



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

Prishtina, 30 June 2014
Ref.no.:RK658/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI46/14

Applicant

Slobodan Vujičić

Request for interpretation of Article 57.1 [General Principles] of Chapter III [Rights of Communities and their Members] of the Constitution of 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, and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Mr. Slobodan Vujičić (hereinafter: the “Applicant”), residing in Prishtina.

Subject matter

2. The subject matter of the Referral is a request for interpretation of Article 57.1 [General Principles] of Chapter III [Rights of Communities and their Members] of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”).

Legal basis

3. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”), Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (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 Constitutional Court

4. On 12 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”).
5. On 1 April 2014 the President of the Court, by Decision No. GJR. KI46/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court by Decision, No. KSH. KI46/14, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
6. On 23 April 2014 the Court notified the Applicant of the registration of the Referral and informed the President of the Assembly of the Republic of Kosovo of the Referral.
7. On 19 May 2014 the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Applicant’s statements

8. The Applicant is asking the Court “[...] since the Montenegrins are not included in the Constitution of the Republic of Kosovo, and that without doubt belong to the same language and religious group as the Serbs, can the party Gradjanska Inicijativa Pripadnika Crnogorske Zajednice (Citizen Initiative of the Members of Montenegrin Community) participate in the national elections and compete for one of the 10 reserved or guaranteed seats for the Serbian community?”
9. The Applicant does not provide any further statements or arguments in support of the Referral.

Admissibility of the Referral

10. The Court notes that, in order to assess the admissibility it has to examine the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.

11. In this respect, the Court shall examine whether the Applicant is an authorized party to submit the respective Referral.
12. In the case at hand, the Applicant is seeking an interpretation of the method of application of a provision of the Constitution regarding the 10 guaranteed seats for parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community.
13. In this respect, the Court refers to Article 113.1 of the Constitution which provides: "*The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*"
14. The Court notes that the Applicant asks for an interpretation of the applicability of a constitutional provision related to the next parliamentary elections. The constitutional provision in question is Article 57.1 of Chapter III of the Constitution, which provides: "*Inhabitants belonging to the same national or ethnic, linguistic, or religious group traditionally present on the territory of the Republic of Kosovo (Communities) shall have specific rights as set forth in this Constitution in addition to the human rights and fundamental freedoms provided in chapter II of this Constitution.*"
15. The Applicant specifically claims that the Montenegrins belong to the same language and religious group as the Serbs in accordance with Article 57.1 of the Constitution and their party "Gradjanska Inicijativa Pripadnika Crnogorske Zajednice" (Citizen Initiative of the Members of Montenegrin Community) should be able to participate in the national elections and compete for one of the 10 guaranteed seats reserved for the Serbian community.
16. As understood by the Court, where it concerns a request for an interpretation regarding the provisions of the Constitution, there is no constitutional provision that empowers the Applicant to bring such a Referral before the Court. Only the parties explicitly mentioned by the Constitution have such powers.
17. In this respect, the Court refers to Article 93 (10) [Competencies of the Government] of the Constitution "*The Government has the following competencies: may refer Constitutional questions to the Constitutional Court*". Furthermore, in Case No. KO98/11 the Court held that "*According to Article 93 (10) the Government may refer Constitutional questions to the Constitutional Court. If the questions are constitutional questions then the Government will be an authorised party and the Referral will be admissible.*" (See Case KO98/11, Applicant: *The Government of the Republic of Kosovo*, Judgment of 20 September 2011 and See Case KO18/14, Applicant: *Vesna Mikić and 20 other Deputies of the Assembly of the Republic of Kosovo*, Resolution on Inadmissibility of 11 February 2014).
18. Moreover, the Court also refers to Article 84 (9) [Competencies of the President] of the Constitution "*The President of the Republic of Kosovo: may refer constitutional questions to the Constitutional Court.*"

19. As far as the Applicant is an individual, he/she is entitled to submit a Referral under Article 113.7 of the Constitution. Under this provision, individuals or legal persons may submit a Referral challenging decisions of public authorities as allegedly being taken in violation of their individual rights and freedoms guaranteed by the Constitution only after exhaustion of all legal remedies provided by law. However, this is not the case in the current Referral.
20. Therefore, the Court concludes that the request for interpretation of Article 57.1 of Chapter III of the Constitution by the Applicant does not fall within the scope of being authorized party.
21. Consequently, the Applicant's Referral is inadmissible, pursuant to Article 113.1 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 of the Constitution and Rule 56 (2) of the Rules of Procedure, on 30 June 2014, unanimously

DECIDES

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

Judge Rapporteur

President of the Constitutional Court

Snezhana Botusharova

Prof. Dr. Enver Hasani