



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

Prishtina, 18 March 2013
Ref.no.:RK398/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI130/12

Applicant

Xhymshit Xhymshiti

**Constitutional review of the Notification of the Office for Prosecutorial
Assessment and Verification ZZVP/12/213 of 23 November 2012**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Cukalovic, 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 Applicant is Xhymshit Xhymshiti, a practicing lawyer from Gjilan.

Challenged decisions

2. The Applicant challenges the notification ZZVP/12/13 of the Evaluation Panel of the Office for Prosecutorial Assessment and Verification of 23 November 2012, served on the Applicant on 24 November 2012, and the decision of the Panel for Reconsideration of Kosovo Prosecutorial Council, KPK/82, of 30 November 2012.

Subject matter

3. The subject matter of the Referral is the alleged violation of the right to work by the Evaluation Panel of the Office for Prosecutorial Assessment and Verification, and the constitutional interpretation of 25 years of experience of the Applicant in Kosovo judiciary.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution; Articles 20 and 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law), and Rule 36 (1) a) of the Rules of Procedure of the Constitutional Court of Kosovo (hereinafter: the Rules of Procedure).

Procedure before the Court

5. On 18 December 2012, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 10 January 2013, the President by Decision No. GJR.KI130/12 appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President by Decision no.KSH.KI130/12, appointed the Review Panel composed of Judges Robert Carolan (presiding), Altay Suroy and Enver Hasani.
7. On 1 February 2013, the Applicant submitted additional documents to the Court.
8. On 28 February 2013, the Constitutional Court informed the Applicant, the Office for Prosecutorial Assessment and Verification and the Kosovo Prosecutorial Council, of the registration of the Referral in the Court's respective register.
9. On 13 March 2013, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court on the inadmissibility of the Referral.

Proceedings before the Court

10. On 2 May 2012, the Kosovo Prosecutorial Council announced vacancies for prosecutors in entire territory of the Republic of Kosovo including also the municipal prosecution offices in Gjilan and Ferizaj.
11. The Applicant applied for the position of prosecutor in the municipal prosecution office in Gilan and Ferizaj, and on 24 November 2012 he was informed by the Evaluation Panel of the Office for Prosecutorial Assessment and Verification that he was not recommended for the position he had applied for and that other candidates proved to be more successful.
12. The Applicant filed a request to the Panel for Reconsideration of the Kosovo Prosecutorial Council, and on 4 December 2012 the said Panel rejected the Applicant's

request for reconsideration reasoning that it was proven that Applicant had fewer points than the other candidates, who were recommended by the Evaluation Panel.

Applicant's allegations

13. The Applicant alleges that the Evaluation Panel and the Panel for Re-consideration of the Kosovo Prosecutorial Council, through their notifications respectively their decisions, by not recommending the Applicant for the position of Prosecutor in Gjilan and Ferizaj, have violated his right to work as well as the Article 61 [Representation in Public Institutions Employment] of the Constitution,
14. The Applicant alleges that his Referral has constitutional basis because when applying for the position of prosecutor he had provided evidence and certified facts related to his 25 years of experience in Kosovo judiciary.
15. The Applicant requests from the Court the interpretation of his 25 years of experience in Kosovo judiciary, and to ascertain violation of his rights by the Evaluation Panel and by the Panel for Reconsideration, when they assessed that the Applicant has not reached the required number of points in order to be recommended for the position of municipal prosecutor in the municipal prosecution office in Gjilan or Ferizaj.
16. The Applicant in his Referral to this Court has provided evidence of his experience as a lawyer in the Kosovo judiciary, including his experience as prosecutor and judge.
17. Moreover, the Applicant alleges that *"it is very true that the proposed candidates do not have even one year of work experience in prosecution."*

Assessment of admissibility

18. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and further specified by the Law on Constitutional Court and the Rules of Procedure.
19. 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 remedies provided by law"
20. The Court also refers to Articles 10.1 and 11 of the Law No. 03/L-202 on Administrative Conflicts which provide:

"Based on the Law, a natural and legal person has the right to start an administrative conflict, if he/she considers that by the final administrative act in administrative procedure, his/her rights or legal interests has been violated."

"Administrative conflict, according to the lawsuit¹, shall be solved by the Supreme Court of the Republic of Kosovo."
21. From the documents submitted, it is clear that the Applicant has not initiated an administrative conflict based on the legislation in force in Kosovo, and consequently

¹ The Law No.03/L-202 on Administrative Conflict uses the term "indictment".

has not exhausted all legal remedies in accordance with Article 113.7 of the Constitution.

22. 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: AABRIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo, KI-41/ 09, of 21 January 2010, and see *mutatis mutandis*, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).
23. The Court similarly decided, on 18 May 2011, in the Resolution on Inadmissibility in case No. 114/10, Applicant Vahide Badivuku - Constitutional Review of the Kosovo Judicial Council Notification on the reappointment of judges and prosecutors, No 01/118-713, of 27 October 2010.
24. It follows that the Referral is inadmissible due to the non-exhaustion of all legal remedies in compliance with 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 in compliance with Rule 36.1 (a) of the Rules of the Procedure, on 13 March 2013, unanimously:

DECIDES

- I. TO REJECT the Referral as 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur

Dr. sc. Kadri Kryeziu

President of the Constitutional Court

Prof. Dr. Enver Hasani

