



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

Prishtina, 24 April 2014  
Ref.no.:RK 564/14

## RESOLUTION ON INADMISSIBILITY

in

Case No. KI207/13

Applicant

**Rexhep Kabashi, Jusuf Mejjini and Meleqe Bexheti**

***Request for “interpretation of the provision of Article 109, para. 5 and Article 105, para.1 of the Constitution of the Republic of Kosovo, regarding the retirement age of the prosecutors and of judges”.***

### 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 Applicants are Mr. Rexhep Kabashi (Prosecutor in the Office of the Chief State Prosecutor), Mr. Jusuf Mejjini (Prosecutor in the Office of the State Chief Prosecutor), and Ms. Meleqe Bexheti (Judge of the Supreme Court of Kosovo).

## **Challenged decision**

2. The Applicants do not challenge any decision but are requesting from the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") an *"interpretation of the provision of Article 109, para. 5 and Article 105, para.1 of the Constitution of the Republic of Kosovo, regarding the retirement age of the prosecutors, respectively of judges"*.

## **Subject matter**

3. The subject matter is the request for interpretation of two articles of the Constitution of Republic of Kosovo (hereinafter: the "Constitution"), namely Article 109.5 [State Prosecutor] and Article 105.1 [Mandate and Reappointment], which the Applicants allege *"it is not clearly stated by which law is regulated the retirement age for judges and prosecutors."*

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law") and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## **Proceedings before the Court**

5. On 18 November 2013, the Applicants submitted the Referral to the Court.
6. On 19 November 2013, the President of the Constitutional Court by Decision, No.GJR.KI 207/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President of the Court by Decision, No.KSH.KI 207/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues, and Enver Hasani.
7. On 20 November 2013, the Court notified the Applicants, the Kosovo Judicial Council and the Kosovo Prosecutorial Council of the registration of the Referral.
8. On 2 December 2013, the President of the Court by Decision, No.KSH.KI 207/13, replaced Presiding Judge of the Review Panel, Judge Robert Carolan, with Judge Ivan Čukalović. The composition of the Review Panel is as follows: Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Enver Hasani.
9. On 3 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

10. On 18 November 2013, the Applicants submitted a Referral with the Court, requesting the Court as the only authority to interpret two provisions of the Constitution.

Article 109.5, which provides *“The mandate for prosecutors shall be three years. The reappointment mandate is permanent until the retirement age determined by law or unless removed in accordance with law.”*

Article 105.1, which provides *“The initial mandate for judges shall be three years. The reappointment mandate is permanent until the retirement age as determined by law or unless removed in accordance with law.”*

11. The Court notes that there have not been any judicial proceedings in this matter.

## Applicant’s allegations

12. The Applicants have brought their Referral to this Court under Article 112.1 of the Constitution, which provides:

*“The Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.”*

13. The Applicants allege that Articles 109.5 [State Prosecutor] and 105.1 [Mandate and Reappointment] of the Constitution, which pertain the retirement age for prosecutors and judges, does not *“clearly state by which law is regulated the retirement age for judges and prosecutors.”*
14. The Applicants also allege that the *“Law on the State Prosecutor (Law no. 03/L-225) of 30.09.2010 and the Law on Courts (Law no. 03/L-199) have not provided any provisions for retirement age of prosecutors, respectively judges.”*
15. The Applicants also draws the Court’s attention to the fact that the Law on Prosecutorial Council of Kosovo *“have, provided the criteria of recruitment, appointment and reappointment of prosecutors”* but does not address what the age of retirement should be. In addition, the Applicants draws the Court’s attention to *“the Law on Judicial Council of Kosovo (Law no. 03/L-223) of 30.09.2010, [which] has provided the procedures and disciplinary measures for judges”* but does not, allegedly, provide the age of retirement.
16. The Applicants also mention provisions from the *“Law on the Civil Service of the Republic of Kosovo (Law no. 03/L-149), which by the provision of Article 90, para. 1 item 2.1 provided the termination of the employment relationship of civil servants by reaching the retirement age, while the provision of Article 91, para. 1, provided the retirement age at 65 years, respectively the Law on Labour (Law no. 03/L-212) of 01.11.2010, by provisions of Article 67, para. 1, sub para. 1.4 provided that the employment relationship is terminated when an employee reaches the pension age of 65 years.”*

17. The Applicants allege that *“prosecutors and judges do not belong either to the category of civil servants or to the category of employees, but they are special officials, whereas the rights and obligations are regulated by special laws, such as the Law on State Prosecutor, the Law on Courts, respectively the Law on Kosovo Prosecutorial Council and the Law on Kosovo Judicial Council.”*
18. The Applicants further allege and claim that since the laws upon which their rights and obligations are mandated have failed to provide a specific retirement age, the Court needs to *“provide correct interpretation of the constitutional provisions, respectively of the provision of Article 109, para. 5, when it has to do with the State Prosecutor and provision of Article 105, para. 1 the retirement age of the prosecutor, respectively the judge and which law should be applied in the present case.”*

### **Admissibility of the Referral**

19. The Court observes that, in order to be able to adjudicate the Applicants' complaint, it is necessary to first examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
20. In the case at hand, the Applicants are seeking an interpretation of two constitutional provisions, namely Articles 109.5 and 105.1 of the Constitution because the Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.
21. In this respect, the Court notes that under Article 112.1 of the Constitution, *“[t]he Constitutional Court is the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution.”* However, this is a general provision and the Court has the authority to interpret the Constitution if the Referral is filed by an authorized party.
22. In this respect, the Court refers to Article 113.1 of the Constitution which provides: *“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”*
23. The Court notes that the Applicants submitted their Referral under 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.”*
24. The Applicants do not challenge any final decisions by the public authorities and they do not have established whether any rights of the Constitution have been violated. Instead they are seeking an interpretation from the Court in respect to Articles 109.5 [State Prosecutor] and 105.1 [Mandate and Reappointment] of the Constitution, which pertain the retirement age for prosecutors and judges because allegedly it is not clear which law regulates the retirement age for judges and prosecutors.

25. In this respect, the Court notes that Article 113.5 of the Constitution before the promulgation of a law grants ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.
26. Furthermore, after a law has been promulgated, Article 113.2 (1) authorizes the Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson to refer question of compatibility of laws with the Constitution.
27. Finally, also Article 113.8 of the Constitution provides that *"The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court's decision on that case depends on the compatibility of the law at issue."*
28. Thus, the Court concludes that the request of the Applicants do not fall within the scope of the jurisdiction of neither of the abovementioned Articles of the Constitution. Therefore, the Applicants are not authorized parties under the Constitution to refer this question to the Court.
29. Consequently, the Applicants' Referral is inadmissible, pursuant to Article 113.1 of the Constitution.

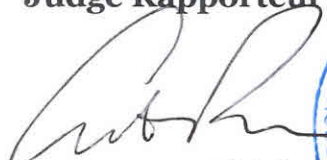
## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 of the Constitution and Rule 56.2 of the Rules of Procedure, on 24 April 2014 , unanimously/by majority

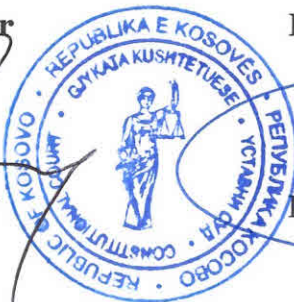
## DECIDES

- I. TO DECLARE the Referral as Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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**



Arta Rama-Hajrizi



**President of the Constitutional Court**



Prof. Dr. Enver Hasani