



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

Pristine, 30 January 2013
Ref. No.:RK377/13

RESOLUTION ON INADMISSIBILITY

In

Case No. KI91/12

Applicant

Ali Latifi

**Constitutional Review of the Decision issued by EULEX Prosecution Office in
Prizren appointing the defense counsel ex-officio in case HP-155/12**

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 Mr. Ali Latifi, a lawyer from Prishtina.

Challenged decision

2. The challenged decision of the public authority by which are alleged violations of the rights guaranteed by the Constitution is the Decision issued by EULEX Prosecution Office in Prizren on appointment of the defense counsel ex-officio. The Applicant has not specified the number of the decision, the date of issuance nor the date of receipt. This decision relates to a case HP-155/12.

Subject matter

3. The subject matter of the Referral submitted to the Constitutional Court of the Republic of Kosovo on 10 September 2012 is the constitutional review of the Decision issued by EULEX Prosecution Office in Prizren appointing the Applicant as a defense counsel in case HP-155/12. The Applicant requests from the Court to explain whether the Applicant should be the defense counsel of the defendant S. P. who is accused of war crimes.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law Nr. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law), and Article 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedures).

Proceedings before the Court

5. On 10 September 2012, the Applicant submitted the Referral to the Constitutional Court.
6. On 31 October 2012, by Decision GJ.R.KI91/12 the President of the Court appointed Judge Ivan Čukalovic as Judge Rapporteur. On the same day, the President of the Court appointed the Review Panel composed of judges: Almiro Rodrigues (Presiding) Snezhana Botusharova and Kadri Kryeziu.
7. On 25 September 2012, the Constitutional Court requested from the Applicant that in compliance with Article 48 of the Law on Constitutional Court and Rule 36 of the Rules, he should fill out the form of the Court and submit court decisions, the necessary evidence and proofs in order for his Referral to be processed and reviewed.
8. The Applicant did not respond to any of the requests submitted by the Court.
9. On 15 November 2012, the Court notified the Applicant that the Referral has been registered.

Summary of the Facts

10. On 10 September 2012, the Applicant submitted only one-page Referral.
11. The Applicant addressed the same request to the following institutions:

Chamber of Advocates of the Republic of Kosovo,
Ministry of Justice of the Government of Kosovo
Kosovo Judicial and Prosecutorial Council,
Chief State Prosecutor of Kosovo and to District Prosecutors

EULEX,
Special Prosecution of Kosovo,
Supreme Court of Kosovo and to Constitutional Court of the Republic of Kosovo

12. The Applicant challenges the Decision issued by EULEX Prosecution Office in Prizren on appointment of the defense counsel in case HP-155/12, where the Applicant was appointed as defense counsel of the defendant S. P.

S.P. is charged with crimes committed against civilian population in Krusha MA Prizren. (This decision is not in the case file)

13. The Applicant states that he has informed EULEX Prosecution Office through Kosovo Chamber of Advocates, requesting from them to know whether he can be appointed as defence counsel, because, as he states "*on 20.08.1998 in the Hague and on 06.09.2003 at the Prosecution of Kosovo I have initiated the procedure on the war crimes towards the civil population that the Serbian state committed against the unprotected population in Kosovo.*"

Applicant's allegations

14. The Applicant did not specify which rights, guaranteed by the Constitution, have been violated.

Assessment of the admissibility of the Referral

15. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.

16. In this regard, the Court refers to Article 113.1 and 113.7 of the Constitution, which stipulate:

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

7. "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 the present case, the Applicant has not:
 - a. Submitted any supporting documentation for the review of his Referral and
 - b. Provided any evidence that his rights and freedoms were violated by any public authority

18. The Court also takes into account:

Rule 36 para. 3 of the Rules of Procedure of the Constitutional Court, where is stipulated:

" (3) A Referral may also be deemed inadmissible in any of the following cases:

(f) the Referral is incompatible ratione materiae with the Constitution;

19. The Court emphasizes that the *ratione materiae* compatibility of a Referral with the Constitution derives from the substantial competence of the Court's jurisdiction, laid

down in the Article 113 of the Constitution and in particular with Article 113.7 when individual Referrals are concerned.

20. In order for a Referral to be compatible *ratione materiae* with the Constitution, the right which is alleged to have been violated to the Applicant should be guaranteed and protected by the Constitution.
21. In this respect, the European Court on Human Rights reviews only the cases that are referred about the assumed violations of rights guaranteed by the European Convention on Human Rights and its Protocols and not the rights guaranteed by other legal instruments or that are out of the Court's jurisdiction (see Peñafiel Salgado versus Spain, Application no n° 65964/01 dated 16 April 2002 and x against Netherland ECHR Decision dated 4 October 1976)
22. Mr. Latifi has not specified in his Referral which of his rights, guaranteed by the Constitution was violated, whereas from the text of the Referral the Court could not determine that any of the rights, guaranteed by Kosovo Constitution has been a subject of possible violation.
23. The issue of the appointment of the *ex-officio* defense counsel is not by itself a constitutional matter, and it is not determined by any of the rights guaranteed by the Constitution, which the Applicant could invoke.
24. Under these circumstances, the Applicant did not raise any constitutional matter within the legal framework provided by Article 113.7, therefore in compliance with the Rule 36 para. 3 (f), the Referral should be declared as inadmissible due to incompatibility *ratione materiae* with the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution and in accordance with Rule 36.3 item (f) of the Rules of Procedure, in the session held on 29 January 2013, unanimously

DECIDES

- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20(4) of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani

