



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

Prishtina, 11 February 2014
Ref.no.:RK551/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KO18/14

Applicants

Vesna Mikić and 20 other Deputies of the Assembly of the Republic of Kosovo

Request to “[...] interpret the provisions of the Constitution of Kosovo regarding the reserved seats for the representatives of the communities that do not constitute the majority in 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.

Applicants

1. The Applicants are Vesna Mikić, Petar Miletić, Jelena Bontić, Kostić Biserka, Saša Milosavljević, Jasmina Živković, Emilija Ređepi, Albert Kinolli, Danush Ademi, Saša Đokić, Hamza Balje, Milivoje Stojanović, Vesimir Stojanović, Xhevdet Neziraj, Müfera Şinik, Fikrim Damka, Enis Kervan, Boban Todorović, Murselj Haljilji, Etem Arifi, Goran Marinković, all of them deputies of the Assembly of the Republic of Kosovo (hereinafter: the “Applicants”).

Subject matter

2. The subject matter of the Referral is the request to “interpret the provisions of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”) regarding the reserved seats for the representatives of the communities that do not constitute the majority in Kosovo.”, namely, whether “[...] *the communities are entitled to one more mandate of reserved seats together with guaranteed seats, pursuant to Article 148, Chapter XIV [Transitional Provisions for the Assembly of Kosovo] dated 15.06.2008 for next mandate respectively the upcoming General Elections that will be held during 2014.*”

Legal basis

3. The Referral is based on Article 113 of the Constitution and Rule 56.2 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

Proceedings before the Court

4. On 31 January 2014, the Applicants submitted the Referral to the Court.
5. On 3 February 2014, the President of the Court by Decision, No. GJR. KO18/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court by Decision, No. KSH. KO18/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.
6. On 4 February 2014, the Court notified the Applicants of the registration of the Referral and informed the Assembly of the Republic of Kosovo (hereinafter: the “Assembly”) of the Referral.
7. On 10 February 2014, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Applicants’ statements

8. The Applicants are asking the Court to interpret whether the communities not in the majority in Kosovo are entitled to benefit from the system of reserved seats for one more mandate of the Assembly of the Republic of Kosovo, namely following the upcoming parliamentary elections in 2014. Their request is related with Article 148 of Chapter XIV [Transitional Provisions] of the Constitution.
9. The Applicants refer to Article 3, paragraph 2 of the Comprehensive Proposal for the Kosovo Status Settlement which provides: “*For the first two electoral mandates upon the adoption of the Constitution, the Assembly of Kosovo shall have twenty (20) seats reserved for representation of Communities that are not in the majority in Kosovo, as follows: Ten (10) seats shall be allocated to the parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community and ten (10)*”

seats shall be allocated to other Communities as follows: the Roma community one (1) seat; Ashkali community one (1) seat; the Egyptian community one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; Bosniak community three (3) seats; Turkish community two (2) seats; and Gorani community one (1) seat. Any seats gained through elections shall be in addition to the ten (10) reserved seats allocated to the Kosovo Serb Community and other Communities respectively.”

10. The Applicants further refer to Article 148 [Transitional Provisions for the Assembly of Kosovo] of the Constitution which provides that: *“For the first two (2) electoral mandates, the Assembly of Kosovo shall have twenty (20) seats reserved for representation of Communities that are not in the majority in Kosovo, as follows: Ten (10) seats shall be allocated to the parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community and ten (10) seats shall be allocated to other Communities as follows: the Roma community, one (1) seat; the Ashkali community, one (1) seat; the Egyptian community, one (1) seat; and one (1) additional seat will be awarded to either the Roma, the Ashkali or the Egyptian community with the highest overall votes; the Bosniak community, three (3) seats; the Turkish community, two (2) seats; and the Gorani community, one (1) seat. Any seats gained through elections shall be in addition to the ten (10) reserved seats allocated to the Kosovo Serb Community and other Communities respectively.”*
11. In this respect, the Applicants claim that *“Notwithstanding paragraph 1 of this Article, the mandate existing at the time of entry into force of this Constitution will be deemed to be the first electoral mandate of the Assembly, provided that such mandate continues for a period of at least two (2) years from the date of entry into force of this Constitution.”* Thus, the Applicants consider that *“[...] the first mandate cannot be treated as a complete mandate, because pursuant to the Comprehensive Proposal for the Kosovo Status Settlement it is stated after the Adoption of the Constitution and the mandate was shortened.”*
12. In addition, the Applicants allege that *“[...] the shortening of the mandate and its retroactive application is in contradiction to human rights and rights of communities respectively, the decisions pursuant to the Constitution and the Comprehensive Proposal for the Kosovo Status Settlement apply for two mandates and only after the adoption of the Constitution.”*

Admissibility of the Referral

13. The Court observes that, in order to be able to adjudicate the Applicants' Referral, it is necessary to examine whether they have fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law on the Constitutional Court and the Rules of Procedure.
14. In this respect, the Court shall examine whether the Applicants are an authorized party to submit the respective Referral.

15. In the case at hand, the Applicants are seeking an interpretation of the method of application of certain provisions of the Constitution regarding the reserved seats for the representatives of the communities that do not constitute the majority in Kosovo. In particular, the Applicants are asking whether the communities are entitled to one more mandate of reserved seats together with guaranteed seats, pursuant to Article 148 [Transitional Provisions for the Assembly of Kosovo] of the Constitution for the next mandate in respect to the upcoming General Elections that will be held during 2014.
16. 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.”*
17. The Court notes that the Applicants ask for an interpretation of the applicability of a constitutional provision related to the next parliamentary elections. The constitutional provision in question is Article 148 of the Transitional Provisions, which was deleted from the Constitution of Kosovo by Decision of the Assembly No. 04-V-436, dated 07 September 2012.
18. The Applicants specifically claim that Article 148 was intended to apply for two electoral mandates of the Assembly of Kosovo, and that the first electoral mandate should not be counted as the sitting mandate at the time of the entry into force of the Constitution. In the Applicants’ reasoning, this would imply that the system of reserved seats for members of non-majority communities contained in Article 148 would continue to apply following the next elections for the Assembly of Kosovo scheduled for 2014. The Applicants argue that if the system of reserved seats is not followed in the next mandate of the Assembly this would constitute a violation of the human rights of non-majority communities. The Applicants do not specify what human rights would be violated nor how these rights would be violated.
19. Alternatively, the Applicants could be understood to be seeking an abstract interpretation of the meaning of the deletion of Article 148 from the Constitution, namely that its provisions regarding its applicability to the mandates of the Assembly would somehow have survived the deletion of this article and still apply today. However, even in this understanding, the Applicants’ request for interpretation lacks any constitutional basis. 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 Deputies of the Assembly to bring such a Referral before the Court.
20. The Court reiterates that according 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).

21. Moreover, the Court also reiterates that according 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.*”
22. In this respect, the Court notes that the competencies of the constitutional state bodies are to be exercised according to the provisions of the Constitution.
23. The Court having in mind the quoted provisions of the Constitution concludes that the Applicants are not an authorized party to bring such a request.
24. Consequently, the Applicants’ 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 10 February 2014, unanimously

DECIDES

- I. TO DECLARE 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 effective immediately.

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Prof. Dr. Enver Hasani