



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
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Pristina, 7 October 2010
Ref. nr. AGJ 46/10

Judgment

Case No. KO 80/10

The Referral of the President of the Republic of Kosovo, His Excellency, Dr. Fatmir Sejdiu, for Explanations Regarding Jurisdiction over the Case of Rahovec Mayor, Mr. Qazim Qeska

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge,
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

The Applicant

1. The Applicant is President of the Republic of Kosovo, His Excellency, Dr. Fatmir Sejdiu.

Legal Basis

2. Articles 84.9 and Article 113.2.1 as well as Articles 123 and 45 of the of the Constitution of the Republic of Kosovo (hereafter referred as "the Constitution").

Procedure before the Constitutional Court

3. On 27 August 2010 the President of the Republic of Kosovo, through his legal representatives submitted the Referral with the Court.
4. On 31 August 2010 pursuant to the Rules of Procedures the President of the Court appointed Dr Gjyljeta Mushkolaj as Judge Rapporteur and a Review Panel consisting of Judges Robert Carolan (Presiding), Altay Suroy and Snezhana Botusharova.
5. On 1 September 2010 the Secretariat of the Court, pursuant to the Rules of the Procedure, notified the Referral to Mr. Qazim Qeska and the Minister of Local Government Administration and requested their responses.
6. On 6 September 2010 the Minister of Local Government Administration submitted his reply to the Referral. Mr. Qeska did not submit a response.
7. Due to the nature of the case on 21 September 2010 the Court gave the priority to the case.
8. On 27 September 2010 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the admissibility of the Referral.
9. The full Court deliberated and voted in a private session on the Referral on 27 September 2010.

Subject matter

10. The subject matter is the following question that have been referred to Constitutional Court by the President of the Republic of Kosovo:

"Which institution in the Republic of Kosovo is responsible for assessing the effectiveness and validity of the resignation and for confirming the eventual expiry of a mayor's term of office, based on communiqué addressed to the public, the uncertainty of which has prevented further actions by the President in compliance with the constitutional principle of free and equal elections?"

Admissibility of the Referral

11. Pursuant to Article 113 (1) of the Constitutional, the Constitutional Court has jurisdiction to decide only on matters referred to the court in a legal manner by authorized parties.
12. The Applicant argues that present case involves uncertainties regarding the authority of relevant institutions to establish the validity of the resignation and the expiration of a Mayor's term of office based on a statement of resignation addressed to the people of the Municipality. The Applicant further argues that because of these uncertainties, the President could not proceed with further action in compliance with the constitutional principle of free and equal elections,

envisaged in Article 123 (2) of the Constitution as far as municipal elections are concerned.

13. The Applicant concludes that since "the President is authorized party according to Article 113, and dispute in question has rendered it impossible for the President to undertake the necessary steps to provide for the abidance by the constitutional principle of free and equal elections, the Court has jurisdiction to consider the present claim filed by the President."
14. Consequently the Applicant argues that requirements specified both in Article 84.9 and Article 113.1.2 of the Constitution are satisfied in the present case.
15. Article 84.9 of the Constitution reads as follows:

*"Article 84 [Competencies of the President]
The President of the Republic of Kosovo...*

(9) may refer constitutional questions to the Constitutional Court...."

16. It is clear that the pursuant to Article 84(9) of the Constitution, the President of the Republic of Kosovo is authorized to refer constitutional questions to the Constitutional Court.
17. The Court has therefore to consider whether the raised question is "constitutional question" in line with Article 84(9) of the Constitution.
18. For the proper consideration it is necessary to summarize the factual background of the case that caused the question that was put before the Constitutional Court.

Summary of the facts related to the question at issue

19. On 1 July 2010 Mr. Qazim Qeska, Mayor of Rahovec, publicly addressed the citizens of the Municipality of Rahovec, via communiqué, and announced his irrevocable resignation. In his resignation Mr Qeska emphasised that he "made a clear decision, a well thought decision, to untimely end the mandate given...by the people with their free will in conformity with Article 56, item C of the Law on Local Self Government.
20. He also added as follows: *"Dear citizens, this is a painful decision, but I consider deeply in my heart and soul that it is a just and better decision, in the interest of citizens, since the constellation reigning at me, including my health situation, disables me to perform the duties of the mayor with responsibility for the citizens of Rahovec municipality, to whom I committed myself deeply and sincerely. Reasons for my resignation and untimely end of the mandate are mainly of personal nature. This decision has been made with the largest determination and responsibility having in mind all facts and personal circumstances (health reasons), as well as the interest of the citizens of Rahovec municipality to whom I was, I am and I will always be correct and I will always be correct and I will not disappoint them. Dear citizens, my mandate belongs to the people-it is yours, so today, on 1 July 2010, I give back to you and only to you the mandate you trusted on me, hoping you will understand me since this decision in the proper and*

righteous one. My people-the citizens of Rahovec municipality deserve a leader who will always be close to them and with them, but due to numerous reasons, I am currently not able to stand in front of citizens, as you are accustomed with me. I ask you for your deep understanding of the act of my resignation and untimely end of my mandate."

21. On 6 July 2010 the Minister of the Ministry of Local Government Administration (hereinafter referred to as MLGA), addressed to the Mayor of Rahovec, Mr. Qazim Qeska, with a request for the confirmation of his resignation from the post of Mayor.
22. Mr. Qazim Qeska confirmed his resignation to MLGA and enclosed the written communiqué from 1 July 2010.
23. On 16 July 2010, Minister of the MLGA, sent a letter to the President of the Republic of Kosovo, informing him that Mr. Qazim Qeska had confirmed his irrevocable resignation and that based on Article 56.3, item (c) of the Law on Local Self-Government No. 03/L-040, "the mandate of the mayor of this municipality has ended."
24. It is not the task of the Constitutional Court to evaluate the facts of the particular case, but the above mentioned facts at the outset appear to raise a constitutional question. That it is in particular because it relates to two constitutional provisions, i.e. Article 123 [General Principles of Local Government and Territorial Organization] and Article 45 [Freedom of Election and Participation] of the Constitution.
25. Consequently, based on Article 84.9 of the Constitution, the Court found that the Referral submitted by the President of the Republic on 27 August 2010 is admissible.
26. Taking into account the above-mentioned there is no need for the Court to elaborate admissibility grounds provided by Article 113.1.2. of the Constitution.

Substantive Issue

27. The Court notes that the first part of the question posed by the President, which reads as follows: "*Which institution in the Republic of Kosovo is responsible for assessing the effectiveness and validity of the resignation and for confirming the eventual expiry of a mayor's term of office, based on communiqué addressed to the public...*" queries whether any resignation of any mayor is final and definitive and whether it puts an end to a Mayor's mandate.
28. The General Principles of Local Government and Territorial Organization in the Republic of Kosovo are defined in Article 123 of the Constitution, which reads as follows:

"Article 123 [General Principles]

The right to local self-government is guaranteed and is regulated by law.

Local self-government is exercised by representative bodies elected through general, equal, free, direct, and secret ballot elections.

The activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and respects the European Charter of Local Self-Government. The Republic of Kosovo shall observe and implement the European Charter on Local Self Government to the same extent as that required of a signatory state.

Local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the Communities not in the majority and their members."

29. The Constitutional Court recalls that Local Authorities are one of the main foundations of any democratic regime. It should be also recalled that in order to fully respect the European Charter on Local Self Government, there is a need to ensure that Local Authorities possess a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfillment (see Preamble of the European Charter on Local Self Government).
30. The Constitutional right to local self government in the Republic of Kosovo is further regulated by the Law on Local Self Government (Law 2008/03-L040 approved on 20 February 2008 and promulgated on 15 June 2008).
31. Article 56 of the Law on Local Self Government regulates the issue of election of mayor as well as the end of his/her term of office as follows:

"Election of the Mayor of the Municipality

56.1. The Mayor of the Municipality shall be elected by a direct election in accordance with the law on local elections.

56.2. The Mayor of the Municipality shall be elected for a term of four years.

56.3. The term of office of the Mayor of the Municipality shall end upon:

- a) the completion of his mandate;*
- b) his death;*
- c) his resignation;..."*

32. The Court recalls that Article 8 of the European Charter on Local Self-Government regulates the administrative supervision of local authorities' activities. It provides that any review of local authorities' activities shall have a legal basis, and that any administrative supervision shall be restricted to ensuring compliance with domestic law and constitutional principles.

33. The Court notes that, in accordance with the Constitution, and Article 8 of the Charter, the Law on Local Self Government does not empower central level government bodies to carry out any action for acceptance of the resignation of a mayor.
34. Furthermore, in order to answer to the question at issue properly, it should be also recalled that Law on Local Elections in the Republic of Kosovo (2008/03-L072 approved on 5 June 2008 and promulgated on 15 June 2008) in its Article 11 prescribes the end of mandate of mayors as follows:

"Article 11

End of mandate and Dismissal of Mayors

11.1 The mandate of the Mayor ends in accordance with the Law on Local Self-Government.

11.2 The Mayor whose mandate ceases pursuant to paragraph 1 of this Article shall be replaced by conducting an early election for a Mayor in that Municipality. The mandate of newly elected Mayor shall end on the same date as the mandate of Mayor that he or she replaces."

35. In answering the above mentioned constitutional question, taking into account the above mentioned provisions of the Constitution and the applicable laws, the Constitutional Court finds that the resignation of a Mayor is final and definitive and it puts an end of a Mayor's mandate.
36. The Court should also consider what the constitutional consequences are of a Mayor's resignation.
37. The Court recalls that right of self-government can be only exercised by democratically constituted authorities. In this respect it is important to recall that Article 3 (2) of the European Charter on Local Self Government, in the pertinent part reads as follows:

"Article 3 – Concept of local self-government

2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them...."

38. The Court would also like to recall that pursuant to Article 123 (2) of the Constitution the right to local self-government is exercised by representative bodies elected through general, equal, free, direct, and secret ballot elections.
39. This right should be read in conjunction with Article 45 of the Constitution, that reads as follows:

"Article 45 [Freedom of Election and Participation]

1. Every citizen of the Republic of Kosovo who has reached the age of eighteen, even if on the day of elections, has the right to elect and be elected, unless this right is limited by a court decision.

2. The vote is personal, equal, free and secret.

3. State institutions support the possibility of every person to participate in public activities."

40. The Constitutional Court recalls that the Law on Local Elections gives a power to President of the Republic to set and announce the local elections.

41. Consequently, taking into account Articles 123(2) and 45 of the Constitution in conjunction with Article 3(2) of the European Charter of Local Self Government, the Court finds that constitutional consequences of a mayor's resignation are the calling for elections by the President of the Republic in order to ensure the right of the citizens to enjoy the right to a free and equal vote in establishing their local self-government.

FOR THESE REASONS, THE COURT UNANIMOUSLY DECIDES AS FOLLOWS:

- I. The Referral is admissible;
- II. Any resignation of any mayor is final and definitive and it puts an end of a Mayor's mandate.
- III. The constitutional consequences of that act are the calling for elections by the President of the Republic in order to ensure the right of the citizens to enjoy the right to a free and equal vote in establishing their local self-government.
- IV. This Judgement shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law.
- V. The Judgement is effective immediately.

Judge Rapporteur

Dr. Gjyljeta Mushkolaj



President of the Constitutional Court

Prof. Dr. Enver Hasani