



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

Prishtina, 16 September 2019
Ref. no.:RK 1425/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KO124/19

Applicant

The Prime Minister of the Republic of Kosovo

Request for interpretation of the act of resignation of the Prime Minister of the Republic of Kosovo and definition of the competencies and functioning of the Government after the resignation of the Prime Minister

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by the Prime Minister of the Republic of Kosovo, Mr. Ramush Haradinaj (hereinafter: the Applicant).

Subject matter

2. The subject matter is the request for interpretation of the act of resignation of the Prime Minister of the Republic of Kosovo and the definition of the competences and functioning of the Government after the resignation of the Prime Minister.
3. The Applicant submitted the following question to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court):
 - (i) *“after the resignation of the Prime Minister, can it be considered that the situation created after this act, as established in Article 95, paragraph 5, is analogous to the situation where the Government is considered resigned within the meaning of Article 100, paragraph 6 of the Constitution and the dissolution of the Assembly, within the meaning of Article 82, paragraph 1, sub-paragraph 2 [?]”* and
 - (ii) *“what are the competencies and functioning of the Government after the resignation of the Prime Minister?.”*

Legal basis

4. The Referral is based on paragraph 10 of Article 93 [Competencies of the Government], in conjunction with Article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Proceedings before the Constitutional Court

5. On 29 July 2019, the Applicant submitted the Referral to the Court.
6. On the same date, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Gresa Caka-Nimani and Safet Hoxha.
7. On the same date, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the President of the Republic of Kosovo, His Excellency Mr. Hashim Thaqi (hereinafter: the President) and the President of the Assembly of the Republic of Kosovo, Mr. Kadri Veseli (hereinafter: the President of the Assembly) with a request that the latter be submitted to all deputies of the Assembly. On that occasion, the Court invited the President, the President of the Assembly and the deputies of the Assembly to submit their comments, if any, by 12 August 2019.
8. On 13 August 2019, the Parliamentary Group of VETËVENDOSJE! Movement (hereinafter: LVV), represented by the deputy Albulena Haxhiu, submitted their comments to the Court.
9. On 14 August 2019, the Court sent a copy of the comments from the LVV Parliamentary Group to the Applicant giving him the opportunity to comment,

if any, and requested him to submit the act of resignation as the Prime Minister of the Republic of Kosovo, by 21 August 2019.

10. On the same date, a copy of the comments of the LVV Parliamentary Group was sent to the President and the President of the Assembly with a request that the copy of the comments be disseminated to the deputies of the Republic of Kosovo.
11. On 4 September 2019, the Review Panel considered the Report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

12. On 11 June 2017, the early parliamentary elections were held.
13. On 8 July 2017, the CEC certified the results of the elections for the Assembly. On 7 September 2017, the Assembly was constituted upon the election of the President and Vice-Presidents.
14. On the same date, the President mandated Ramush Haradinaj, as a candidate proposed by the PDK, AAK and Nisma, for the establishment of the Government.
15. On 9 September 2017, the Assembly, with sixty-two (62) votes “for”, voted for the Government of the Republic of Kosovo with Prime Minister Ramush Haradinaj.
16. On 19 July 2019, the Applicant, in a capacity of the Prime Minister of the Republic of Kosovo, at the 111th meeting of the Government of the Republic of Kosovo, declared the irrevocable resignation from the position of the Prime Minister.
17. On 22 July 2019, the Applicant formally addressed the President and the President of the Assembly with the notice of resignation from the position of Prime Minister. In paragraph 3 of that letter, the Applicant stated that “*until the election of the new Government, I will perform my constitutional duty as outgoing Prime Minister and Government*”.

Applicant’s allegations

As to the admissibility of the Referral

18. The Applicant alleges that Article 93 (10) [Competencies of the Government] of the Constitution expressly gives to the Government the competence to refer questions to the Constitutional Court. The Applicant alleges that: “*[...] This competence under this constitutional provision is a broad competence and is not subject to any restrictions, including but not limited to the specific cases listed in Article 113 of the Constitution.*”

19. The Applicant refers to the Judgment of this Court in case no. KO98/11, in respect of the Referral pursuant to Article 93 (10), the Court found, *inter alia*: “If the questions are constitutional questions then the Government will be an authorised party and the Referral will be admissible”.
20. In this regard, the Applicant adds: “From the constitutional authorization of the Government also derives the right of the Prime Minister to refer constitutional issues which otherwise cannot be referred under Article 113, paragraphs 2 and 3 [Jurisdiction and Authorized Parties] of the Constitution. This is due to the fact that there are legal acts and circumstances that are considered “constitutional issues” but which cannot formally be brought before the Constitutional Court because they do not have the form of a law, decree, regulation or statute of a municipality (in accordance with Article 113, paragraph 2 of the Constitution). Such is the case with the “Resignation of the Prime Minister”, an act which is not a law or decree but is an action that has caused a legal-political effect to the extent that there is a social need for interpretation of the Constitution”.
21. The Applicant alleges that the resignation of the Prime Minister, after the speech and notification sent to the President and the President of the Assembly, may be considered to fall within the material jurisdiction (*ratione materiae*) of the Court, as the issues raised fall within the circle of the constitutional issues as reflected in cases no. KO80/10 and KO103/14 of this Court. The Applicant adds: “It is quite clear that the characteristic of the criterion of “constitutional issue”, as defined in the above-mentioned cases, is that the issue falls within the scope of the Constitution of the Republic of Kosovo in the sense of letter and spirit”.
22. With regard to the Court’s newest case law, more specifically case no. KO79/18, the Applicant alleges, *inter alia*: “In resolution No. KO79/18, the Constitutional Court mentions the phrase “in its present composition” implying that there is current internal consensus to address only issues arising from Article 113 which reveals the Court’s discretion to define “constitutional questions” itself. Also in the same decision is presented a historical overview of the acceptance of “constitutional issues”.
23. Finally, the Applicant claims that the present Referral falls within the range of constitutional issues affecting the separation of powers, the maintenance of constitutional order and state-building. The Applicant alleges that: “[...] The Court has previously dealt with them and given that the Court has stated that it has discretion in defining narrowly or broadly the “constitutional questions”, this discretion should in this case be used in the broad definition of admissibility. This is because the state-building must be understood in perpetuum and “the social needs for the Court to be included in interpretations of specific articles of the Constitution” should not reflect the timing of the action, the actual composition nor the evolution of the discretion of the Constitutional Court”.

Regarding the merits of the Referral

24. The Applicant alleges that the Constitution does not specify the competencies of the outgoing Government and in the absence of a Law on the Government, such situations remain legally unregulated. The Applicant with regard to Article 95 (5) [Election of the Government] of the Constitution adds: *“The Constitution does not determine whether, in the case referred to above, the Government is considered to be outgoing, as is the case when a motion of no confidence is voted for the Government as a whole, as defined by Article 100, paragraph 6 of the Constitution”*.
25. In this regard, the Applicant asserts that in the period prior to the entry into force of the Constitution, the Constitutional Framework for Provisional Self-Government in Kosovo provided for the resignation of the Government, which set out in section 3, item 9.3.13.: *“Upon the resignation of the Prime Minister, the entire Government shall resign. The Government shall continue in a caretaker capacity until the election of a new Prime Minister”*.
26. The Applicant alleges that within the meaning of Article 95 (5) of the Constitution, the dismissal of the Government implies the successful passing of the motion of no confidence to the Government by the Assembly. The Applicant alleges: *“Concerning the meaning of Article 95, paragraph 5 of the Constitution, Commentary on the Constitution of the Republic of Kosovo, by Prof. Dr. Enver Hasani/Prof. Dr. Ivan Čukalović states that “Within the meaning of Article 95.5, the Government is run by the Prime Minister, and the dismissal, resignation, or remaining the Prime Minister's seat vacant shall, ipso jure, result in the Government being considered dismissed”*.
27. As to Article 100 (6) [Motion of No Confidence] of the Constitution, the Applicant alleges: *“If we take into account the current practice of implementing the Constitution in situations set out in Article 100 (when a successful motion of no confidence has passed) or in cases under Article 82, paragraph 1, sub-paragraph 2, (where the Assembly itself has decided on dissolution), that is, in both of these situations, the Government (Thaqi I Government, Thaqi II Government, Mustafa Government), during the period of successful passing of the motion of no confidence, namely the dissolution of the Assembly, until the election of the new Government, continued to exercise function, organize and hold regular meetings of the Government, being limited by not fully exercising constitutional powers, such as for example, has not approved the draft law”*.
28. The Applicant also refers to the constitutional and legal provisions of the countries in the region, such as the Republic of Albania, the Republic of Croatia and the Republic of Northern Macedonia, on matters governing the competencies of the outgoing governments.

Comments submitted by the LVV Parliamentary Group

29. The LVV Parliamentary Group, in their comments on the Referral, state that the Applicant cannot submit a constitutional question if the matter is not established in Article 113 of the Constitution. According to the LVV parliamentary group, from the content of the referral it can be concluded that it

does not fall “*prima facie*” under the jurisdiction provided by Article 113 of the Constitution.

30. Referring to the most recent case law of the Court, namely Resolution on Inadmissibility of the Constitutional Court in case KO79/18, *the President of the Republic of Kosovo*, of 21 November 2018, in matters of jurisdiction established by Article 1113 of the Constitution, the Parliamentary Group of the LVV stated that the Applicant cannot use Article 93 (10) of the Constitution to refer cases to the Court if the matter does not fall within the scope of Article 113 of the Constitution. They added that even the President could not use this kind of referral of the constitutional questions based on Article 84 (9) of the Constitution.
31. Also, referring to the most recent case law of the Court, more specifically Resolution on Inadmissibility in case KO131/18, *the President of the Republic of Kosovo* of 6 March 2019, on the issue of jurisdiction established in Article 113 of the Constitution, the Parliamentary Group of the LVV, added: “[...] *under the Constitution and the case law of this Court, the President’s authority to refer constitutional questions must be understood in relation to the provisions of the Constitution which relate to the jurisdiction of the Court set forth in Article 113 of the Constitution and that the constitutional provision established in paragraph 9 of Article 84 of the Constitution which states that the President may “refer constitutional questions” - is related to Article 113 of the Constitution*”.
32. Finally, the LVV Parliamentary Group, considers: “[...] *Since no legal action or inaction (constitutional issue) of the Applicant (the outgoing Prime Minister) falls under Article 113 of the Constitution, specifically the jurisdiction of the Constitutional Court, the [LVV] Parliamentary Group considers that the Applicant’s Referral has no constitutional and legal support [...] The Constitutional Court must render a Resolution on Inadmissibility by which it will decide to declare such meaningless and out of any legal logic referrals inadmissible*”.

Admissibility of the Referral

33. The Court first examines whether the Referral meets the admissibility requirements as established in the Constitution and further specified in the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, (hereinafter: the Law) and the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, No. 01/2018 (hereinafter: the Rules of Procedure).
34. Article 113, paragraph 1, of the Constitution provides that: “*The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties*”.
35. The Court notes that the Government is an authorized party under Article 113 [Jurisdiction and Authorized Parties], paragraphs 2 and 3, of the Constitution.
36. In accordance with Article 113, paragraph 2, of the Constitution, “*The Assembly of Kosovo, the President of the Republic of Kosovo, the Government,*

and the Ombudsperson are authorized to refer the following matters to the Constitutional Court:

(1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;

(2) the compatibility with the Constitution of municipal statutes.

37. Further, Article 113, paragraph 3, of the Constitution provides that: [...],the Government [...]is] authorized to refer the following matters:

(1) conflict among constitutional competencies of the Assembly of Kosovo, the President of the Republic of Kosovo and the Government of Kosovo;

(2) compatibility with the Constitution of a proposed referendum;

(3) compatibility with the Constitution of the declaration of a State of Emergency and the actions undertaken during the State of Emergency;

(4) compatibility of a proposed constitutional amendment with binding international agreements ratified under this Constitution and the review of the constitutionality of the procedure followed;

(5) questions whether violations of the Constitution occurred during the election of the Assembly.

38. In this regard, Article 113, paragraphs 2 and 3 of the Constitution, expressly provide for cases that the Government may refer to the Constitutional Court.

39. As to the present case, the Court recalls that the Applicant in the present Referral requests “*Interpretation of the act of resignation of the Prime Minister of the Republic of Kosovo and definition of the competencies and functioning of the Government after the resignation of the Prime Minister*”.

40. The Applicant, more specifically before the Court, addresses the following question:

“after the resignation of the Prime Minister, can it be considered that the situation created after this act, as established in Article 95, paragraph 5, is analogous to the situation where the Government is considered resigned within the meaning of Article 100, paragraph 6 of the Constitution and the dissolution of the Assembly, within the meaning of Article 82, paragraph 1, sub-paragraph 2 , accordingly what are the competencies and functioning of the Government after the resignation of the Prime Minister?”

41. The Court recalls that the Applicant, regarding the admissibility of the Referral, states that: “*Article 93, paragraph 10, of the Constitution [...] expressly gives the Government the competence to refer cases to the Constitutional Court. This competence under this constitutional provision is a broad competence and is not subject to any restrictions, including but not limited to the specific cases listed in Article 113 of the Constitution*”.

42. In support of his arguments, the Applicant further adds that “*pursuant to the decision of the Constitutional Court in case KO98/11, where it considered the*

admissibility of the Referral submitted by the Government of Kosovo pursuant to Article 93, paragraph 10 of the Constitution, decided that “If the questions are constitutional questions then the Government will be an authorised party and the Referral will be admissible” under Article 93, paragraph 10 of the Constitution”.

43. Therefore, the Applicant alleges that the Referral should be declared admissible as *“the resignation of the Prime Minister”* falls into the *“constitutional issues”* and *clarification of this issue has an impact on “separation of powers and the maintenance of constitutional order”*.
44. In this respect, as it is rightly specified in the content of the Applicant’s Referral, the Constitutional Court, under Article 113, paragraph 1 of the Constitution, has jurisdiction to decide only on cases brought before it in a legal manner by authorized parties.
45. In this regard, the Court is the final authority for the interpretation of the Constitution, in accordance with Article 112, paragraph 1 of the Constitution, in relation to the cases before it as established in Article 113. In this respect, the Court has made it clear that it does not deal with interpretations of issues relating to legal actions or inactions of the constitutional institutions for which it is not authorized under Article 113 of the Constitution (see the case of the Constitutional Court, KO79/18, *the President of the Republic of Kosovo*, Resolution on Inadmissibility of 21 November 2018).
46. With regard to the meaning and limits of Article 93, paragraph (10) of the Constitution, which states that the Government may refer constitutional questions to the Constitutional Court, which the Applicant refers to, the Court notes that the referrals submitted on this basis may be admissible only within the jurisdiction of the Court, expressly and clearly set out in Article 113, paragraph 2 and 3.
47. The Court, as the Applicant pointed out in the Referral, in its previous case law, applying the meaning of the notion of *“constitutional questions”*, considered referrals which are not expressly included within the limits of its jurisdiction as established in Article 113, paragraphs 2 and 3 of the Constitution. In this connection, the Court was served with a Referral by the Government concerning the immunity of the deputies of the Assembly of the Republic of Kosovo, which the Court considered to constitute *“constitutional questions”* (see the case of the Constitutional Court KO98/11, *the Government of the Republic of Kosovo*; Judgment of 20 September 2011). The Court was also requested by the President of the Republic to interpret the meaning of the specific provisions of the Constitution (see, for example, Case No. KO80/10, *the President of the Republic of Kosovo*; Judgment of 7 October 2010; Case No. KO97/10, *Acting President of the Republic of Kosovo*; Judgment of 28 December 2010; Case No. KO57/12, *the President of the Republic of Kosovo*, Judgment of 22 October 2012; Case No. KO103/14, *the President of the Republic of Kosovo*, Judgment of 1 July 2014).

48. On the basis of this position, the Court declared inadmissible the Referrals submitted by the President of the Republic of Kosovo pursuant to Article 84, paragraph 9 of the Constitution, finding that they did not fall under Article 113, paragraphs 2 and 3 of the Constitution, and consequently could not be reviewed by the Court (see cases of the Constitutional Court, KO79/18, *the President of the Republic of Kosovo*, Resolution on Inadmissibility of 21 November 2018; KO131/18, *the President of the Republic of Kosovo*, Resolution on Inadmissibility of 6 March 2019; and, KO181/18, *the President of the Republic of Kosovo*, Resolution on Inadmissibility of 13 June 2019).
49. In addition, the Court notes that the case law of the Court established in the case of the Court KO79/18, cited above, was also known to the Applicant. In this regard, the Court notes that in his response regarding the Referral of the President of the Republic of Kosovo, in the case KO181/18, mentioned above, the Prime Minister stated that *“this time also as in case KO79/18 [the President] based referral on Article 84, paragraph 9, and Article 112, paragraph 1, of the Constitution. For this particular case, always according to the clarification of the Constitutional Court, it is explicitly stated that it does not deal with interpretations of matters relating to legal actions or inactions of the constitutional institutions for which it is not authorized under Article 113 of the Constitution.*
[...]
Therefore, taking into account the basis on which the Referral was filed, without denying the President's right to bring the case before the Court, it is apparent that the Referral does not meet the admissibility requirements due to the lack of the Court's basic jurisdiction in relation to the authorizations of the President as an authorized party deriving precisely from Article 113 of the Constitution (see the case of the Constitutional Court, KO181/18, cited above, paragraph 33 and 34).
50. Therefore, the Court reiterates that the content of the provision of Article 113 of the Constitution, taken in its entirety, is clear and concrete as to the competencies of the Government deriving from the context of an authorized party before the Constitutional Court. Consequently, despite the need that may appear in practice for interpretation regarding other matters relevant to the competences of the Government, it follows that Article 113 of the Constitution represents the basic and sole jurisdictional foundation of the Constitutional Court with respect to the authorizations of the Government as an authorized party before the Constitutional Court (see, *mutatis mutandis*, the case of the Constitutional Court, KO79/18, cited above, paragraph 78).
51. Therefore, in the present case, the Court recalls once again that the Applicant requests *“Interpretation of the act of resignation of the Prime Minister of the Republic of Kosovo and definition of the competencies and functioning of the Government after the resignation of the Prime Minister”*.
52. The Court finds that the Referral does not fall within the purview and is not reasoned within the meaning of Article 113, and this is also confirmed by the Applicant, because pursuant to Article 113, paragraph 2, the Government may refer the question of the compatibility with the Constitution of the laws, decrees of the President and the Prime Minister, and of the regulations of the

Government as set forth in 113.2 (1), and of the municipal statute, as established in 113.2 (2) of the Constitution.

53. Whereas, based on Article 113, paragraph 3, the Government is authorized to refer matters relating to situations of conflict among constitutional competences of the Assembly, the President and the Government; compatibility of the referendum with the Constitution; the compatibility of the declaration of the state of emergency and the actions taken during this state with the Constitution; the compatibility of the proposed constitutional amendments with international agreements and the constitutional review of the procedure followed; as well as the constitutionality of the election process of the Assembly.
54. The Court notes that the question of the legal status of the Government, following the resignation of the Prime-minister, can be brought before the Court only if it is referred under Article 113, paragraph 2, where the authorized parties may challenge before the Court the questions relating to the compatibility with the Constitution of the decrees of the Prime Minister, as well as of the regulations of the Government, or based on Article 113, paragraph 3, as questions related to situations of conflict among constitutional competences of the Assembly, the President and the Government.
55. Therefore, based on the foregoing, the Court concludes that the issues raised by the Applicant before the Court do not fall within the scope of the jurisdiction of the Constitutional Court, as set out in Article 113 of the Constitution, and therefore despite their importance and legitimate dilemmas that may arise, the Court cannot answer the questions raised until they have been submitted to the Court under the procedures provided for by the Constitution.
56. Therefore, in accordance with Article 113, paragraph 1, of the Constitution, the Court concludes that the Applicant's Referral is inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113, paragraph 1 of the Constitution, and Rule 59 (2) of the Rules of Procedure, on 4 September 2019, unanimously

DECIDES

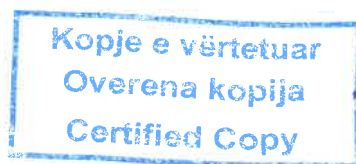
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Bajram Ljatifi

Arta Rama-Hajrizi



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