



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

Prishtina, 18 November 2013
Ref.no.:RK497/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI142/13

Applicant

Fadil Maloku

**Request for constitutional review of the Decision of the President of the
Republic of Kosovo, No. 686-2013, of 6 September 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Cukalovic, 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 Referral is submitted by Mr. Fadil Maloku, residing in Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Decision of the President of the Republic of Kosovo No. 686-2013, of 6 September 2013.

Subject matter

3. The subject matter of the Referral is the constitutional review of the Decision of the President of the Republic of Kosovo No. 686-2013 of 6 September 2013, regarding the termination of the Applicant's mandate as a member of the Central Election Commission of the Republic of Kosovo (hereinafter: CEC).

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution); Article 47 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121, of 16 December 2008, which entered in to force on 15 January 2009 (hereinafter: the Law); Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

Proceedings before the Constitutional Court

5. On 9 September 2013, the Applicant submitted a Referral with the Constitutional Court.
6. On 24 September 2013, the President of the Court, by Decision NO. GJR.142/13, appointed Judge Altay Suroy as Judge Rapporteur, and by Decision NO. KSH.142/13, appointed members of the Review Panel, composed of Judges: Robert Carolan (Presiding), Prof. Dr. Ivan Čukalović and Prof. Dr. Enver Hasani.
7. On 8 October 2013, the Court notified the Applicant, the Office of the President of the Republic of Kosovo and the CEC Office of registration of the Referral.
8. On 22 October 2013, the Review Panel reviewed the report of the Judge Rapporteur and recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 6 September 2013, the President of the Republic of Kosovo (Decision: no. 686-2013) terminated to the Applicant the mandate of CEC member. The Applicant used to represent in CEC the Parliamentary Group of the Coalition for New Kosovo.
10. The Decision of the President on termination of exercising the function of CEC member is based on Article 139 item 4 of the Constitution, Article 61, paragraph 5 item (a) of the Law on General Elections in the Republic of Kosovo, as well as on the document of the Parliamentary Group of the Coalition for New Kosovo, protocol no. 728, of 20 August 2013 and on the document with protocol no. 743, of 3 September 2013.

Applicant's allegations

11. The Applicant alleges that the Decision no.686-2013 of 6 September 2013 of the President of the Republic of Kosovo, violates the Applicant's constitutional rights, guaranteed by: Article 21 paragraph 1, 2, 3 and 4 [General Principles]; Article 22 paragraph 1, 2 and 3 [Direct Applicability of International Agreements and Instruments]; Article 23 [Human Dignity]; Article 45 paragraph 3 [Freedom of Election and Participation]; Article 55 paragraph 5 [Limitations on Fundamental Rights and Freedoms]; Article 4 Paragraph 1 item (d) [Prohibition of slavery and forced labour] and Article 18 [Limitation on use of restrictions on rights] of ECHR and on Article 19 of Universal Declaration of Human Rights.
12. The Applicant also alleges that the Decision No. 686-2013 of 6 September 2013 of the President of the Republic of Kosovo, is contrary to Article 61.5 item (a) of the Law on General Elections. The Applicant claims that this Article does not have to do anything with his work as CEC member. Furthermore, the latter claims that the abovementioned Decision is also contrary to Article 61 item (e) that is referred to the mandate and the appointment of the CEC members.

Assessment of admissibility of the Referral

13. The Court examines whether the Applicant has met the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure of the Court.
14. In the present case, the Applicant is natural person, who bases his Referral on Article 113.7 (Individual Referrals) of the Constitution.
15. In this respect, the Court refers to Article 113 paragraph (7) which provides:

113. 7. "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. From the case file, the Court notes that the Applicant challenges the Decision of the President of the Republic of Kosovo No. 686-2013 of 6 September 2013, regarding the termination of the Applicant's mandate as member of the Central Election Commission of the Republic of Kosovo.
17. The Applicant in this case has failed to prove that he has exhausted effective legal remedies available under the laws in force, against the contested decision.
18. Thus, in this respect, the Court assesses that the Applicant's Referral does not meet the procedural requirements for admissibility, as required by Article 113.7 of the Constitution.
19. The principle of subsidiarity requires that the Applicant exhausts all procedural possibilities in the regular proceedings, in order to prevent violation of the Constitution or, if any, to remedy such violation of a fundamental right. Otherwise, the Applicant is liable to have his case declared inadmissible by the

Constitutional Court, when failing to avail himself of the regular proceedings or failing to report a violation of the Constitution in the regular proceedings. The rule is based on the assumption that the legal order of Kosovo will provide an effective legal remedy for the violation of constitutional rights (see Resolution on Inadmissibility Kl-41/09, of 21 January 2010, AAB-RIINVEST University L.L.C., Prishtina vs. the Government of the Republic of Kosovo, and see *mutatis mutandis*, ECHR, Selmouni vs. France, no. 25803/94, Decision of 28 July 1999).

20. From the foregoing reasons, the Court concludes that the Applicant's Referral does not meet procedural admissibility requirements, since the Applicant has not exhausted effective legal remedies provided by law.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 paragraph (7) of the Constitution, Article 47.2 of the Law, and Rule 36 (1) a) and 56 (2) of the Rules of procedure, on 22 October 2013, unanimously:

DECIDES

- I. TO REJECT the Referrals as inadmissible;
- 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; and
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Altay Suroy

President of the Constitutional Court

Prof. Dr. Enver Hasani

