



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 1 December 2015. godine
Ref. No.: RK863/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI77/15

Applicant

Naser Foniqi

**Constitutional Review of Decision KGJK/No. 18/2015 of Kosovo Judicial
Council, of 11 March 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Naser Foniqi with residence in Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision [KGJK/no. 18/2015] of Kosovo Judicial Council (hereinafter: KJC), of 11 March 2015.

Subject Matter

3. Subject matter is the constitutional review of challenged decision, which allegedly violated Article 102 [General Principles of the Judicial System], Article 107 [Immunity] of the Constitution of the Republic of Kosovo, as well as the Law on Courts and the Regulation on Internal Organization of the Courts.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

5. On 16 June 2015 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 3 August 2015 the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
7. On 15 October 2015 the Court informed the Applicant and KJC about the registration of the Referral.
8. On 12 November 2015, after having considered the report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of Facts

9. The Applicant is a judge of the Basic Court in Prishtina. On 11 April 2014 the Office of the Disciplinary Counsel (hereinafter: ODC) initiated disciplinary proceedings against the Applicant before KJC, due to unprofessional conduct, abuse of judicial functions and violation of applicable Code of Ethics.
10. On 1 August 2014 the KJC after the conducted proceedings [Decision DK. no. 10/2014] decided to reprimand the Applicant for unprofessional conduct, abuse of judicial function and violation of the applicable Code of Ethics.
11. On 8 September 2014, dissatisfied with the abovementioned decision, the Applicant filed an appeal with the second instance committee of the KJC. In addition to the Applicant, the ODC also filed an appeal against the aforementioned decision.

12. On 11 March 2015 the second instance committee of KJC [Decision KGJK/No. 18/2015] rejected the appeals of the Applicant and of the ODC as ungrounded and upheld the Decision of the Disciplinary Committee of the KJC.

Applicant's Allegations

13. The Applicant alleges that the KJC, by the challenged decision has violated his rights guaranteed by Article 102 [General Principles of the Judicial System] and Article 107 [Immunity] of the Constitution of the Republic of Kosovo.
14. The Applicant requests the Court:

„By this Referral, I want that the Constitutional Court of Kosovo annuls Decision KGJK. no. 18/15 of Kosovo Judicial Council, of 11 March 2015 [...]”.

Admissibility of the Referral

15. The Court first examines whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
16. In this regard, 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. The Court also refers to Article 47.2 of the Law, which provides that:

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

18. Furthermore, the Court takes into account Rule 36 (1) (b) of the Rules of Procedure, which states that:

„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. In this regard, the Court recalls that the Applicant claimed that the KJC by challenged decision violated his rights guaranteed by the Constitution of the Republic of Kosovo.
20. In the present case, it can be noted that the Applicant has not exhausted all legal remedies in accordance with Article 113.7 of the Constitution, considering that the Applicant had the right to appeal against the challenged decision of the KJC before the Department for Administrative Matters of the Basic Court.

21. The Court further recalls that the principle of subsidiarity requires that the Applicant exhaust all legal remedies provided by the law.
22. The rationale for the exhaustion rule is to afford competent authorities, including the 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 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).
23. Therefore, the Court considers that the Applicant's Referral is premature, because of non-exhaustion of all available legal remedies, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.
24. It follows that the Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 12 November 2015, unanimously

DECIDES

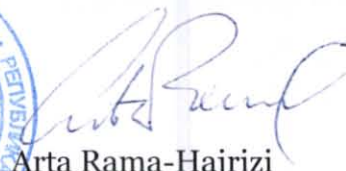
- I. TO DECLARE the Referral Inadmissible;
- II. This Decision shall be notified to the Parties and published in the Official Gazette, in accordance with Article 20.4 of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Arta Rama-Hajrizi

