



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, 9 February 2017  
Ref. no.:RK1038/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI34/16**

Applicant

**Faculty of Physical Education and Sport Sciences of the University of  
Prishtina “Hasan Prishtina”**

**Constitutional review of Decision (prot. no. 55) of the Steering Council of  
the University of Prishtina “Hasan Prishtina” of 14 January 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 Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

#### **Applicant**

1. The Referral was submitted by the Faculty of Physical Education and Sport Sciences in the University of Prishtina “Hasan Prishtina” (hereinafter: the Applicant), represented by the Secretary of the Faculty, Gani Ibrahim.

## **Challenged decision**

2. The Applicant challenges the Decision (prot. no. 55) of the Steering Council of the University of Prishtina “Hasan Prishtina” of 14 January 2016, and the Regulation on Rules and Procedures on General Elections in the University of Prishtina “Hasan Prishtina” No. 4/541 of 24 December 2015 (hereinafter: Regulation on Elections in the UP).

## **Subject matter**

3. The subject matter is the assessment of the challenged decision. The Applicant does not mention, in particular, what Articles of the Constitution were violated.

## **Legal basis**

4. The Referral is based on Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 16 February 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 March 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
7. On 25 March 2016, the Court notified the Applicant and the University of Prishtina “Hasan Prishtina” about the registration of the Referral.
8. On 11 November 2016, the President of the Court appointed Judge Ivan Čukalović as Presiding Judge of the Review Panel replacing Judge Robert Carolan, who resigned on 9 September 2016.
9. On 12 December 2016, 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**

10. On 24 December 2015, the University of Prishtina “Hasan Prishtina” (hereinafter: the UP) adopted the Regulation on elections of the UP.
11. The Applicant filed an appeal with the Steering Council of the University of Prishtina “Hasan Prishtina” (hereinafter: the Steering Council) against the adoption of the Regulation on Elections in the UP.

12. On 14 January 2016, the Steering Council (Decision prot. no. 55) rejected as ungrounded the appeal of the Applicant.

### **Applicant's request**

13. The Applicant requests "legal interpretation of the Regulation on Rules and Procedures on General Elections in the UP (no. 4/541, dated 24.12.2015), namely Article 3, under serial number 4 Assistant, whether it is in conformity and pursuant to the Statute of the UP, namely Articles 171, 178 and 241 of the Statute of the UP in force."
14. The Applicant further requests "to annul the election of "new assistant" as a member of the Council of the Faculty of Physical Education and Sports; and to annul the right of new assistants to exercise the vote for the election of the Dean in the FPES".

### **Relevant legal provisions**

#### **LAW No. 04/L-037 ON HIGHER EDUCATION IN THE REPUBLIC KOSOVO**

##### *Article 17*

##### *The Statute of Providers of Higher Education*

- 1. The operation and management of public provider of higher education defined in the statute proposed by the Ministry and approved by the Assembly. This Statute may be amended in accordance with its provisions with the approval of the Ministry and approval by Assembly.*
- 2. The Statutes of all other providers and any amendments in them shall be approved solely by the Ministry.*
- 3. The Statute of each university contains provisions which provide to the Senate or equivalent body equivalent structure main responsibility for consultation and decision-making on academic matters; where among the members of this body are elected representatives of academic staff and students.*
- 4. The Statute of each provider of higher education guarantees development of consultations on academic matters with teaching staff and with students.*
- 5. The Statute of each provider of higher education that receives public funds ensures appliance of below principles from provider:*
  - 5.1. equality of opportunity in employment and equal access to scientific study and research without discrimination.*
  - 5.2. all persons and bodies conduct in accordance with the highest standards of selflessness, integrity, objectivity, accountability, transparency, honesty and leadership: In discharging official duties no person shall act as a representative of any group of any description and shall neither seek nor accept any kind of mandate: During whole time all persons must act solely in the interests of the provider as a whole.*
- 6. A Statute submitted to the Ministry under the provisions of this Law shall be approved if it meets the conditions set out in this Law. Refusal by*

*the Ministry to approve a Statute or confirm modifications to it may be challenged before a court of competent jurisdiction.*

**STATUTE OF THE UNIVERSITY OF PRISHTINA**  
**"Hasan Prishtina"**

*Article 14*

*The academic units and organizational units of the University are not legal entities. The academic and organizational units of the University have the powers provided for in this Statute. The academic units and organizational units of the University are special programs within the UP, namely the UP is a budgetary organization within the framework of the Budget Law made up of academic programs-units.  
[...]*

**Admissibility of the Referral**

15. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
16. In this respect, the Court refers to Articles 21 (4) and 113 (1) and (7) of the Constitution, which establish:

*Article 21*

*[...]*

*4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.*

*Article 113*

*(1) The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

*[...]*

*(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.*

17. The Court also refers to Rule 36 (1) (a) of the Rules of Procedures which provides:

*"(1) The Court may consider a referral if:*

*[...]*

*(a) the referral is filed by an authorized party."*

18. In that respect, the Court notes that the Applicant does not mention any violation of the constitutional rights by public authorities. He only requests "legal interpretation of the Regulation on Rules and Procedures on General Elections in the UP (no. 4/541, dated 24.12.2015), namely Article 3".

19. The Court also notes that the Applicant has not provided any information regarding the initiation of the proceedings before the regular courts to resolve its appeals, or in connection with the legal interpretation of the Regulation on Rules and Procedure of general elections in the UP.
20. The Court recalls that, in accordance with Articles 21 (4) and 113 (7) of the Constitution, individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution.
21. However, the Court notes that, according to the Statute of the UP, the Faculty of Physical Education and Sport Sciences is an academic and organizational unit of the University and the Faculty is not a legal entity.
22. Therefore, the Court finds that the Applicant is not an authorized party, since it is not an individual in the sense of Articles 21 (4) and 113 (7) of the Constitution.
23. In sum, the Court concludes that, in accordance with Rule 36 (1) (a) of the Rules of Procedure, the Referral is rejected as inadmissible.

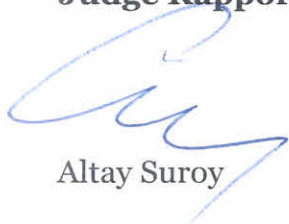
### **FOR THESE REASONS**

The Constitutional Court of Kosovo, in accordance with Articles 113.7, 21.4 of the Constitution, and Rule 36 (1) (a) of the Rules of Procedure, in the session held on 12 December 2016, 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.

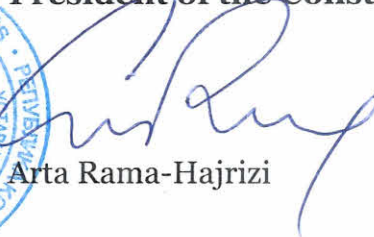
**Judge Rapporteur**



Altay Suroy



**President of the Constitutional Court**



Arta Rama-Hajrizi