



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

Pristine, on 27 January 2012
Ref. No.: RK192/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 06/11

Applicant

Prof. Dr. Shaban Hasi

**Request for constitutional review of the Notification of the Senate of the
University of Prishtina, Ref. No. 4/49, dated 03.12.2010**

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 Prof. Dr. Shaban Hasi, from Glllogoc, residing at Jasharajs' Street, no number, in Glllogoc.

Challenged decision

2. The challenged decision is the Notification of the Senate of the University of Prishtina (hereinafter referred to as "UP") Ref. No. 4/449, dated 03.12.2010.

Subject matter

3. The subject matter of the case submitted with the Constitutional Court of the Republic of Kosovo on 21.11.2011 is the constitutional review of the Notification Ref. No. 4/449, dated 03.12.2010, signed by UP Rector, Mr. Mujë Rugova, whereby the Faculty of Medicine (the financial service), the legal advisor of UP, the academic office and professors Mr. Shaban Hasi and Mr. Lutfi Dervishi have been notified that the selection issue of these two professors is rejected because the said persons are undergoing judicial proceedings and at the same time the financial service of UP has been obliged to remove the said persons from the payroll.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as the "Constitution"), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 16 December 2009 (hereinafter referred to as the "Law"), and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the "Rules of Procedure").

Proceedings before the Court

5. On 21 January 2011, Prof. Dr. Shaban Hasi submitted the Referral with the Constitutional Court of Kosovo requesting constitutional review of the Notification of the Senate of the University of Prishtina (hereinafter referred to as the "UP") Ref. No. 4/449, dated 03.12.2010.
6. On 14 February 2011, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of judges Altay Suroy (Presiding), Ivan Čukalović and Gjyljeta Mushkolaj, members.
7. On 3 March 2011, the Constitutional Court notified the Applicant and the University of Prishtina on the registration of the Referral that was submitted with this Court, requesting the UP to reply in written concerning the Referral and possible comments.
8. The Constitutional Court did not receive any reply from the UP within the 45 day time limit.
9. On 9 June 2011, after having considered the Report of the Judge Rapporteur, Kadri Kryeziu, the Review Panel, composed of Judges Altay Suroy (Presiding), Ivan Čukalović and Gjyljeta Mushkolaj, Panel members, recommended to the full Court on the inadmissibility of the Referral.

Summary of the facts

10. Prof. Shaban Hasi, according to his assertion in the Referral addressed to the Constitutional Court, has been working at the Faculty of Medicine since 1987.
11. The University of Prishtina with an indefinite date of the month of December 2010, had sent Notification Ref. No. 4/449 to the Faculty of Medicine and a copy of it to the UP archive, to the office for academic issues, to the Faculty, to the legal advisor of UP,

to the abovementioned persons (Prof. Dr. Shaban Hasi and Prof. Dr. Lutfi Dervishi) and to the financial service of the UP, which had been signed by the Rector of UP, Prof. Dr. Mujë Rugova, and the legal advisor of UP, in which it had stressed that UP, in the meeting of the Senate held on 8.11.2010, had been decided that “the selection issue of Prof Shaban Hasi and Prof Lutfi Dervishi should be rejected because the said persons are undergoing judicial proceedings”.

12. The financial service of UP has also been obliged through this notification to remove the abovementioned persons from the payroll as of the date the meeting of the Senate was held (8.11.2010).
13. Prof. Dr. Shaban Hasi complained through his lawyer Shaqir Behrami, to the UP Senate because of one-sided termination of the contract with the Faculty of Medicine and without the decision of the Senate with the proposal that the Senate should render the decision to ANNUL Notification Ref. 4/449 and extend the employment relationship for the post he had prior to this notification.
14. Prof. Dr. Shaban Hasi did not receive any reply from the UP Senate regarding this complaint.
15. On 7 December 2010, at the request of Prof. Dr. Shaban Hasi, the Municipal Court in Glogoc issued a certificate confirming that no plenipotentiary indictment has been filed against Mr. Shaban Hasi, nor he has been convicted under a judgment for a criminal offence punishable by imprisonment up to 3 (three) years or a fine.
16. On 14.12.2010, the Faculty of Medicine, through document Ref. No. 4333, signed by the Dean of the Faculty, sent a reply to his request confirming that the Faculty has no data that Prof. Shaban Hasi has ever been convicted or that he has been issued a warning for his work by the Deanery of this Faculty.
17. On 20.12.2010, the Deanery of the Faculty of Medicine, through the official document Ref. No. 4421, sent another reply to Prof. Shaban Hasi confirming that the Rectorate of U.P. has not requested any clarification or written information from the Deanery of the Faculty of Medicine concerning the issue raised against him (eventual judicial proceedings) and that the Deanery of the Faculty of Medicine is not aware of this issue.
18. Finally on 21.01.2011, Prof. Dr. Shaban Hasi submitted a Referral with the Constitutional Court claiming the violation of constitutionally guaranteed rights mentioned in the Referral.

Applicant's allegations

19. The Applicant has stressed he considers that the notification he is challenging with the Court has violated his constitutionally guaranteed rights to live and work.
20. The Applicant also stressed in the Constitutional Court that Notification Ref. No. 4/449, signed by UP Rector, which does not even have the form of the decision, has unlawfully denied him the right to exercise the duty of the professor for the subject of Surgery at the Faculty of Medicine, because he is allegedly undergoing court proceedings. The Applicant claims he has never been in court proceedings and he possesses relevant documentation confirming these claims. He calls the Notification of the Rector arbitrary and claims that his constitutionally guaranteed right to work and live has been violated by this action.

Assessment of the admissibility of the Referral

21. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution.

22. In this relation, the Court refers to Article 113.7 of the Constitution, which states that:

“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.”

The Court also takes into account: Article 46 of the Law on the Constitutional Court of the Republic of Kosovo, concerning individual referrals, which stipulates that:

The Constitutional Court receives and processes a referral made in accordance with Article 113, Paragraph 7 of the Constitutional, if it determines that all legal requirements have been met.

23. By examining documents submitted in the Referral by the Applicant, the Court finds that the Applicant has not fulfilled the rule for the exhaustion of legal remedies because he has not provided evidence, except a complaint filed with the UP Senate, that he had followed any other legal remedy or that he has received a decision on merits from an administrative body or regular Court prior to addressing the Constitutional Court with a Referral.

24. In this direction, the Court stresses that the legal requirement of the exhaustion “of all legal remedies provided by law” is absolutely necessary as an essential requirement to submit a Referral with the Constitutional Court, and in addition to being a legal requirement provided by the Constitution and the Law on the Constitutional Court, it is also provided by Rule 36, para (a) of the Rules of Procedure of the Constitutional Court as an essential legal requirement.

25. Always referring to this admissibility requirement, the Court notes that Article 25.5 of the **Law No. 2002/03 on Higher Education in Kosovo, promulgated** by Michael Steiner, Special Representative of the Secretary General, on 12 May 2003, clearly stipulates that:

“Academic and other staff of providers of higher education shall have the right to challenge any decision or action of a provider of higher education in relation to them before the Ministry and then to a court of competent jurisdiction.”

26. From what was said in the foregoing paragraphs, it is clear that the Applicant has not used this legal possibility to use the legal remedy.

27. The Court wishes to emphasize that the rationale of the rule for the exhaustion of legal remedies is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. This rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights (see, *mutatis mutandis*, ECHR, Selmouni v. France, no. 25803/94, Decision of 28 July 1999).

28. The Court had applied such a rationale while examining previous Referrals in the Cases: KI 55/10, Hamide Osaj, Request for Constitutional Review of Supreme Court of

Kosovo Judgment, Pkl. nr. 43/2010, dated 4 June 2010; Case No. KI 20/10 Muhamet Bucaliu against the Decision of the State Prosecutor KMLC. Nr. 09/10, dated 24 February 2010 (Decision of Constitutional Court, dated 15 October 2010).

29. Under these circumstances, the Referral is **inadmissible** because its Applicant **has not exhausted** all legal remedies before addressing the **Constitutional** Court.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution of the Republic of Kosovo, Article 47.2 of the Law on the Constitutional Court and Rule 36.1 (a) of the Rules of Procedure, on 14 June 2011, unanimously

DECIDES

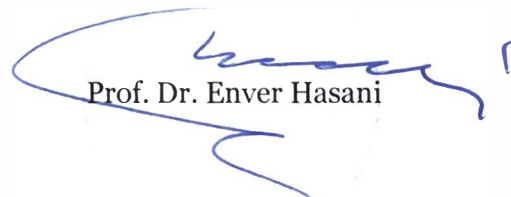
- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette in accordance with Article 20-4 of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

Judge Rapporteur



Kadri Kryeziu

President of the Constitutional Court



Prof. Dr. Enver Hasani