the Republic of Kosovo, pursuant to Articles 104.1 and 86 (16), appoints judges upon the proposal of the Kosovo Judicial Council.
22. In this respect, the Court finds that, the Applicant has not substantiated in any manner his complaints made under Article 3 ECHR or under his rights and freedoms guaranteed

by the Constitution as required by Article 113.7 of the Constitution and Article 48 of the Law (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

23. It follows that the Referral is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: “The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.”

#### **Assessment of the request for interim measure**

24. The Applicant requests the suspension of the Decrees because they “are entirely unlawful and anti-constitutional, and simultaneously in serious violation of the law”, since they allowed for the nomination of:

“ ...

- a. corrupt candidates;
- b. candidates suspected of the commission of criminal offences;
- c. incompetent, inexperienced people;
- d. candidates who had collaborated with the Milosevic regime.

...”

25. As a result:

“ ...

- a. no candidates from martyrs’ families had been nominated;
- b. the Decrees had been a denigration and serious insult to the martyrs’ families;
- c. and were an insult to the efforts and results of the fight of the Kosovo people for freedom and independence;
- d. the Decrees also qualified martyrs’ families as “undesirable”; and
- e. disrespected the procedures of other domestic and international authorities.

...”

26. As to the Applicant’s request, the Court refers to Article 27.1 of the Law:

*“The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk of irreparable damages, or if such an interim measure is in the public interest.”*

and, in particular, Rule 54 (1) of the Rules of Procedure, stipulating that, at any time when a Referral is pending before the Court and the merits of the Referral have not been adjudicated by the Court, a party may request interim measures. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution and Article 47.2 of the Law on the Constitutional Court, and Rule 56 (2) of the Rules of Procedure, on 9 June 2011, unanimously,

### DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. TO REJECT the Request for interim measure;
- III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

Ivan Čukalović



**President of the Constitutional Court**

Prof. Dr. Enver Hasani

