



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

Pristina, 19 May 2014
Ref.no.:RK625/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI230/13

Applicant

Tefik Ibrahimimi

**Constitutional Review of Article 7.5 of the Law No 03/L-072 on Local
Elections in the Republic of Kosovo**

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral is submitted by Mr. Tefik Ibrahimimi (hereinafter: the “Applicant”), residing in Gjilan.

Challenged decision

2. The Applicant challenges the Article 7.5 of the Law 03/L-072 on Local Elections in the Republic of Kosovo.

Subject matter

3. The Applicant requests the Constitutional Court to review whether Article 7.5 of the Law 03/L-072 on Local Elections is in compliance with Article 45.1 of the Constitution [Freedom of Election and Participation].
4. The Applicant also requests the Court to: *“annul this Article and [that] I am elected as a municipal council member since I have the highest number of votes of my political subject AKR in Gjilani.”*

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 16 December 2008, which entered into force on 15 January 2009 (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 Court

6. On 24 December 2013, the Applicant submitted the Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
7. On 15 January 2014, the President of the Constitutional Court by Decision GJR. KI160/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same day, the President of the Court by Decision No. KSH. KI160/13 appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
8. On 28 January 2014, the Applicant was notified of the registration of the Referral. On the same day the Court notified the Supreme Court of the registration of the Referral.
9. On 25 March 2014, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. The Applicant, as a member of political party AKR (Aleanca Kosova e Re), was a candidate for Gjilan Municipal Council in local elections held on 3 November 2013.

11. On 2 December 2013, the Central Elections Commission (hereinafter: CEC) announced the results of the local elections. According to these results the Applicant gained 302 votes.
12. Notwithstanding the results, the Applicant did not become a member of Gjilan Municipal Council, because the seat in the Municipal Council was accorded to the female candidate from the same political party, who was second on the list and who received 69 votes, pursuant to the provisions of the Law No. 03/L-072 on Local Elections, establishing a gender quota for municipal council members.
13. On 3 December 2013, the Applicant lodged a complaint before Elections Complaints and Appeals Panel (hereinafter: ECAP).
14. On 6 December 2013, ECAP rendered Decision A. no. 1120/2013, rejecting the Applicant's complaint as ungrounded. In the reasoning of the ECAP Decision, it was, *inter alia*, stated "*From the case file the ECAP found that the complainant claims are unsustainable because the allocation of seats in Municipal Council is performed by the CEC pursuant to Article 8 of the Law on Local Elections. Pursuant to this it is implied that it is the competency of the CEC to allocate the seats in the Municipal Councils to each Municipal Council member candidates by respecting the gender quota pursuant to above mentioned provision.*"
15. The Applicant filed an administrative appeal with the Supreme Court, within the deadline foreseen by law.
16. On 12 December 2013, the Supreme Court by Judgment AA-Uzh. No. 8936/2013, rejected the Applicant's appeal as ungrounded.
17. In its judgment the Supreme Court stated that "*Pursuant to this situation of the case, the Supreme Court found that the ECAP has correctly and completely found the factual situation and did correctly apply the law when it rejected as not grounded the complaint of Tefik Ibrahim, a candidate of Aleanca Kosova e Re (AKR), to become a member of Gjilani Municipal Council, because he did not argument his appeal claims with any evidence.*" Further the Supreme Court reasons that "*Pursuant to the Court's finding the contested Decision is clear and understandable, whereas its reasoning contains sufficient reasons on decisive facts that are accepted by this Court, which also finds that the material right was correctly applied. Pursuant to the above mentioned situation of the case this Court found that the factual situation was correctly found and no law was broken against the appellant, therefore his appeal claims were not approved, because they have no impact in finding a different factual situation from the one found by the ECAP.*"

Applicant's allegations

18. The Applicant claims that "*Pursuant to the final results of the CEC and CRC in the registry of Gjilani Municipal Council Members Candidates from AKR – Aleanca Kosovae Re, he has the most votes 302 in total. Whereas the political subject through which he was nominated has won two seats in the Gjilani Municipal Council. Out of these two seats one was given to the bearer of the list and the second to the female candidate that received only 69 votes.*"

19. Further, the Applicant alleges *“the CEC allocated two seats to the mentioned subject, and decided that one seat goes to the bearer of the list and the other to the female candidate that has only 69 votes. This allocation is done pursuant to the 30% quota which I find to be unjust, unfair and discriminatory treatment.”*

Assessment on the Admissibility of the Referral

20. The Court notes that to be able to adjudicate upon the Applicant complaint, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and the Rules of Procedure.
21. Articles 113.1 and 113.7 of the Constitution establish the general legal framework required for the admissibility of individual referrals. They provide:

“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

(...)

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.”
22. The Court notes that the Applicant does not challenge the constitutionality of the decision of ECAP A. No. 1120/2013 and judgment AA. Uzh. no. 893/2013 of the Supreme Court.
23. In the present case, the Applicant requests the “Constitutional review of Article 7 paragraph 5 of Law no. 03/L-072 on Local Elections in the Republic of Kosovo,” submitting that “The Constitutional Court should ascertain whether this Article is in harmony with Article 45, paragraph 1 of the Constitution of the Republic of Kosovo.”
24. In fact, the Applicant refers to Article 113.7 of the Constitution as a legal basis to submit his Referral.
25. The Court recalls that only authorities that are explicitly enumerated in Article 113.2 to 113.6 of the Constitution are authorized parties to refer to the Court matters of abstract constitutional review and to request the constitutional review of the legislation.
26. The Court having in mind the quoted provisions of the Constitution concludes that the Applicant is not an authorized party to bring such a request.
27. Therefore, the Court considers that the Applicant is not an authorized party to challenge the constitutionality in abstract of a law and, thus, his Referral should be declared inadmissible.

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 .7 of the Constitution, Article 48 of the Law and Rule 36 (3) c) of the Rules of the Procedure, in its session held on 25 March 2014, unanimously

DECIDES

- I. TO REJECT the Referral as 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. TO DECLARE this Decision immediately effective.

Judge Rapporteur

President of the Constitutional Court


Dr. Sc. Kadri Kryeziu


Prof. Dr. Enver Hasani

