



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

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Date: 08.july.2011

Ref.No.:125/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 33/11**

**Applicant**

Democratic Party of Kosovo Ashkalia

**Constitutional Review of the Judgment of the Supreme Court of Kosovo  
A.A. No. 66/2011 of 5 February 2011**

**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

**Applicant**

1. The Applicant is the Democratic Party of the Kosovo Ashkalia, registered at the address: Mother Theresa in Fushë Kosova municipality represented by Mr. Naser Emini from Ferizaj, Secretary General of the Political entity Democratic Party of Kosovo Ashkalia.

## **Challenged decision**

2. The challenged decision is the Judgment of the Supreme Court of Kosovo A.A. No. 66/2011 of 5 February 2011 rejecting the appeal on the resolution of the Elections Complaints and Appeals Panel A. No. 112/2011 of 2 February 2011 by which the request of the Political entity of the Democratic Party of the Kosovo Ashkalia (hereafter: DPKA) to gain another parliamentary seat, was rejected as unfounded.

## **Subject matter**

3. The Applicant challenges the Judgment of the Supreme Court of Kosovo A.A. No. 66/2011 claiming that this decision violates Article 64 Paragraph 2 of the Constitution of the Republic of Kosovo. Considering that this political entity DPKA should have won another additional parliamentary seat, which according to the Constitution belongs to them, but has been given to another political entity, respectively the Ashkalia Party for Integration (hereafter: API).

## **Legal basis**

4. Articles 113.7 and 21.4 of the Constitution, Article 20, Article 22.7 and Article 22.8 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereafter: the "Law") and Rule 56 (b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereafter: "Rules of Procedure").

## **Proceedings before the Court**

5. On 3 March 2011 the Applicant submitted his Referral to the Constitutional Court of the Republic of Kosovo (hereafter: the "Court").
6. On 23 March 2011 the Constitutional Court notified the Elections Complaints and Appeals Panel (hereafter: "ECAP") and the Supreme Court of Kosovo that proceedings on reviewing the constitutionality of their decisions have been initiated.
7. On 31 March 2011 the Supreme Court of Kosovo in their reply to the Constitutional Court of Kosovo stated that they have nothing to add and that their opinion on the subject matter is exposed on the Judgment of the Supreme Court of Kosovo.
8. On 6 April 2011 replying to our notification, the ECAP in its response indicated the reasons why they rejected the request of the DPKA, submitted additional documentation and recommended to reject the request of the DPKA as unfounded.
9. On 9 June 2011 after reviewing the report of Judge Altay Surroy, the Review Panel composed of Judges Robert Carolan (Presiding), Prof. Dr. Enver Hasani and Gjyljeta Mushkolaj, recommended to the full Court the inadmissibility of the Referral.

## **Summary of facts**

10. On 30 January 2011 the Central Electoral Committee (hereafter: CEC) announced the results of the general elections, according to which the mandates guaranteed by the Constitution of Kosovo for minority of Roma, Ashkalia and Egyptians guaranteed 4 (four) seats and that:
  - Democratic Party of Kosovo Ashkalia votes 2871 mandate 1

- New Democratic Initiative of Kosovo      votes 1690      mandate      1
- Party of the United Kosovo Roma      votes 690      mandate      1
- Ashkali Party of Integration      votes 1386      mandate      1

11. on 31 January 2011 the DPKA filed an appeal against the decision of the CEC to the ECAP, considering that this decision of the CEC damaged the DPKA, emphasizing that this violates the Constitution of the Republic of Kosovo and the Article 111 of the Law on General Elections in Kosovo.
12. Deciding on the appeal of the DPKA filed against the announced election results by the CEC, at the meeting held on 2 February 2011 the ECAP issued the Resolution A No. 112/2011 and rejected the appeal of the DPKA as unfounded.
13. On 3 February 2011 the DPKA filed a complaint, to the Supreme Court of Kosovo on the resolution of the ECAP, whereby the Supreme Court of Kosovo on the session held on 5 February 2011 ruled the Judgment A.A. No. 66/2011 rejecting the appeal as unfounded.
14. On the 3 March 2011, after exhausting all legal remedies, the DPKA submitted a request for constitutional review of the above-mentioned judgments and resolutions to the Constitutional Court.

### **Applicant's Allegations**

15. The Applicant claims that the Judgment of the Supreme Court of Kosovo A.A. Br. 66/2011 of 5 February 2011, by which was rejected the appeal against the resolution of the Elections Complaints and Appeals A.br. 112/2011 of 2 February 2011 and by which, the request of the Political entity DPKA to gain another parliamentary seat has been rejected as ungrounded, violates the Constitution of the Republic of Kosovo and the Law No.003/L-073 on general elections in the Republic of Kosovo.
16. DPKA claims that as a party of a non-majority community it was damaged by these decisions and that the additional seat belonging to them was given to the political entity of API.

### **Law on elections in Kosovo**

17. The Constitution of the Republic of Kosovo in Article 64 paragraph 2 scope 2 which determines the composition of the Assembly of the Republic of Kosovo, provides the following:
  - (2) *Parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the other Communities shall have the total number of seats won through the open election, with a minimum number of seats in the Assembly guaranteed as follows: **the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; ...***

18. The Law in regard to organizing elections in the Republic of Kosovo is governed by Law No. 03/L-073 on General Elections in the Republic of Kosovo, Law No. 03/L-256 on Amending and Supplementing the Law No. 03/L-073 on General Elections.
19. According to the Law 03/L-073 Law on general elections in the Republic of Kosovo Article 111 determines the distribution of seats and the way to calculate the seats belonging to some political entities in the Assembly of Kosovo, providing the following:

*„111.2 (b) the total number of valid votes received by each Political Entity in the Assembly elections shall be divided by 1, 3, 5, 7, 9, 11, 13, 15, et seq. until the number of divisors used is equal to the number of seats:...”*

20. The Law No. 03/L-256 on amending and supplementing of the Law No. 03/L-073 on general elections by Article 106 paragraph 1 provides the following;

*“The CEC shall certify the final election results after the completion of all polling station and counting centre procedures and when all outstanding complaints related to voting and counting have been adjudicated by the ECAP and any appeals of ECAP’s decisions on them have been determined by the Supreme Court of Kosovo.”*

### **Preliminary assessment of the admissibility**

21. In order to be able to adjudicate the Applicants’ Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure of Constitutional Court.
22. On 3 March 2011 the Applicant submitted his Referral to the Constitutional Court, while the last Decision regarding this case was ruled by the Supreme Court of Kosovo on 5 February 2011. Therefore, the Court concludes that the Referral was submitted pursuant to Article 49 of the Law.
23. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, resolution on inadmissibility in Case KI.13/09 Sevdail Avdyli of 17 June 2010).
24. On the presented case the Applicant did not provide any proof that the Judgment of the Supreme Court has violated rights and freedoms guaranteed by the Constitution in Chapter II, Chapter III and Chapter IV (Article 21-82 of the Constitution) also there was no proof that the Supreme Court of Kosovo arbitrarily decided when the Referral was rejected as unfounded (see *mutatis mutandis*, Vanek v. Slovak Republic, Decision of ECHR on Admissibility of the application No. 53363/99 of 31 May 2005).
25. In the present case, the Constitution of the Republic of Kosovo in Article 64 paragraph 2 scope 2 provides that: „ One additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes...” and not to the political entity with the highest overall votes.

26. Having in mind that the political entity of the DPKA and API represent the same non-majority community of Ashkalia, and that this non-majority community of Ashkalia won two seats as prescribed by the Constitution, therefore, the Constitutional Court finds that the Referral is manifestly unfounded in accordance to the Rule 36 (1c) of the Rules of Procedure which provides: "The Court shall reject a Referral as being manifestly ill-founded when: c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution".

### **FOR THESE REASONS**

The Constitutional Court of Kosovo pursuant Article 113.7 of the Constitution, Article 20 of the Law, and Rule 36 (2b) and Rule 56(2) of the Rules of Procedure, on the session held on 9 June 2011, unanimously

### **DECIDES**

- I. TO REJECT the Referral as Inadmissible.
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law.
- III. This Decision is effective immediately.

**Judge Rapporteur**

Altay Suroy

**President of the Constitutional Court**

Prof. dr Enver Hasani