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

Prishtina, on 4 June 2018
Ref. No.: RK 1243/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI157/17

Applicant

Shaip Surdulli

Constitutional review of Decision ZL Anr. 1119/2017 of the Election Complaints and Appeals Panel, of 1 December 2017

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Mr. Shaip Surdulli (hereinafter: the Applicant).

Challenged decision

2. The challenged decision is Decision ZL. Anr. 1119/2017 of the Election Complaints and Appeals Panel (hereinafter: ECAP) of 1 December 2017, which rejected the Applicant's appeal as out of time against the Decision of the Central Election Commission (hereinafter: CEC) on the announcement of the final result of the local elections in the second round for the Mayor of the Municipality of Kamenica.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly *"violated the right of individual freedom guaranteed with the Constitution by the CEC and ECAP, where the CEC certified the candidacy for the position of the Mayor of Mr. Qendron Kastrati in an unlawful manner under Article 9 of Law No. 03/L-072* [on Local Elections in the Republic of Kosovo]".

4. The Applicant in his Referral does not accurately clarify what right guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) has been violated.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 26 December 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 27 December 2017, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani.

8. On 28 December 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to ECAP. On the same date, the Court also notified Mr. Qëndron Kastrati, the elected Mayor of the Municipality of Kamenica, in a capacity of the interested party about the registration of the Referral. The court sent him a copy of the Referral and invited him to submit his possible comments regarding the Referral within seven (7) days of the receipt of the document.

9. On 5 January 2018, the Court received the comments of Qëndron Kastrati regarding the Referral.

10. On 10 January 2018, the Court notified the Applicant about the receipt of comments from Mr. Qëndron Kastrati, and sent him a copy of these comments.

11. On 11 January 2018, the Court received "a reply to the referral" to the ECAP request.

12. On 17 January 2018, the Court notified the Applicant about the receipt of comments by the ECAP.

13. On 15 May 2018, 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 facts

14. On 21 June 2017, the local elections were announced in the Republic of Kosovo.

15. On 30 August 2017, the Central Election Commission (hereinafter: CEC), based on the recommendation of the Office for Political Parties Registration and Certification (hereinafter: Office for PPRC), approved (No. 1545/3/2017) certification of Lëvizja VETËVENDOSJE! (hereinafter: LVV) for participation in the Local Elections in the Republic of Kosovo, with the candidates for presidents and candidates for members of the Municipal Assemblies.

16. Pursuant to Article 26, paragraph 6 of the Law 03/L-073 on General Elections in the Republic of Kosovo (hereinafter: the Law on General Elections), the deadline for appeal against the CEC Decision for certification of the list of the candidates is "*five (5) business days after the notification of that political entity about the decision.*" No appeal was filed against the abovementioned decision of the CEC.

17. On 22 October 2017, the first round of local elections in the Republic of Kosovo was held. The Applicant was a candidate of the Democratic League of Kosovo (hereinafter: LDK) for the Mayor of the Municipality of Kamenica.

18. Based on the final results of the first round of elections, none of the candidates for Mayor of Municipality of Kamenica won more than "50% plus 1 (one) vote of the total number of valid votes" in this municipality. Accordingly, the election of the Mayor of Kamenica would be decided by the result of the second round of elections, which would take place between the two candidates with the highest number of votes in the first round, namely between the Applicant from LDK and Qëndron Kastrati from the LVV.

19. On 19 November 2017, the second round of the local elections was held, where for the Mayor of the Municipality of Kamenica competed the two abovementioned candidates.

20. On 29 November 2017, the Central Election Commission (hereinafter: CEC) announced the final results of the Local Elections, for the second round for the presidents of eighteen municipalities, among them also for the Mayor of the Municipality of Kamenica. According to these final results, Qëndron Kastrati, a candidate for Mayor of the Municipality of Kamenica from the LVV received the majority of votes.

21. On 30 November 2017, against the aforementioned CEC decision on announcement of the final results of the local elections for the second round, the Applicant filed an appeal with the ECAP.

22. In his appeal, the Applicant claimed that the candidate for the Mayor of the Municipality of Kamenica, Qëndron Kastrati from the LVV, was certified by the Central Election Commission contrary to Article 9, paragraph 2 of the Law No. 03/L-072 on Local Elections in the Republic of Kosovo (hereinafter: the Law on Local Elections), because according to the Applicant *"the candidate in question was a resident of the Municipality of Prishtina without being a resident for at least 3 years of the Municipality of Kamenica [...]"*.

23. On 1 December 2017, the ECAP by the Decision (ZL. Anr. 1119/2017) dismissed as out of time the Applicant's appeal.

24. In its decision, the ECAP found that the CEC by Decision No. 1545/3-2017 of 30 August 2017 approved the recommendation of the Office for PPRC for certification of LVV for participation in the Local Elections in the Republic of Kosovo, with candidates for presidents and candidates for members for Municipal Assemblies, among them Qëndron Kastrati as a candidate for the Mayor of Municipality of Kamenica. As a result, ECAP referring to the provisions of the Law on General Elections found that the deadline for filing an appeal against the abovementioned CEC Decision of 30 August 2017 *"was until 04.09. 2017, and according to this decision the parties did not file an appeal, which means that the appeal was filed after the legal deadline [...]"*.

25. The ECAP decision also contained the following legal advice*: "No appeal against this decision is allowed"*.

26. On 7 December 2017, the CEC certified the final election results for the second round for the Mayor of Municipality of Kamenica.

Applicant's allegations

27. The Applicant alleges that the challenged decision of the ECAP violated his*" [right] [of] individual freedom guaranteed by the Constitution by the CEC and ECAP, where the CEC has certified the candidacy for the position of the Mayor of Municipality Mr. Qendron Kastrati in an unlawful manner under Article 9 of Law No. 03/L-072 [on Local Elections in the Republic of Kosovo]"*.

28. The Applicant in his Referral does not accurately clarify what right guaranteed by the Constitution has been violated.

29. The Applicant further alleges that the ECAP Decision did not allow him *"a right to file appeal with the Supreme Court"*.

30. Finally, the Applicant requests the Court to *"[...] annul the decisions for the certification of the candidate Mr. Qendron Kastrati for the Mayor of the Municipality of Kamenica and to render decision for certification of the results of another candidate in the second round on 19.11.2017, Mr. Shaip Surdulli*

from the LDK branch in Kamenica or that the local elections for the Mayor of the Municipality of Kamenica be repeated".

Comments submitted by Mr. Qëndron Kastrati

31. Mr. Qëndron Kastrati, in a capacity of the interested party, submitted his comments on the Applicant's Referral. In his comments, Mr. Kastrati, among other things, states

> *"Although the Applicant alleges in his Referral that his individual right guaranteed by the Constitution of Kosovo has been violated, he did not explicitly specify the violation of any right guaranteed by Chapter II of the Constitution of Kosovo".*

32. Mr. Kastrati further alleges that: *"The Applicant filed the legal remedy guaranteed by the provisions of Law No. 03/L-073 on General Elections in Kosovo, where, according to the provisions of Article 26 of the said Law, the procedure for reviewing and certifying the list of candidates is regulated. In the provision of paragraph 26.6 of the Law No. 03/L-073 on General Elections is guaranteed the right to file a regular legal remedy for challenging certification, namely for refusing to certify the list of candidates, where such appeal is filed with the ECAC as a second-instance administrative authority. The ECAP is in its decision ZL Anr. 119/2017 rightly found that the Applicant's appeal was out of time, since the latter filed his appeal on 30 November 2017, while the CEC adopted the recommendation of the Political Party Certification Office on 30 August 2017. Therefore, the deadline for filing an appeal within the meaning of provision 26.6 of the Law No. 03/L-073 on the General Elections in Kosovo is 5 (five) days from the date when the CEC adopted the recommendation of the ORCPP, and the last day for filing the appeal was 04.09.2017. So, the Applicant filed his appeal almost two months after the legal deadline".*

33. Mr. Kastrati, finally, proposes to the Court that: *"the Referral KI157/17 be declared INADMISSIBLE, based on the provisions of Article 46 in conjunction with Article 48 of the Law on the Constitutional Court, Rule 36, paragraph 2 , item a), b), c) and d) of the Rules of Procedure of the Constitutional Court".*

Comments submitted by ECAP

34. ECAP in its "reply" regarding the Applicant's referral confirmed that *"[...] we entirely support Decision ZL. Anr. 1119/2017 of 01.12.2017 for the reasons given in the aforementioned decision [...]".*

35. The ECAP maintains that "*in the present case it has not at all considered this case filed by the appellant according to the appeal of 30.11.2017*" as the Applicant's appeal was rejected as out of time.

36. Regarding the Applicant's allegation that against the ECAP Decision was not allowed an appeal to the Supreme Court, the ECAP states that "*the Panel when deciding pursuant to the decision ZL. Anr. 1119/2017 of 01.12.2017, did not find legal grounds to give the opportunity to the appellant to file appeal against the*

above-mentioned decision of ECAP with the Supreme Court, since the legal provision of Article 118 par. 4 of the LGE [Law on General Elections] explicitly provides in which cases the parties to the proceedings may be given the legal advice and the right to appeal the ECAP decision to the Supreme Court, therefore, based on the provisions above, the Panel did not find any legal grounds to give to the appellant the opportunity to appeal the decision of the Panel ZL. Anr. 1119/2017 of 01.12.2017, to the Supreme Court".

37. Finally, the ECAP emphasizes that the Applicant's referral is not *prima facie* justified and that the Applicant did not sufficiently substantiate his allegation *"of violation of a constitutional right, therefore the Referral must be declared inadmissible as manifestly ill-founded".*

Admissibility of Referral

38. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.

39. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

> *"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."*

40. The Court also examines whether the Applicant has fulfilled the requirements for submission of his Referral in accordance with Article 49 [Deadlines] of the Law, which establish:

> *"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...".*

41. Regarding the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, challenging the act of a public authority, namely Decision ZL. Anr. 1119/2017 of ECAP of 1 December 2017, after exhaustion of all legal remedies. The Applicant also submitted the Referral in accordance with the deadlines of Article 49 of the Law.

42. However, the Court should further assess whether the requirements foreseen in Article 48 [Accuracy of the Referral] of the Law and Rule 36 [Admissibility Criteria] of the Rules of Procedure have been met:

Article 48
[Accuracy of the Referral]

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."

Rule 36
[Admissibility Criteria]

"(1) The Court may consider a referral if

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

(d) the Applicant does not sufficiently substantiate his claim".

43. The Court notes that the Applicant in his Referral does not specify what right guaranteed by the Constitution has been violated by the challenged decision. In addition, the Court notes that the Applicant specifically alleges a violation of the provisions of the Law on Local Elections.

44. The Court recalls that the ECAP by Decision (ZL. Anr. 1119/2017) rejected the Applicant's appeal against the CEC decision on the announcement of the final results for the local elections in the second round as out of time. In its Decision, ECAP concluded that the Applicant challenged the certification of Mr. Qëndron Kastrati as a candidate for the Mayor of Kamenica in violation of the provisions of the Law on Local Elections.

45. In this regard, the ECAP found that the CEC rendered decision on certification of LVV for participation in local elections with candidates for presidents and candidates for members of the Municipal Assemblies, among them also Qëndron Kastrati, as a candidate for the Mayor of Municipality of Kamenica, on 30 August 2017 (Decision No. 1545/3-2017). Based on this finding and referring to the relevant provisions of the Law on General Elections, the ECAP found that the Applicant's appeal was out of time.

46. Concerning the case, the Court notes that the ECAP rejected the Applicant's appeal for procedural reasons and did not review the Applicant's allegations specified in his appeal to the ECAP, as the ECAP dismissed the appeal as out of time.

47. In addition, regarding the Applicant's allegations that against the ECAP Decision was not allowed an appeal to the Supreme Court, the Court notes that ECAP in its *"reply to the appeal"* stated that *"based on [Article 118, paragraph 4 of the*

Law on General Elections] the Panel [ECAP] did not find any legal grounds to give to the appellant the opportunity to file appeal against the decision of the Panel ZL. Anr. 1119/2017 of 01.12.2017, with the Supreme Court".

48. The Court recalls that the Applicant specifically claims that "*CEC certified the candidacy for the position of the Mayor of the Municipality Mr. Qendron Kastrati in an unlawful manner under Article 9 of Law No. 03/L-072* [on Local Elections in the Republic of Kosovo] ".

49. The Court reiterates that the interpretation of the law is a duty of the regular courts and is a matter of legality. In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law. (See, *mutatis mutandis*, the ECtHR case *Garcia Ruiz v. Spain*, No. 30544/96, Judgment of 21 January 1999, para. 28). No constitutional matter was substantiated by the Applicant (See case KI63/16, Applicant *Astrit Pira*, Resolution on Admissibility, of 8 August 2016, para. 44. and also Case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Admissibility, of 15 November 2016, para. 62).

50. In conclusion, the Court finds that the Applicant has not specified at all what constitutionally protected fundamental rights and freedoms have been violated as a result of the abovementioned ECAP Decision, in accordance with Article 48 of the Law and, moreover, he did not substantiate his allegations that the proceedings before the ECAP was unfair or arbitrary.

51. Therefore, in accordance with Article 48 of the Law and Rule 36 (1) (d) and (2) (d), the Applicant's Referral is manifestly ill-founded on constitutional basis and, therefore, inadmissible.

FOR THESE REASONS

In accordance with Article 48 of the Law and Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, the Constitutional Court in the session held on 15 May 2018, unanimously

DECIDES

I. TO DECLARE the Referral 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; and

IV. TO DECLARE this Decision effective immediately;

Judge Rapporteur **President of the Constitutional Court**

Ivan Čukalović Arta Rama-Hajrizi