



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

Prishtina, 09 march 2012
Ref. No.: RK199/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI51/10

Applicant

Živić Ljubiša

Constitutional Review of the Decision of President of the Republic of Kosovo on the appointment of Mr. Zdravković Goran as a member of the Central Election Commission representing the Serbian Community.

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 Živić Ljubiša from Gračanica, President of the Independent Social Democrats League.

Opposing party

2. The opposing party is the President of the Republic of Kosovo.

Subject matter

3. The subject matter is the assessment of the constitutionality of the Decision of President of the Republic of Kosovo concerning the appointment of Mr. Zdravković Goran member of the Central Election Commission representing the Serbian Community.

Alleged violations of constitutionally guaranteed rights

4. The Applicant did not explicitly specify what rights guaranteed by the Constitution were alleged to have been violated.

Legal Basis

5. Article 113.7 of the Constitution, Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Applicant's complaint

6. On 29 June 2010, the Applicant filed a Referral with the Constitutional Court, alleging that the President of the Republic of Kosovo violated the Constitution and the Law on General Elections of the Republic of Kosovo by appointing Mr. Zdravković Goran as a member of the Central Election Commission (CEC) representing the Serbian community.
7. On 28 October 2010, the Applicant filed a new Request to the Constitutional Court requesting to annul the Decision of President of the Republic of Kosovo on the appointment of Mr. Zdravković Goran and return Mr. Živić Siniša to the position of a member of the Central Election Commission representing the Serbian community.

Proceedings before the Constitutional Court

8. The Applicant lodged a Referral with the Constitutional Court on 29 June 2010.
9. By order of the President dated 9 July 2010, Judge Gjyljeta Mushkolaj was appointed as Judge Rapporteur. On the same date, the President appointed the Review Panel composed of Judge Robert Carolan presiding and Judges Altay Suroy and Kadri Kryeziu.
10. The Court deliberated on the Referral on 21 February 2011.

Comments of the opposing party

11. On 5 July 2010, the notification on the registration of the case and the request to reply was sent to the President of the Republic of Kosovo. On 02 August 2010, the President of the Republic of Kosovo through his duly appointed lawyers sent a reply to the Court.

Summary of the facts

12. On 04 July 2008 the President of the Republic of Kosovo, Dr. Fatmir Sejdiu, requested the representatives of the six biggest parliamentary groups and representatives of non-majority Communities in the Assembly of Kosovo to send their nominations for appointments to the CEC. Also, on 4 July 2008 the President of the Republic of Kosovo requested from the Serb Liberal Party, the largest political party representing the Serb Community in the Assembly of Kosovo, to send its proposal for appointment to the Central Election Commission.
13. On 14. July 2008, Mr. Stojanović Bojan, head of the parliamentary group of Serb Liberal Party sent a letter to the President proposing Mr. Mr. Zdravković Goran to be a member of CEC.
14. The President, on 15 July 2008, appointed Mr. Zdravković Goran as a member of CEC and representing the Serb community. This Decision of the President entered into force on the date when it was signed.
15. On 19. July 2008 Mr. Mr. Zdravković Goran was sworn in before the President and officially became a member of the CEC.
16. The Applicant complains that the President of the Republic of Kosovo violated the Constitution and the Law on General Elections of the Republic of Kosovo by appointing Mr. Mr. Zdravković Goran as a member of the Central Election Commission. According to the applicant, Mr. Zdravković Goran does not fulfil the conditions stipulated by the law to hold that position, regarding qualifications.
17. In his Second Request to the Constitutional Court of 28. October 2010, the Applicant asks the Constitutional Court to annul the Decision of the President of the Republic of Kosovo and replace Mr. Mr. Zdravković Goran with Mr. Živić Siniša, who previously held the position of a member of the Central Election Commission pursuant to the decision of Mr. Joachim Reucker, the Special Representative of the Secretary General, in accordance with the UNMIK Regulation No. 2007/25 of 29 August 2008. According to the Applicant, the rights of Mr. Živić Siniša were violated by the Decision of the President appointing Mr. Zdravković Goran as a member of CEC without any notification to Mr. Živić Siniša concerning his replacement.

Assessment of the Admissibility of the Referral

18. The Court needs to preliminarily assess whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure of the Court.
19. The Court notes that Article 49 of the Law provides that the Referral should have been submitted within a period of four (4) month after the final decision in the case. Article 49 of the Law stipulates as follows:

The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.
20. When that deadline of four months has arisen before the entry into force of the Law, Article 56 the Law provides that “it shall begin to be counted on the day upon which this Law enters into force”. The Law entered into force on 15 January 2009, on the day of publication in the Official Gazette of the Republic of Kosovo”.

21. The challenged decision of the President of the Republic of Kosovo was signed on 15 July 2008 and made public on the same day. The member appointed to the Central Election Commission by the same Decision of the President took his oath before the President of the Republic on 19 August 2008. Consequently, the deadline for the submission of the Referral with the Court expired on 15 May 2009, while the Applicant submitted the Referral on 29 June 2010. Hence, the Referral is out of time, pursuant to the above Article of the Law.
22. Even if the Referral were not out of time, in accordance with Article 113.1 of the Constitution, "*The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties*" and Article 113.7 of the Constitution provides that "*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.*"
23. It is true that decisions of the President of the Republic concerning appointments of individuals are decisions of public authorities. They concern one or more specific addressees, and must be considered as decisions affecting the individual rights and freedoms of individuals guaranteed by the Constitution. As a consequence, they are subject to constitutional review, i.e. appealable to the Constitutional Court.
24. However, as it is required by Article 48 of the Law, the Applicant has not submitted any evidence, or substantiated his claim that his individual rights and freedoms have been violated by the decision of the Assembly. For the purposes of the Constitution, a victim is a natural or legal person (see case of *AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case No. KI. 41 /09*) whose Constitutional Rights are personally or directly affected by a measure or act of a Public Authority. A person who is not affected in this manner does not have standing as a victim since the Constitution does not provide for *actio popularis*. In other words, an Applicant cannot complain in the abstract about measures by public authorities which have not been applied to them personally, such as is the case before this Court. The Referral is therefore also rejected as manifestly ill-founded.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law, and Section 56 (2) of the Rules of Procedure, unanimously

DECIDES

- I. To REJECT this Referral as inadmissible;
- II. The Secretariat shall notify the Parties of the Decision and shall publish it in the Official Gazette in accordance with Article 20.4 of the Law; and
- III. This Decision is effective immediately.

Judge Rapporteur


Dr. Gjyljeta Mushkolaj

President of the Constitutional Court


Prof. Dr. Enver Hasani

