



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

Prishtina, 12 February 2015
Ref. no.:RK771/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI109/14

Applicant

Ahmet Krasniqi et al.

**Constitutional Review
of the conclusion of the Assembly based on the transcript of the plenary
session of 10, 11 and 17 April 2014**

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, and
Arta Rama-Hajrizi, Judge

Applicants

1. The Applicants are Ahmet Krasniqi, Halit Shabani, Ramë Manaj and Arbnor Kastrati (hereinafter, the Applicants). In front of the Constitutional Court of the Republic of Kosovo (hereinafter, the Court), they are represented by the first Applicant, Mr. Ahmet Krasniqi residing in Prishtina.

Challenged decision

2. The Applicants do not challenge any specific decision, instead they challenge the actions of the deputy president of the Assembly of the Republic of Kosovo (hereinafter, the Assembly) Mr. Sabri Hamiti, during the plenary session of the Assembly on 10, 11 and 17 April 2014, when he concluded that there was no required quorum to vote for the composition of the Kosovo Competition Authority (hereinafter, the KCA).

Subject matter

3. The subject matter is the request for constitutional review of the actions of the deputy president of the Assembly during the plenary session of the Assembly on 10, 11 and 17 April 2014, when he concluded that there was no required quorum to vote for the composition of the KCA. The Applicants claim that the conclusion of Mr. Sabri Hamiti that there was no quorum to render a decision is an erroneous application and violation of Article 80, paragraph 1 [Adoption of Laws] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"). The Applicants consider that it resulted in an essential violation of human rights pursuant to Article 49 of the Constitution, [Right to Work and Exercise Profession] and Article 54 of the Constitution [Judicial Protection of Rights].

Legal basis

4. The Referral is based on Article 113 (7) of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 27 June 2014 the Applicants submitted the Referral to the Court.
6. On 7 July 2014 the President of the Court by Decision GJR. KI109/14 appointed Judge Ivan Čukalović as Judge Rapporteur and by Decision, KSH. KI109/14 appointed the Review Panel composed of Judges Robert Carolan (presiding), Almiro Rodrigues and Enver Hasani.
7. On 4 September 2014 the Court informed the Applicant of the registration of the Referral.

8. On 13 October 2014 the Applicants submitted additional documents to the Court, which provided a more detailed and extensive elaboration of the existing Referral submitted on 27 June 2014.
9. On 2 February 2015 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

10. On 19 February 2014 the Government of the Republic of Kosovo (hereinafter: the Government) adopted Decision 02/171 by which the names of the presiding and other members of the KCA: Ahmet Krasniqi (presiding) and Halit Shabani, Ramë Manaj and Arbnor Kastrati (members) were proposed to the Assembly.
11. On 10, 11 and 17 April 2014 the Assembly held its regular plenary session, in which it had as a point of the agenda, amongst others, the review or the proposal/decision of the Government on the appointment of the presiding and the other members of the KCA. When the proposal/decision was put to the vote the deputy president of the Assembly concluded that *“currently there are 82 deputies in total present. We have a vote: 7 against, 36 in favor, and 1 abstention. There is no quorum to render a decision.”*
12. On 19 May 2014 the Applicants submitted a request to the General Directorate for Legal and Procedural Matters of the Assembly, for the interpretation of the vote on the proposal/decision of the Government by the Assembly.
13. On 21 May 2014 the Director of General Directorate for Legal and Procedural Matters of the Assembly replied to the Applicants through a letter, in which was stated that:

*“The General Directorate on legal and procedural matters is not authorized to interpret the vote at the plenary session.
We remind you that the Assembly was dissolved on 7 May 2014. Pursuant to the Rules of Procedure of the Assembly, all pending matters must be proceeded again by the proposer.”*
14. On 21 May 2014 the Applicants also submitted a complaint with the Independent Oversight Board of Civil Service in Kosovo (hereinafter, the IOB) *“in the legal matter “Challenging a rendered decision” against the Assembly of the Republic of Kosovo”*.
15. On 22 May 2014 the IOB rendered Decision A/02/212/2014, declaring itself incompetent to decide on the matter. The IOB held that:

“The panel of the Board upon reviewing this matter concluded that the Board is not competent to review this administrative matter because pursuant to Article 4, paragraph 2 of Law No.03/L-149 on the Civil Service of Kosovo “Officials elected to elected positions in the institutions of the public administration and officials appointed by elected officials to specific

positions are not Civil Servants”, as well as pursuant to Article 10, paragraph 1.1 of Law No.03/L-192 on the Independent Oversight Board for Civil Service of Kosovo, the Board has the competency to “reviews and determine appeals filed by civil servants against decisions of employing authorities in all institutions of Civil Service in accordance with rules and principles set out in the Law on Civil Service in the Republic of Kosovo.”

16. On 23 May 2014 the Applicants submitted to the Ombudsperson Institution an “*Appeal against the violation of the Constitutional rights upon the voting pertaining to the Decision to propose the appointment of the president and the members of the Commission on Protection of Competition*”.
17. On 9 June 2014 the Ombudsperson Institution sent a Notification on Inadmissibility to the Applicants, providing that:

“[...] the Ombudsperson notices that the abovementioned have submitted their request to refer to the Constitutional Court the reviewing of the constitutionality pertaining to the rendering of the decision during the session of the Assembly [...] The Ombudsperson reemphasizes that the Constitutional Court reviews only cases legally brought before the Court by authorized parties. The Ombudsperson considers it necessary to invoke Article 113 of the Constitution [Jurisdiction and Authorized Parties] which legitimates the Ombudsperson to address the Constitutional Court, but only in the following cases:

(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.

In these circumstances, the Ombudsperson concludes that the referral of the above mentioned challenging the decisions of the Assembly of the Republic of Kosovo cannot be processed before the Constitutional Court, because the Ombudsperson is not legitimized as an authorized party in this matter, pursuant to Article 113.1 of the Constitution of the Republic of Kosovo [...]”.

Applicants’ allegations

18. The Applicants allege that that the conclusion of Mr. Sabri Hamiti that there was no quorum to render a decision is an erroneous application and a violation of Article 80, paragraph 1 [Adoption of Laws] of the Constitution, which reads as follows:

“Laws, decisions and other acts are adopted by the Assembly by a majority vote of deputies present and voting, except when otherwise provided by the Constitution.”

19. According to the Applicants, the erroneous counting of the necessary quorum resulted in an “*essential violation of human rights, pursuant to Articles 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights] of the Constitution.*”

20. The Applicants further argue that “[...] Article 51, item 3, second paragraph of the Rules of Procedure of the Assembly of the Republic of Kosovo provides that: “The decisions taken in the meetings of the Assembly are valid if more than half of the total number of Members of the Assembly were present at the time the decision was taken. The laws, decisions and other acts of the Assembly shall be considered adopted if voted for by the majority of the members present and voting.”.
21. In addition, the Applicants claim that “Neither the Constitution nor the Rules of the Procedure of the Assembly draw a distinction between the quorum for work and quorum for decision making which means, that if 61 deputies are present in the Assembly hall, the Assembly can hold hearings and make decisions if not otherwise is determined by the Constitution [...]”.
22. Furthermore, the Applicants argue that “The conclusion of Mr. Hamiti that in the plenary session there were 82 deputies and that there was no quorum for decision-making is inconsistent with itself and the general rules, because if there is no quorum the session would not be able to proceed. In the present case the session has continued and the proposal was put to a vote, if the deputy does not vote either for or against, it is present considered to have abstained, otherwise nowhere in the provisions of the Constitution and the Rules is not determined that if the deputy is present in the hall can be considered is not.”
23. Finally, the Applicants request from the Court:
 - i. “For this matter , to deliberate and adopt a decision in accordance of the constitutional provisions in force;
 - ii. To give a clear interpretation what does the quorum mean, and what is the meaning of simple majority and what of the absolute majority;
 - iii. To give an interpretation of the abstention;
 - iv. To give an interpretation of the number of votes necessary to adopt a decision in the Assembly”

Admissibility of the Referral

24. The Court first examines whether the Applicants are authorized party to submit a referral to the Court, in accordance with the requirements of Article 113.7 of the Constitution.

Article 113, paragraph 7 of the Constitution provides:

“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.”

A. As to the alleged violation of Article 80.1 of the Constitution

25. The Court notes that in the present case, *inter alia*, the Applicants are seeking an interpretation of Article 80.1 [Adoption of Laws] of the Constitution.

26. In this respect, the Court emphasizes that, under Article 112.1 of the Constitution, it is "the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution." However, the Court has the authority to interpret the Constitution only if the Referral is filed by an authorized party.
27. The Court notes that the Applicants submitted their Referral under Article 113.7 of the Constitution, but they do not challenge any final decisions by a public authority. Instead, they are seeking an interpretation from the Court in respect to Article 80.1 [Adoption of Laws] of the Constitution, in order to clarify what does the "necessary quorum for adopting a decision in the Assembly" mean.
28. In this respect, the Court notes that Article 113.5 of the Constitution provides that before a law is promulgated ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.
29. Furthermore, after a law has been promulgated, Article 113.2 (1) authorizes the Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson to refer a question of compatibility of laws with the Constitution to the Court.
30. Finally, Article 113.8 of the Constitution also provides that "The courts have the right to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court's decision on that case depends on the compatibility of the law at issue."
31. Thus, the Court concludes that this complaint of the Applicants does not fall within the scope of neither of the abovementioned articles of the Constitution. Therefore, the Applicants are not an authorized party under the Constitution to refer this question to the Court. (See also Constitutional Court Case No. KI207/13, Applicants *Rexhep Kabashi et al.*, Resolution on Inadmissibility of 24 April 2014).
32. Consequently, this part of the Referral is inadmissible, pursuant to Article 113.1 of the Constitution.

B. As to the alleged violation of Articles 49 and 54 of the Constitution

33. The Court further notes that, the Applicants also invoke Article 49 [Right to work and Exercise Profession] and Article 54 [Judicial Protection of Rights], complaining of the erroneous calculation of the quorum by the deputy president of the Assembly, which resulted in a violation of these articles.
34. In this respect the Court recalls that Article 49 provides:

"1. The right to work is guaranteed.

2. *Every person is free to choose his/her profession and occupation.*”

while Article 54 provides:

“Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.”

35. The Court notes that the Applicants only listed and described the content of the constitutional provisions guaranteeing right to work and exercise profession and judicial protection of rights. However, they did not clearly present how and why these rights have been violated.
36. The Court reiterates that dissatisfaction with the decision or merely the mentioning of articles and provisions of the Constitution does not suffice for an Applicant to allege a constitutional violation. When alleging such a violation, an Applicant must present convincing and indisputable arguments to support the allegations for the referral to be grounded (See Constitutional Court case No. KI198/13 Applicant *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 13 March 2014).
37. In this context, the Applicants have not filed any convincing arguments to establish that the alleged violations mentioned in the Referral represent constitutional violations (see, *Vanek v. Republic of Slovakia*, ECtHR Admissibility Resolution, no. 53363/99, of 31 May 2005) and did not specify how the referred articles of the Constitution to support his claims, as required by Article 113.7 of the Constitution and Article 48 of the Law.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 47 of the Law and Rules 36 (1) a) and 36 (2) d) of the Rules of Procedure, on 2 February 2015, unanimously

DECIDES

- I. TO DECLARE the Referral:
 - a. With regards to allegations under point A), inadmissible, because the Applicants are not authorized party to seek interpretation of a constitutional provision;
 - b. With regards to allegations under point B), inadmissible because the Applicants have not sufficiently substantiated his claim.
- 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;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović



Prof. Dr. Enver Hasani