



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

Prishtina, on 3 March 2014
No. ref.:RK 561/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI147/13

Applicant

Ilir Bunjaku

Constitutional Review of the Administrative Instruction No. 20/2012 of the Ministry of Education, Science and Technology, on Comparability and Equivalence of Diplomas and Study Programs before the Bologna System and of the Bologna System

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 Applicant is Mr. Ilir Bunjaku (hereinafter: the Applicant), from the village of Samadrexha, Municipality of Vushtrri.

Challenged decision

2. The challenged decision is the Administrative Instruction No. 20/2012 of the Ministry of Education, Science and Technology (hereinafter: AI MEST), on Comparability and Equivalence of Diplomas and Study Programs before the Bologna System and of the Bologna System, signed by the Minister on 22 October 2012.

Subject matter

3. The subject matter is constitutional review of Administrative Instruction No. 20/2012 of MEST, which according to the Applicant, places a group of engineers graduated in the Faculty of Electrical and Computer Engineering (FECE), who finished their lectures in a five-year program before graduation, in an unequal position with those who attended four-year studies, and the academic title awarded upon graduation.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: Constitution), Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 13 September 2013, the Applicant filed his referral with the Court.
6. On 24 September 2013, by Decision GJR. KI147/13, the President of the Court appointed Judge Arta Rama-Hajrizi as Judge Rapporteur, and a Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 7 October 2013, the Constitutional Court notified the Applicant and the MEST on registration of the referral.
8. On 5 December 2013, 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 the facts

9. On 22 October 2010, MEST issued Administrative Instruction No. 20/12 – on Comparability and Equivalence of Diplomas and Study Programs before the Bologna System. The Administrative Instruction was signed by the Minister of Education, Science and Technology.
10. Article 4.1 of this AI provides that “*Diplomas of four-year university studies of the system before Bologna are equivalent to 240 ECTS. Paragraph 2 of the*

same Article provides that: *“To earn a Master degree, these graduates shall also collect at least 60 ECTS in one of these programs”*.

11. Article 5 of the same AI provides: *“Diplomas of 5 (five) years university studies that have been completed with the public defense of the graduate thesis in technical system areas before Bologna are equivalent with 300 ECTS”*.
12. According to the Applicant, himself and a group of FECE students attended all lectures in a five-year study system, and passed almost all exams, but without graduation, and in the meantime, the study program changed in the Faculty, where the fifth year exams were transferred to the fourth year of study.

Applicant’s allegations

13. The Applicant alleges that the Administrative Instruction has placed him and the group of students finishing the five-year study program in an unequal position with other students, because they are not recognized 300 ECTS, like those graduating in the system before the Bologna system.
14. The Applicant has not alleged any violation of any constitutionally guaranteed right, but has requested review of legality of this Administrative Instruction.

Assessment of admissibility of the Referral

15. In order to be able to review the Referral of the Applicant, the Court must first assess whether the Applicant has met all admissibility criteria as provided by the Constitution, and further specified by Law and Rules of Procedure
16. In this regard, the Court refers to Article 113.1 of the Constitution, which provides:

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

and Article 113.7, 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 referring to the Applicant’s Referral and violations alleged, the Court finds that the Referral was filed by an individual, that the Applicant has not proven to have exhausted any legal remedy before filing the Referral with the Constitutional Court, and that the challenged legal act was made public on 20 October 2012, which means 10 and a half months before the Applicant’s Referral was submitted to the Court.
18. In relation to the admissibility criteria of the authorized party, the Court finds the following:

19. The Applicant challenges AI of MEST No. 20/12, signed by the Minister of MEST on 22 October 2012.
20. Article 92 [General Principles] of the Constitution provides that:

“1. The Government consists of the Prime Minister, deputy prime minister(s) and ministers”.
21. In due consideration of the above-mentioned constitutional norm, and the fact that the challenged AI was signed by a Minister of the Government, and belongs to the executive branch, respectively the MEST, it is clear that the AI is a bylaw of the Government of Kosovo.
22. In relation to this, the Court notes that Article 113 [Jurisdiction and Authorized Parties] of the Constitution providing the parties that are authorized to refer constitutional matters, in its item two has stipulated:

“The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:

(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government”.
23. Based on the above, the Court notes that individuals are not authorized parties, in the meaning of Article 113 of the Constitution, to refer matters of compliance of Government regulations with the Constitution, since such referrals may be filed only by entities as provided by Article 113.2 of the Constitution.
24. In similar circumstances, the Court has addressed the issue of authorized parties when deciding in Case KI44/10 of Applicant Gafurr Podvorica, when on “constitutional review of the Decision of the Ministry of Labor and Social Welfare (MLSW) no. 89 dated 23 April 2010, on the dissolution of the Social Policy Institute within MLSW, it issued Resolution on Inadmissibility (see the Resolution in Case KI44/10 of 18 March 2011 and also the European Court of Human Rights when it reviewed Application no. 45129/98 (see Convention Municipal Section of Antilly v. France (December) no. 45129/98, ECHR 1999-VIII).”
25. Furthermore, the Court notes that the Applicant has not specified any human right as guaranteed by the Constitution which may have been violated by the legal act he challenges, while from the contents of the Referral, the Court was not able to ascertain what rights could have been subject of the matter filed for review before it.
26. In these circumstances, the Applicant has not proven that he is an authorized party to file a referral with the Court, in the form and content in which he has built the case, and therefore

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 (3) c) of the Rules of the Procedure, on 5 December 2013, unanimously:

DECIDES

- I. TO DECLARE 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


Arta Rama-Hajrizi

President of the Constitutional Court


Prof. Dr. Enver Hasani

