



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

Prishtina, 26 March 2015
Ref. No.: RK 783/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI183/14

Applicant

Ilir Berisha

**Request for Constitutional Review of the Notification
Ref. ZVVGJ/0389/14 of the Appointment Committee of the Kosovo
Judicial Council, of 22 September 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The Referral is submitted by Mr. Ilir Berisha (hereinafter: the Applicant), with residence in Peja.

Challenged Decision

2. The Applicant requests the constitutional review of the Notification Ref. ZVVGJ/0389/14 of the Appointment Committee of the Judicial Council of Kosovo (hereinafter: KJC) of 22 September 2014.

Subject Matter

3. The subject matter is the request for constitutional review of the Notification [Ref. ZVVGJ/0389/14] of the KJC, of 22 September 2014, which allegedly violates the Applicant's rights and freedoms as guaranteed by: Article 3 (Equality Before the Law), Article 7 (Values), Article 24 (Equality Before the Law), Article 32 (Right to Legal Remedies), Article 49 (Right to Work and Exercise Profession) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6, 7 and 14 of the European Convention of Human Rights (hereinafter: ECHR).

Legal Basis

4. Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 19 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 13 January 2015, the President of the Court, by Decision GJR. KI183/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI183/14, appointed the Review Panel, composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 27 January 2015, the Court informed the Applicant and the KJC about the registration of the Referral.
8. On 12 February 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of Facts

9. On 4 February 2014, the KJC announced a vacancy for the positions of a certain number of Judges. In the vacancy announcement, the KJC set the requirements which the Applicants had to meet in their applications, which are specified by Article 26 paragraph 1 of the Law on Courts.
10. The Applicant applied within the time limit specified in the vacancy announcement for the position of Judge of the Municipal Court in Peja.

11. On 25 September 2014, the KJC decided to reject the Applicant's application for a position as a judge at the Municipal Court of Peja. The KJC sent a letter of notification [Ref. ZVVGJ/0389/14] of this decision to the Applicant explaining the reasons for its decision. The application had been rejected because the Applicant did not comply with the years of professional experience requirements contained in the Law (Article 26, paragraph 1 of the Law on Courts).
12. On 29 September 2014, the Applicant considered that the KJC had committed an error in determining the facts regarding his work experience. Therefore, he filed an objection to the second instance committee of the KJC requesting the re-consideration of his application.

Applicant's Allegations

13. The Applicant stated in his Referral: "*... that he considers that in his case were violated his rights and freedoms under Article 3 (Equality Before the Law) Articles 7 (Values), Article 24 (Equality Before the Law), Article 32 (Right to Legal Remedies), Article 49 (Right to Work and Exercise Profession) of the Constitution of Kosovo, as well as Article 6, 7 and 14 of the ECHR, and that these violations still continue*".
14. In his Referral, the Applicant requests from the Court:
 - *To declare the Referral admissible;*
 - *To hold that there have been violations of Articles 3, 7, 24, 32 and 49 of the Constitution of Kosovo, and Articles 6, 7 and 14 of the ECHR;*
 - *To annul the Notification Ref. ZVVGJ/0389/14, of the Appointment Committee of the Kosovo Judicial Council, of 22 September 2014, as unconstitutional;*
 - *To order the Kosovo Judicial Council to rectify the abovementioned violations of the Constitution and of the ECHR.*

Assessment of the Admissibility of the Referral

15. In order to be able to adjudicate the Applicant's Referral, the Court has to examine whether he has met the admissibility requirements, laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.
16. In this respect, the Court refers to Article 113.7 of the Constitution, which provides:

"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".
17. In addition, Article 47.2 of the Law also provides:

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

18. Furthermore, Rule 36 (1) b) reads:

“The Court may consider a referral if all effective remedies that are available under the law against the judgment or decision challenged have been exhausted”.

19. The Applicant states in his Referral that Notification [Ref. ZVVGJ/0389/14] of KJC, of 22 September 2014, violated his rights and freedoms guaranteed by the Constitution of Kosovo and the ECHR, as cited in paragraph 12 of this report.

20. The Applicant has not submitted to the Court the response, if any, of the KJC to his objection and request of 29 September 2014. In addition, the Applicant has not indicated whether he has made any other attempts through other legal remedies to insure the constitutional rights, that he now alleges were violated before filing his referral with this Court.

21. Therefore, the Court considers that, in the present case, the Referral of the Applicant is premature, as the Applicant's proceedings for reconsideration of his application initiated before the second instance authority of the KJC has not been concluded.

22. In addition, the Court notes that there are other administrative remedies available to the Applicant which can address his complaints.

23. The Court reiterates that the principle of subsidiarity requires that the Applicant exhaust all procedural possibilities in regular proceedings, in order to prevent the violation of the Constitution, if any, or to remedy such violation of fundamental rights.

24. The rationale for the exhaustion rule is to afford the concerned authorities, 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 shall 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: *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).

25. In conclusion, the Court considers that in the present case there is no final decision of the competent authority which could be considered, and which could be the basis of the alleged violation.

26. It follows that the Referral is inadmissible pursuant to Article 113.7 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (1) b) of the Rules of Procedure, in the session held on 26 March 2015, 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. This Decision is effective immediately.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani