



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

Pristina, 16 June 2017
Ref. No.:RK 1093/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI130/16

Applicant

Hamdi Ibrahim

**Constitutional review of Decision KGJK/No.74/2016 of the Kosovo
Judicial Council, of 6 July 2016**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, judge
Almiro Rodrigues, judge
Snezhana Botusharova, judge
Bekim Sejdiu, judge
Selvete Gërzhaliu-Krasniqi, judge and
Gresa Caka-Nimani, judge

Applicant

1. The Referral was submitted by Hamdi Ibrahim from Podujeva (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision KGJK/No.74/2016 of Kosovo Judicial Council (hereinafter: KGJK), of 6 July 2016, which was served on him on 12 July 2016.

Subject matter

3. The subject matter is the constitutional review of the abovementioned decision of KJC, whereby the Applicant's rights and freedoms guaranteed by Article 40 [Freedom of Expression] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) as well as Article 10 [Freedom of expression] of the European Convention on Human Rights (hereinafter: ECHR) have allegedly been violated.
4. The Applicant also requests the Constitutional Court (hereinafter: the Court): *...to impose interim measure so that the Decision of KJC of 6.07.2016 is annulled until the final decision is rendered by the Constitutional Court of the Republic of Kosovo.*

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 29, 54 and 55 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 11 November 2016, the Applicant submitted the Referral to the Court.
7. On 12 December 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Bekim Sejdiu (judge) and Selvete Gërxhaliu-Krasniqi (judge).
8. On 20 December 2016, the Court notified the Applicant about the registration of the Referral, and sent a copy of the Referral to the Kosovo Judicial Council.
9. On 1 January 2017, the Applicant submitted to the Court the supplement to the Referral of 11 November 2016.
10. On 27 March 2017, the Review Panel considered the report of Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

11. On 29 June 2015, the Applicant, in a capacity of the President of the Basic Court in Prishtina, in an interview with a radio television station in which he presented his stance and commented on the work of the State Prosecution of Kosovo.

12. On 4 December 2015, the Office of the State Prosecutor submitted to the Disciplinary Committee of the Kosovo Judicial Council (hereinafter: DCKJC) a complaint, in which it accused the Applicant of misconduct under Article 34, paragraph 1. item 1.4 of the Law on Kosovo Judicial Council, pertaining the violation of the Code of Ethics and Professional Conduct for Judges.
13. On 31 March 2016, the DCKJC rendered Decision KD.No. 04/2016, which found the Applicant guilty of misconduct, and therefore imposed on him the disciplinary measure of reprimand. The Decision of DCKJC reads:

„The Committee concluded that by his statement President Ibrahimimi, on 29 June 2015, in the TV station Koha Vision, in the show Puls, has exceeded his competences as a president of the court, provided by Article 24, items 1, 2, 3, 4, 5, 6, 7 of the Law on Kosovo Judicial Council.“
14. On 27 April 2016, the Applicant filed an appeal with KJC against the Decision of DCKJC of 31 March 2016.
15. On 6 July 2016, the KJC rendered Decision which rejected the Applicant's appeal with the reasoning:

„Kosovo Judicial Council, pursuant to Article 41 of the Law on Kosovo Judicial Council No. 03/L-223, reviewed the case file, challenged decision, the appealing allegations and following this, found that the appeal of the President/Judge Hamdi Ibrahimimi is ungrounded.“

Applicant's allegations

16. The Applicant considers that *“these decisions violate the right to freedom of expression guaranteed by the Constitution of the Republic of Kosovo to address the critics towards the work of an institution or the holders of responsibilities in that institution, and in particular when a person having the legal competencies to act, does not act.”*
17. The Applicant further adds that *„the statement of the President of the Court, as a free expression of an opinion, was absolutely in the function of the increase of an authority of the justice system in Kosovo, and in no way, aiming at denigrating any institution or an individual.“*
18. The Applicant further alleges that *“that the decision rendered by KJC was taken in the administrative proceedings, that against this decision he had an opportunity in accordance with the law to exhaust the legal remedy-that by a claim to initiate the procedure of the administrative conflict before the Department for Administrative Matters that acts within the subject matter and territorial jurisdiction of the Basic Court in Prishtina...but due to the fact that he directly runs the Department for Administrative Matters, where he appoints and dismisses the judges from this department, he did not want to exhaust this legal remedy.“*
19. The Applicant requests the Court to:

„a) To declare the Referral admissible.

b) To impose interim measure, so that the Decision of 6.07.2016, be annulled until the final decision is rendered by the Constitutional Court of the Republic of Kosovo.

c) To hold that the Decision of KJC of 6.07.2016 has violated the freedom of expression guaranteed by the Constitution of the Republic of Kosovo– Article 40. To order the KJC to declare Decision of 12.07.2016 invalid and as such does not produce any legal effect.

d) To order the KJC to notify the Constitutional Court about the implementation of the decision of the Constitutional Court.”

Admissibility of Referral

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

21. In this respect, the Court refers to Article 113.7 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.”

22. The Court also refers to Article 47.2 of the Law, which provides:

“[...] The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

23. The Court further refers to Rule 36 (1) (b) of the Rules of Procedure which foresees:

“(1) The Court may consider a referral if:

[...]

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted.”

24. The Court notes that the Applicant in the Referral challenges the decisions of the KJC which are rendered in the administrative proceedings conducted before the competent committees of the KJC.

25. The Court further notes that the Applicant having been served with the decisions of the KJC, directly addressed the Constitutional Court, requesting the constitutional review of the KJC decisions related to the alleged violations of the constitutionally guaranteed rights and freedoms, despite the fact that he

had available other legal remedies which are prescribed by the law and by exhausting them he could have protected his rights and freedoms.

26. The Court notes that the Applicant considers that the mere fact that he has a specific position that in itself “bears” certain rights, obligations and responsibilities, should of itself acquit him of the exhaustion of all remedies that are prescribed by law and which are available to him.
27. The Court emphasizes that this cannot be the reason for which the Applicant should be exempt of non-exhaustion of legal remedies, given the fact that law regulated the way to solve such requests.
28. The Court recalls that Article 113 of the Constitution regulates the jurisdiction and the authorized parties, whereby in this Article is specified in detail what cases, and under what circumstances and the criteria, the authorized parties can address the Constitutional Court.
29. The Court further notes that the Applicant is an individual who is among the authorized parties pursuant to Article 113.7 of the Constitution and as such will be a subject of consideration.
30. Furthermore, the Court recalls that other legal provisions, as well as the principle of subsidiarity, require that before addressing the Constitutional Court, the Applicants must exhaust all procedural possibilities in the regular proceedings in order to prevent violations of human rights and freedoms guaranteed by the Constitution or to remedy any violation of the rights guaranteed by the Constitution.
31. The Court would like to recall that in case KI145/15 has dealt with a similar request, and that on 16 May 2016, rendered a resolution on inadmissibility, because the Applicant had not exhausted all the legal remedies provided by law (see: Resolution on inadmissibility: *Florent Muqaj, against decision No. 321/2015 of the Prosecutorial Council of Kosovo*, KI145/15 of 5 November 2015).
32. The rationale for the exhaustion rule of legal remedies is to afford the competent authorities, including the regular courts, the opportunity to prevent or remedy the alleged violation of the Constitution. The rule is based on the assumption that Kosovo legal order provides an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character to the Constitution (See Resolution on Inadmissibility: *AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo*, KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, no. 25803/94, Decision of 28 July 1999).
33. In sum, the Court considers that in this case there is no final decision of the competent authority that at this stage could be the subject of review by the Constitutional Court.

Request for interim measure

34. The Applicant requests the Court to impose an interim measure that would render the decisions of KJC ineffective, until it renders a decision regarding this referral.

35. In order that the Court imposes interim measure, in accordance with Rule 55 (4) of the Rules of Procedure, it is necessary that:

“(a) the party requesting interim measures has shown [...], if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;

(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and [...]

If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.”

36. Based on the above, the Applicant has not shown a *prima facie* case on the admissibility of the Referral. Therefore, the request for interim measure is to be rejected, as ungrounded.

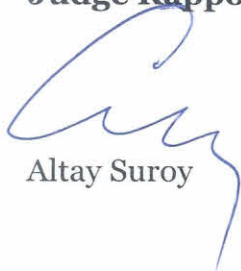
FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 47 of the Law, and Rules 36 (1) (b) and 55 (4) of the Rules of Procedure, on its session held on 27 March 2017, 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. TO DECLARE this Decision effective immediately.

Judge Rapporteur


Altay Suroy



President of the Constitutional Court


Arta Rama-Hajrizi