



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

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Prishtina, 16 June 2014  
Ref. no.:RK641/14

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI211/13**

Applicant

**Demush Krasniqi**

**Constitutional review of the Act of the Kosovo Judicial Council,  
Notification no. 01/118-682, of 27 October 2010**

**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. Demush Krasniqi, residing in the village Drenoc, Municipality of Malisheva, who with power of attorney is represented by Mr. Daut Krasniqi, lawyer from Municipality of Malisheva.

## **Challenged decision**

2. The Applicant challenges the Notification of the Kosovo Judicial Council (hereinafter: KJC), No. 01/118-682, of 27 October 2010, on his dismissal from the post of the Judge in the Municipal Court in Malisheva.

## **Subject matter**

3. The Applicant requests the assessment of the constitutionality and legality of the KJC Notification No. 01/118-682, of 27 October 2010, when as a result of the reappointment of Judges, the KJC, on 27 December 2010, notified the Applicant that his mandate as a judge had ended.

## **Legal basis**

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

## **Proceedings before the Court**

5. On 19 November 2013, the Applicant submitted the Referral to the Constitutional Court.
6. On 3 December 2013, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
7. On 19 December 2013, the Court notified the Applicant on the registration of Referral and requested from him to submit to the Court the official form of the Referral.
8. On 30 December 2013, the Applicant submitted to the Court the Referral form.
9. On 17 January 2014, the Court notified the KJC on registration of the Referral.
10. On 28 March 2014, the Review Panel considered the preliminary report and made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

11. The Applicant is the former Judge of the Municipal Court in Malisheva, who on 27 October 2010 received the KJC Notification, No. 01/118-682, whereby he was notified that his mandate as a Judge in the Municipal Court in Malisheva ended on 27 October 2010.
12. The KJC Notification came as a result of the reappointment process of judges and prosecutors during the third phase, pursuant to Article 2.11, Article 2.16

and Article 14.2 of the Administrative Direction No. 2008/02 on Implementing UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo and Article 150 of the Constitution.

### **Applicant's allegations**

13. The Applicant alleges that the KJC Notification, "... violated UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo of (SRSG) as well as Article 104 of the Constitution of the Republic of Kosovo, the European Charter on the Statute for Judges, Article 6 item 1.2.3 and 4 Remuneration and Social Welfare of Professional Judges".
14. The Applicant requests from the Court "to declare the KJC Notification as unconstitutional and unlawful and to recognize all my rights and obligations from employment relationship, from the day of my dismissal until rendering the decision on merits".

### **Preliminary assessment of admissibility of Referral**

15. 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 in the Law and the Rules of Procedure.
16. In this respect, 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. As well as Article 47.2 of the Law, which provides:

*"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 refers to Rule 36 (1) a) of the Rules, which provides:

*"(1) The Court may only deal with Referrals if:*  
  
*(a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted..."*
19. With respect to this Referral, the Constitutional Court notes that on 27 October 2010, the KJC notified the Applicant, by Notification No. 01/118-682, that his mandate as a Judge in the Municipal Court for Minor Offences in Malisheva ended on 27 October 2010.
20. The KJC based the issuance of this Notification on Article 150 of the Constitution and on Articles 2.11, 2.16 and 14.2 of the Administrative Direction

No. 2008/02 on Implementing UNMIK Regulation No. 2006/25 on a Regulatory Framework for the Justice System in Kosovo.

21. In this respect, the Court concludes that the Applicant has not provided any evidence that he has challenged the decision of the KJC in any of the regular courts of Kosovo or that he has exhausted all legal remedies, before addressing the Constitutional Court with this Referral
22. The Court wants to reiterate that 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 provides an effective remedy against the violation of constitutional rights (see case *Selmouni vs. France*, no. 25803/94, ECtHR Decision of 28 July 1999).
23. The Court applied this same reasoning when it issued the Resolution on Inadmissibility, on the grounds of non exhaustion of all legal remedies (See case KI104/10, *Vahide Badivuku vs. Kosovo Judicial Council*, Resolution on Inadmissibility of 14 June 2011 Case).
24. Therefore, the Court concludes that the Applicant has not exhausted all legal remedies provided by law, in order to submit the Referral with the Constitutional Court and the Referral should be rejected as inadmissible, pursuant to Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure.
25. The Court also notes that if the Applicant had exhausted all of his legal remedies before filing this referral with the Court on 19 November 2013, his referral would be inadmissible because it had not been filed within the four month time limit prescribed by law. See Article 49 of the Law On the Constitutional Court of the Republic of Kosovo.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) a) of the Rules of Procedure, on 28 March 2014, unanimously

## 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**

  
Robert Carolan

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani

