



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 28 October 2013
Ref.no.:RK485/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI91/13

Applicants

Shpend Zajmi, Avni Kryeziu and 19 others

**Constitutional Review of decisions no. 681 of 15 March 2012 respectively
No.338 of 1 February 2013 of the Rectorate of the University of Prishtina**

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
Arta Rama-Hajrizi, Judge

Applicants

1. The Applicants are: Shpend Zajmi, Avni Kryeziu, Irfan Daullxhiu, Badri Mulaj, Suzana Krasniqi, Bahrie Halili, Fitore Komoni, Vesel Skënderi, Arbër Tolaj, Lirie Gashi, Luljeta Luzha, Sadik Rashiti, Burbuqe Skënderi, Sylejman Halili, Florim Shaqiri, Afrim Tahiri, Musa Jashari, Lulzim Sadiku, Shpresa Rexha, Burhan Hadri and Islam Krasniqi (hereinafter: the Applicants), students at the University of Prishtina, Faculty of Medicine.

Challenged decisions

2. Decisions no.681 of 15 March 2012, respectively, no.338 of 1 February 2013 of the Rectorate of the University of Prishtina.

Legal basis

3. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution); Article 20 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 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Subject matter

4. The subject matter of the Referral is the Applicant's right to extension of the time limit for post-graduate studies. The Rectorate of the University of Prishtina had decided to reject the Applicants request for extension of the time limit for post-graduate studies, by stating that the Applicants were notified about the time limit for finishing studies.

Proceedings before the Court

5. On 28 June 2013, the Applicants submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 1 July 2013, the President, with Decision No.GJR.KI91/13, appointed Judge Arta Rama-Hajrizi as Judge Rapporteur. On the same date, the President, by Decision No.KSH.KI91/13, appointed the Review Panel composed of judges: Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu (members).
7. On 15 July 2013, the Applicants were notified about the registration of the Referral. On the same day, the Referral was communicated to the Rectorate of the University of Prishtina.
8. On 13 September 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of facts

9. In the academic year 2002/2003, the Applicants were registered for post-graduate studies at the University of Prishtina, Faculty of Medicine.
10. On 15 March 2012, the Rectorate of the University of Prishtina notified the Applicants that the Management of the University of Prishtina had made the decision i) to allow the continuation of studies with an old system of basic studies and of master studies in the Faculty of Medicine, ii) the continuation of studies for these students (including the Applicants) is allowed until 30 September 2012.

11. On 1 February 2013, the Rectorate of the University of Prishtina notified the Applicants that the Senate of the University of Prishtina had made a decision: i) the request for extension of duration of studies for the students (including also the Applicants), who have not finished master studies, registered before the entry into force of the statute no. 318 of 5 July 2004, is rejected, ii) since the Faculty of Medicine does not organize master studies with a program of studies 5 and 6 years, the students of the category as in the item I of this decision (including also the Applicants) are entitled to directly apply for the programs of the PhD, since during the basic studies have collected 300 or 360 ECTS.

Applicant's allegations

12. The Applicants allege that they have passed all exams, provided by the respective curricula and that they have fulfilled all financial obligations towards the administration of the Faculty of Medicine. The Applicants also allege that they have received the consent of the respective committees of the Faculty of Medicine, but that they have stagnated with the last committee for defense of master thesis.
13. The Applicants allege that by the decisions of the Rectorate of the University of Prishtina, which determined the time limit for finishing the studies are unfair and violate their constitutional rights, guaranteed by Article 47 [Right to Education] and Article 49 [The Right to Work and Exercise Profession] of the Constitution. The Applicants allege that the abovementioned decisions were not communicated to them in written, verbal or any other form.
14. Finally, the Applicants request from the Court: i) to assess the legality of the decisions of the Rectorate of the University of Prishtina regarding the termination of post-graduate studies, ii) to annul the said decisions, and iii) to allow them the continuation of post-graduate studies, respectively the defense of master thesis.

Assessment of the admissibility

15. In order to be able to adjudicate the Applicants' Referral, the Court has to assess beforehand whether the Applicants have met all the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
16. Regarding the request of the Applicants, the Court refers to Article 113.7 of the Constitution, which provides that:

"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. The Court also refers to the Rule 36 (1) a) of the Rules of Procedure, which determines that:

(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.”

18. The Court considers that the wording of Article 113.7 of the Constitution obliges individuals to seek realization of their constitutional rights from the public authorities that is administrative bodies and regular courts of the Republic of Kosovo before addressing the Constitutional Court.
19. 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 Kosovo legal order will provide an effective legal remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (See, case KI41/09, Applicant AAB-RIINVEST L.L.C. Prishtina, Resolution on inadmissibility, of 21 January 2012 and mutatis mutandis, see case Selmouni vs France, No. 25803/94 ECHR, decision of 28 July 1999).
20. In the present case, the Court considers that in order to realize their constitutional rights the Applicants should exhaust legal remedies before the competent authorities; and only after having taken these actions, i.e. after exhaustion of legal remedies, they may address the Constitutional Court if they deem it necessary and that within the four month time limit prescribed in Article 49 of the Law.
21. Regarding the legal deadlines, the Court refers to Article 49 of the Law, which provides that:

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.”

22. The Court also refers to the Rule 36 (1) b) of the Rules of Procedure, which determines that:

“The Court may only deal with Referrals if:

[...]

b) the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant...”

23. From the submitted documents it can be seen that the last decision of the Rectorate of the University of Prishtina was published on 1 February 2013, while the Applicants submitted their Referral to the Court on 28 June 2013,

respectively the Referral was not submitted within the period of four (4) months as provided in Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.

24. It results that the Referral is out of time.
25. Consequently, the Referral should be rejected as inadmissible due to noncompliance with the prescribed requirements of Article 49 of the Law and Rule 36 (1) b) of the Rules of Procedure.


FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution, Article 49 and 19.4 of the Law; as well as pursuant to the Rule 36.1 (b) of the Rules of the Procedure, on 13 September 2013, by majority vote:

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


Arta Rama-Hajrizi



President of the Constitutional Court


Prof. Dr. Enver Hasani