



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

Pristine, 20 March 2012
Ref.No.:RK209/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI. 139/11

Applicant

Ali Latifi

**Constitutional Review of the Notification of the Kosovo Judicial Council
on the reappointment of judges and prosecutors, No. 01/118-658, dated
27 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 Cukalovic, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The applicant is Mr. Ali Latifi, residing in Pristina.

Challenged decision

2. The Applicant challenges the Notification of the Kosovo Judicial Council (hereinafter: "KJC"), No. 01/118-658, dated 27 October 2010, for his dismissal from the post of the judge at the Municipal Court of Minor Offences in Pristina.

Subject matter

3. The Applicant submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") on 26 October 2011 claiming that his rights as guaranteed by Articles 5 [Languages], 32 [Right to Legal Remedies], 104 [Appointment and Removal of Judges] and 108 [Kosovo Judicial Council] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") have been violated.

Legal basis

4. Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56 (2) of the Rules of Procedure.

Proceedings before the Court

5. On 26 October 2011, the Applicant submitted a Referral with the Court.
6. On 23 January 2012, the Referral was communicated to the Supreme Court of Kosovo.
7. On 12 January 2012, the President, with Decision No. GJR. 139/11, appointed Judge Robert Carolan as Judge Rapporteur. On the same date the President, with Decision, No. KSH. 139/11, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Gjyljeta Mushkolaj and Iliriana Islami.
8. On 28 January 2012, the Court requested the Applicant to submit the final Supreme Court decision in his case.
9. On 31 January 2012, the Applicant replied to the request. However, he did not submit the final decision in his case.
10. On 20 March 2012 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 facts

11. The Applicant is a former judge of the Municipal Court of Minor Offences in Pristina, who received a notification from KJC, No. 01/118-658, dated 27 October 2010, informing him that his mandate as a judge with the Municipal Court of Minor Offences in Pristina ceases on 27 October 2010.
12. The notification of KJC refers to the results of the reappointment process of judges and prosecutors during the third phase, based on Article 2.11, Article 2.16 and 14.2 of Administrative Direction No. 2008/02 Implementing UNMIK

Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo and Article 150 of the Constitution.

13. On 1 November 2010, the Applicant filed an appeal to KJC, expressing his dissatisfaction with Decision No. 01/118-658.
14. On 2 February 2011, the Applicant submitted an appeal with the Supreme Court against the dismissal without a decision, while on 22 February 2011 he submitted complementing documents to the appeal.
15. On 22 February 2011, the President of the Supreme Court replied to the Applicant's motion, where the Applicant was advised to initiate Administrative Conflict Procedure with the Supreme Court.
16. On 26 April 2011, the Applicant filed a suit for administrative conflict with the Supreme Court, where he outlined the alleged violations done by KJC, during the procedure of re-appointment.
17. On 27 July 2011, the Applicant submitted a motion with the Supreme Court requesting an urgent treatment of his suit submitted on 26 April 2011.

Applicant's allegations

18. The Applicant claims that the KJC notification contains no reasons as to why he is dismissed from his position of judge. Hence, allegedly, Article 108 [Kosovo Judicial Council] of the Constitution has been violated.
19. Further, the Applicant complains that the Supreme Court, allegedly, has violated Articles 5 [Languages], 32 [Right to Legal Remedies] and 104 [Appointment and Removal of Judges] of the Constitution by not replying to his complaint of 2 February 2011 and 22 February 2011.
20. In addition, the Applicant alleges that KJC has violated Article 108 [Kosovo Judicial Council] of the Constitution, because the examination process is not foreseen by law.

Preliminary assessment of admissibility of the Referral

21. The Applicant complains that the KJC, through Notification, No. 01/118-658, dated 27 October 2010, for his dismissal from the post of the judge at the Municipal Court of Minor Offences in Pristina has violated his Constitutional rights as guaranteed by the Constitution.
22. However, in order for a Referral to be admissible, the Applicant must first show that he/she has fulfilled all admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
23. As to the present Referral, the Constitutional Court notes that, on 27 October 2010, the KJC notified the Applicant, through its Notification No. 01/118-658, that his mandate as a judge with the Municipal Court for Minor Offences in Pristina ceased on 27 October 2010.

24. The KJC apparently based the issuance of this Notification on Article 150 of the Constitution and on Articles 2.11, 2.16, and 14.2 of Administrative Direction No. 2008/02 Implementing UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo, without mentioning other reasons for the dismissal of the Applicant.
25. However, the Court emphasizes that it can only decide on the admissibility of a Referral, if the Applicant shows that he/she has exhausted all effective remedies available under applicable law.
26. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see Resolution on Inadmissibility: Badivuku vs. Kosovo Judicial Council, KI 114/10, 18 May 2011 and see *mutatis mutandis*, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).
27. In the present case, the Court finds that the Applicant has not submitted any *prima facie* evidence and facts indicating that he has exhausted such all effective remedies under Kosovo law in order for the Court to proceed with his allegation about the constitutionality of Notification No. 01/118-658 of 27 October 2010.
28. It follows that the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 47.2 of the Law, and Rule 56 (2) of the Rules of Procedure, on 20 March 2012, 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;
- III. This Decision is effective immediately.

Judge Rapporteur


Robert Carolan



President of the Constitutional Court


Prof. Dr. Enver Hasani