



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

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Prishtina, on 21 December 2015  
Ref. no.:RK871/15

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI177/14**

Applicant

**Miodrag Janković**

**Constitutional Review of Decision U. Ž -A. A. no. 6/2014, of  
the Supreme Court, of 21 July 2014.**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge, and  
Bekim Sejdiu, Judge

#### **Applicant**

1. The Applicant is Mr. Miodrag Janković from Komoran with permanent residence in Belgrade, Serbia.

## **Challenged Decision**

2. The Applicant challenges Decision U. Ž -A.A. no. 6/2014, of the Supreme Court, of 21 July 2014.

## **Subject Matter**

3. The subject matter is the constitutional review of the abovementioned decision. The Applicant also alleges Decision A. no. 7251/2014, of the Election Complaints and Appeals Panel (hereinafter: ECAP) of 2 June 2014, and Decision no. 20140806004875, of the Central Election Commission (hereinafter: CEC), which according to Applicant's allegations violated rights guaranteed by the Constitution of the Republic of Kosovo (hereinafter: the Constitution) under Article 24 [Equality Before the Law], Article 32 [Right to Legal Remedies], Article 45 [Freedom of Election and Participation] and Article 54 [Judicial Protection of Rights], as well as Article 3 of Protocol 1 [Right to free elections], Article 13 [Right to an effective remedy] and Article 14 [Prohibition of discrimination] of the European Convention of Human Rights and Freedoms (hereinafter: the ECHR).

## **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 the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 12 December 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 13 January 2015, by Decision GJR. KI177/14, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Ivan Čukalović and Enver Hasani.
7. On 26 June 2015, the President of the Court by Decision KSH. KI177/14 replaced Judge Enver Hasani whose mandate ended and appointed Judge Arta Rama-Hajrizi as a member of the Review Panel.
8. On 21 January 2015, the Court informed the Applicant on the registration of the Referral, and requested from him additional documents: power of attorney for persons mentioned in the request for submission of official correspondence on his behalf and the CEC decision, which rejected his request for inclusion in the voters' list.
9. On 11 February 2015, the Court received from the Applicant the requested power of attorney, but not the CEC decision.

10. On 2 July 2015, after having considered the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of Facts**

11. The Applicant was a resident of Kosovo, with residence in Fushë-Kosovë until June 1999, when he went to live in Belgrade, Republic of Serbia.
12. With an aim to exercise the right to participate in early parliamentary elections in 2004, the Applicant submitted the necessary documentation to be included in the electoral list.
13. On an unspecified date, the CEC rendered the Decision no. 2014080600875, which rejected the Applicant's request for inclusion in the electoral list on the ground that the Applicant did not meet the requirements under Article 5.1 of the Law on General Elections.
14. On 30 May 2014, the Applicant filed an appeal to the ECAP, challenging the CEC decision.
15. On 2 June 2014, the ECAP by its Decision A. no. 7251/2014 rejected the Applicant's appeal and upheld the CEC Decision, with the same reasoning that the Applicant did not fulfill the requirements for registration in the electoral lists under Article 5.1 of the Law on General Elections.
16. The Applicant filed an appeal against the ECAP Decision with the Supreme Court due to erroneous and incomplete determination of factual situation, erroneous application of the substantive law and substantial violation of the procedural provisions.
17. On 13 June 2014, the Kosovo Judicial Council Secretariat (hereinafter: KJC) sent to the Applicant the payment order filled and stamped by the Supreme Court for the payment of the court fee, in the amount of € 30.
18. On an unspecified date, the Applicant submitted to the Supreme Court a request for exemption from the payment of tax, due to poor financial situation.
19. On 21 July 2014, the Supreme Court rendered the Decision U.-Ž. A.A. no. 6/2014, by which rejected the Applicant's appeal.
20. In the reasoning of the Decision, the Supreme Court stated, "*Pursuant to Article 2.4 of Administrative Direction no. 2008/02 on unification of the court fees, among other it is provided that the term application means a lawsuit, counter lawsuit, appeal. Pursuant to Article 6.1 of the said direction it is provided that the fee shall be paid at the time of filing the claim-appeal, whereas pursuant to Article 6.5 of the direction it is provided that the court shall reject the appeal if the appellant does not pay within the specified time limit the court fee on the submitted appeal*".

21. The Supreme Court further concluded, that despite the fact that the Applicant received the notice to pay the tax he did not fulfill this obligation therefore, "*pursuant to this court's opinion the appeal shall be rejected*".

### **Applicant's Allegations**

22. The Applicant alleges that the Supreme Court, by not considering the merits of the appeal denied him the judicial protection of his rights guaranteed by Article 54 of the Constitution, and put him in an unequal position before the law, which according to him, resulted in the denial of his right to participate in parliamentary elections, thus depriving him of his constitutional right under Article 45 of the Constitution, and Article 3 of Protocol 1 to the ECHR.
23. The Applicant further complains that the legal remedy for the appeal in his case was not effective since it did not allow him to exercise his right therefore, he alleges that there is violation of Article 32 of the Constitution in conjunction with Article 13 of the ECHR, which guarantee the right to effective remedy.
24. The Applicant requested the Court to adjudicate compensation for material damage in the amount of € 30.00, on behalf of the court fee.

### **Admissibility of the Referral**

25. In order to adjudicate the Applicant's Referral, the Court has to first examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
26. In this respect, the Court refers to Article 113.7 of the Constitution, which 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.”*

27. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

*(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

*[...]*

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

28. As stated above, the Applicant addresses the Court with the request to assess the question of whether the Decision of the Supreme Court, of 21 July 2014 and the decisions of the CEC and the ECAP have denied him the participation in parliamentary elections in Kosovo in 2014, and this resulted in violations of the Constitution and of the ECHR, as stated in item three of this report.
29. The Court further notes that despite a written request, the Applicant did not submit the CEC decision, which rejected his application for inclusion in the

voters' list, therefore, the court cannot assess whether this decision caused violation of the Constitution to the detriment of the Applicant.

30. Under Rule 29, paragraph 4 of the Rules of Procedure, it is the duty of the Applicant to attach the necessary documents to his Referral, indicating the alleged violations. It is not the duty of the Court to build the case instead of the Applicant, or to request documents *ex officio*, which would eventually be in his favor.
31. The Court notes that the Law on General Elections in the Republic of Kosovo, promulgated by the Decree of the President of the Republic of Kosovo, no. DL-027-2008, of 15 June 2008, provides that each person to exercise the constitutional right to participate in the elections must meet the following criteria:

#### **Article 5 - Voter Eligibility**

5.1 A person is eligible to vote in an election in accordance with the present Law if he or she is at least eighteen (18) years of age on the day of the election and satisfies at least one of the following criteria:

- a) he or she is registered as a citizen of Kosovo in the Central Civil Registry;
  - b) he or she is residing outside Kosovo and left Kosovo on or after 1 January 1998, provided that he or she meets the criteria in applicable legislation for being a citizen of Kosovo; or
  - c) he or she obtained the status of a refugee, as defined in the Convention Relating to the Status of Refugees of 28 July 1951 and its Protocol of 16 December 1966, on or after 1 January 1995, and is eligible to be registered in the Central Civil Registry as a habitual resident of Kosovo.
32. In this respect, the Court emphasizes that the ECAP rendered the Decision A. no. 7251/2014 on 2 June 2014, by which rejected the Applicant's appeal against the CEC Decision, by stating that "*pursuant to Article 5.1 of the Law on General Elections, the Applicant did not meet the requirements to be registered in the List of Voters*" and did not find that the CEC Decision contains legal violations, as alleged by the Applicant.
  33. The Court further considers that, based on the ECAP competencies, which are provided by Law no. 03/L-256 on amending and supplementing the Law no. 03/L-073 on General Elections in the Republic of Kosovo published in the Official Gazette no. 87 on 16 November 2010, which in Article 1 provided "*ECAP shall mean the Elections Complaints and Appeals Panel, an independent body in charge of adjudicating complaints and appeals concerning the electoral process*".
  34. In addition, as noted above it is clear that the CEC and the ECAP are the bodies established by law, to decide whether the Applicant has fulfilled or not the requirements provided by law to be included in the list of voters, and it is not

the task of the Constitutional Court to determine these facts because they are of legal, and not of the constitutional nature.

35. The Court reiterates that it is not its task under the Constitution, to act as a court of fourth instance, in respect of the decisions taken by regular courts, or in the present case of the independent bodies. It is the role of regular courts or of the administrative bodies to interpret and apply pertinent rules of procedural and substantive law (See, *García Ruiz v. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case no. KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011).
36. In these circumstances of the case, the Court considers that the Applicant's request for participation in the elections was approved, whereas by CEC decision it was concluded that he did not meet the legal requirements to be included in the voters' list, and he was allowed the appeal procedure, where his appeal was rejected. Therefore, taking into account the conducted proceedings, the Court cannot conclude that there has been violation of Article 45 of the Constitution [Freedom of Election and Participation] and Article 3 of Protocol 1 of the ECHR [Right to free elections] , for the mere fact that the result of the application of the Applicant was unfavorable for him.
37. Moreover, the Court notes that "the right to elect and be elected" provided by the Constitution or "the right to free elections" provided by Protocol 1 of the ECHR is not an absolute and unlimited right, but it may be the subject of legal limitations in each state separately.
38. In case *Schindler v. United Kingdom*, the European Court of Human Rights (ECHR) found no violation of Article 3 of Protocol 1 to the ECHR when rejected the right to participate in the general elections in Britain held on 5 May 2010, to a person who has not lived in the UK for a longer period of time than the time specified by the applicable law and that this right shall be subject to limitations provided by the British law at the time (See, ECHR Judgment in case *Schindler v. United Kingdom*, on 7 May 2013- Application no. 19840/09).
39. Regarding the issue of the rejection of the Applicant's appeal by the Supreme Court due to non-payment of the court fee, the Court finds that the Decision of the Supreme Court was rendered based on a legal act (Administrative Direction No. 2008/02 of KJC) that regulates this matter and as such is not an arbitrary and ungrounded act.
40. Furthermore, in the reasoning of its decision the Supreme Court cited Article 6.5 of the Direction, where it is clearly defined "*If fees are not paid by the appellant on the date they are due, the court shall reject the appeal if the appellant does not pay within the specified time limit the court fee due*".
41. The Applicant cannot substantiate his allegation by any evidence that would indicate that certain persons are exempted from the payment of court fees or that this obligation applies only to certain groups of the population as alleged in the appeal. It is quite clear that the Applicant did not submit evidence, which

would show that this decision is an indicator of the alleged violations of inequality before the law, or even legal discriminatory act.

42. Furthermore, the Constitutional Court in the Resolution on Inadmissibility in case KI121/13, Applicant *L.M.* found that the Decisions of the Basic Court in Gjakova, of 8 May 2013 and of the Court of Appeal, of 12 July 2013, which rejected the Applicant's appeals due to non-payment of the court fees, were not incompatible with the Constitution and this Court concludes that the court fees are obligatory for all applicants regardless of population group, and that on the same issue all parties have been equally treated before the law.
43. In these circumstances, the Court cannot find violation of Article 24 [Equality Before the Law], Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution and Articles 14 [Prohibition of discrimination] and Article 13 [Right to an effective remedy] of the ECHR.
44. The Court in the response to the Applicant's request for the compensation of the suffered material damage states that based on the Constitution and the Law, it has no jurisdiction to adjudicate such a damage.
45. In sum, the Court considers that the Applicant did not sufficiently substantiate his allegations.
46. Therefore, the Referral is manifestly ill-founded, and as such, inadmissible.

## FOR THESE REASONS

The Constitutional Court, in accordance with Article 47 of the Law, and Rule 36 (2) (b) of the Rules of Procedure, in the session held on 2 July 2015, 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; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

Altay Suroy



**President of the Constitutional Court**

Arta Rama-Hajrizi