



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

Prishtina, 25 January 2013
Ref. No.: RK374/13

RESOLUTION ON INADMISSIBILITY

in

Case no. KI115/12

Applicant

Fadil Salihu

**Assessment of regularity of election of the President of Vetëvendosje Movement
in Ferizaj, on 4 November 2012**

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

Applicant

1. The Applicant is Fadil Salihu from Ferizaj (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the decision on election of the President of the Vetëvendosje Movement in the Ferizaj Centre, of 04 November 2012.

Subject matter

3. Interpretation of the Statute of Vetëvendosje Movement in relation to the election of President of this Movement in Ferizaj.

Legal basis

4. The referral is based upon Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the Law) and Rule 56, paragraph 2 of the Rules of Procedure (hereinafter: Rules of Procedure).

Proceedings before the Court

5. On 3 December 2012 the Applicant filed a referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. By decision of the President (no. GJR. 115/12 of 06 December 2012), Judge Arta Rama Hajrizi was appointed Judge Rapporteur. On the same day, by decision no. KSH. KI 115/12, the President appointed the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Prof. Dr. Enver Hasani..
7. On 25 January 2013 after having considered the report of Judge Arta Rama – Hajrizi the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and prof. dr. Enver Hasani made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

8. On 4th of November 2012, elections were held for the President of the Vetëvendosje Movement in Ferizaj Centre.
9. On the same day, the person already exercising the function of President was re-elected for President of the Ferizaj Centre, by majority of votes.

Applicant's allegations

10. According to allegations of the Applicant, the elections for President of the Vetëvendosje Movement in Ferizaj, held on 4th of November 2012, resulted in electing a person who does not meet the criteria pursuant to the Statute of the Vetëvendosje Movement, of July 2012.
11. The Applicant specifically invokes Article 17 of the Vetëvendosje Movement Statute, which provides:

“An individual who has taken part in compromising acts, in breach of founding principles and documents of the VETËVENDOSJE! Movement may not be a member of the VETËVENDOSJE Movement. The following shall be considered to be compromising acts:

a) Collaboration with foreign intelligent/information services, and military, foreign para-military and police forces, that have or continue to exercise physical and psychological violence against citizens.”

12. The grounds for his allegations are found by the applicant in the fact that the mentioned person was already elected for the position of President, a position he used to exercise in the previous term, and that during his previous term, financial abuses were found, also identified by the Auditor of the Movement.
13. The Applicant alleges that the person (Candidate for President of Movement Centre) was not present in Kosovo at the time of elections, and had not taken part in the campaign, and that he was elected President by vote-buying.
14. The Applicant, in his referral, states that *“he is addressing the Constitutional Court, because he wants to combat totalitarianism in practice, against the vote-buying for positions, misuses and for the justice to prevail.”*

Assessment of the admissibility of the Referral

15. In order to be able to adjudicate the Applicant’s Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution. In this respect, the Court refers to Article 113.7 of the Constitution which provides as follows:

“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.”

16. The Applicant, in his Referral, does not state what rights, provided for by the Constitution or the law, have been infringed by the election of the mentioned person for President of the Movement, although Article 48 of the Law on the Constitutional Court of the Republic of Kosovo requires that:

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge”

17. In relation to the concrete Referral of the Applicant, the Court refers to the Rule 36, paragraph 3 item (f) of Rules of Procedure of the Constitutional Court, which provides the following:

*“A Referral may also be deemed inadmissible in any of the following cases: f) the Referral is incompatible *ratione materiae* with the Constitution”;*

18. The Court is bound to assess whether it has *ratione materiae* competence at all stages of proceedings. Compatibility *ratione materiae* of a Referral with the Constitution and international acts which are integral parts of the Constitution, in accordance with the Article 53 of the Constitution, derives from the substantial competence of the Court. For a Referral to be compatible *ratione materiae* with the Constitution, the right claimed by the Applicant must be protected by the Constitution.
19. The Applicant points out to an alleged violation related to the interpretation of the “Vetëvendosje Movement Statute”. The Vetëvendosje Movement is not a public authority. Therefore, the Referral is incompatible *ratione materiae* with the Constitution, because the competence of the Constitutional Court covers disputes which are related to alleged violation of the Constitution *by public authorities*.

Therefore, the Referral is incompatible *ratione materiae* with the provisions of the Constitution and, as such, is inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36(3f) of the Rules of Procedure, in the session held on 25 January 2013, 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



Arta Rama Hajrizi



President of the Constitutional Court



Prof. Dr. Enver Hasani