



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 22 December 2010
Ref. No.: AGJ78/10

JUDGMENT

Case No. KO 97/10

In the matter of the Referral submitted by Acting President of the Republic of Kosovo, Dr. Jakup Krasniqi, concerning the holding of the office of Acting President and at the same time the position of Secretary-General of the Democratic Party of Kosovo.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge,
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Cukalovic, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Dr. Jakup Krasniqi, the President of the Assembly of the Republic of Kosovo who is the Acting President of Kosovo.

Subject Matter

2. Whether Dr. Ja up Krasniqi as Acting President of the Republic of Kosovo is prohibited from holding and exercising the position of Secretary-General of the Democratic Party of Kosovo (PDK).

Legal Basis

3. Articles 84 (9) of the Constitution of Kosovo (the Constitution), Article 29 of the Law on the Constitutional Court (the Law) and Section 55 of the Rules of Procedure of the Constitutional Court (the Rules).

Proceedings before the Court

4. By a Referral dated 13 October 2010, received in the Constitutional Court on 14 October 2010, the Acting President of the Republic of Kosovo, bearing in mind the Judgment of the Constitutional Court in the case of Naim Rrustemi and 31 other Deputies of the Assembly of Kosovo and His Excellency, Dr Fatmir Sejdiu dated 28 September 2010, requested;
 - i. Whether the limitation “after election, the President cannot exercise any other political party functions”, as prescribed in Article 88.2 of the Constitution is also valid for the Acting President.
 - ii. Furthermore, he requested “the evaluation of the constitutionality of the temporary holding and the exercising of the functions of President of the Republic of Kosovo and at the same time, exercising the position of the Secretary-General of PDK”.
5. Pursuant to the Rules of Procedure the President of the Court appointed Judge Iliriana Islami as Judge Rapporteur and appointed the following Judges as members of the Review Panel: Judges Ivan Ćukalović (presiding), Enver Hasani (President) and Kadri Kryeziu (Deputy President).

Facts presented by the Applicant

6. On 27 September 2010 His Excellency, Prof. Dr. Fatmir Sejdiu, President of the Republic of Kosovo publicly announced his resignation from the office of President of Kosovo, following the announcement of the Judgment of the majority of the members of the Constitutional Court in the case brought against him by Naim Rrustemi and 31 other Deputies of the Assembly of Kosovo.
7. In that case this Court had found, by a majority decision, that there was a serious violation of the Constitution of Kosovo, namely Article 88.2, by His Excellency, Fatmir Sejdiu holding the office of President of the Republic and at the same time holding the office of Chairman/President of the Democratic League of Kosovo.
8. As President of the Assembly, Dr Krasniqi was given the duties and functions of the President of the Republic of Kosovo, under Article 90 of the

Constitution, even though at all material time he continued and continues to hold and exercise the position of Secretary-General of the PDK.

9. He sought clarification as to whether the aforementioned limitation also applied to him because he was now the Acting President of the Republic of Kosovo.

Admissibility

10. Former President Sejdiu resigned from his office on 27 September 2010 after the Decision of the Constitutional Court in the referral referred to at paragraph 6 above. The President of the Assembly of Kosovo, the Applicant, then became the Acting President and he has performed the functions of President of Kosovo since then.
11. Under Article 84 (9) of the Constitution the President “*may refer constitutional questions to the Constitutional Court.*”
12. The questions raised by the Applicant are “constitutional questions” as contemplated by Article 84 (9) of the Constitution. Namely, it is a relevant constitutional question to clarify whether the steps that the Acting President may take or the actions that he may be called upon to perform, while at the same time holding and exercising the position of Secretary-General of the PDK, constitute a serious violation of the Constitution.
13. What constitutes a constitutional question was addressed by this Court in the case of the Referral of the President of the Republic of Kosovo for Explanations Regarding Jurisdiction over the Case of the Mayor of Rahovec, Case No. KO 80/10. The Court gave Judgment on 7 October 2010 concerning the status of the resignation of the Mayor of a Municipality. The facts outlined in that case satisfied the Court that the matter was of sufficient importance to be rendered admissible. There will in due course, no doubt, be other Referrals on questions submitted by Presidents or Acting Presidents of the Republic of Kosovo.
14. It is proper that there be constitutional certainty as to the powers of an Acting President. It is not lightly that he has posed the question to the Court. The Constitutional Court is charged with answering such questions. In accordance with Article 112.1 of the Constitution, “*the Constitutional Court is the final authority for the interpretation of the Constitution*” and because of that there is no other body from whom the Applicant may seek an answer to these constitutional questions. The Court is of the opinion that the questions raised by the Applicant are “constitutional questions” that are contemplated by Article 84 (9) and that the questions raised are fit to be addressed by the Court.
15. An Acting President should be encouraged to consult the one body capable of dealing with constitutional questions, the Constitutional Court. For these reasons this Court finds that the Applicant has the standing or competence to refer the questions to the Court.

16. Article 84 (9) of the Constitution does not prescribe a time limit within which questions may be referred to the Court. It follows therefore that all the requirements for the admissibility of the Referral are met.

Merits

17. The Law on the President of the Republic of Kosovo, Law No. 03/L-094, was passed on 19 December 2008 and was published in the Official Gazette on 25 January 2009. This law does not mention in any way the role of an Acting President and therefore it cannot assist the Court in dealing with the particular questions referred to the Court.
18. The Court in its Judgment in the case of President Fatmir Sejdiu analysed the role of the President of the Republic of Kosovo and the compatibility of that role with the freezing/holding/exercise of the position of Chairman/President of the Democratic League of Kosovo. The functions of the President, as provided for in the Constitution, were carefully examined in its Judgment. It is not necessary now to restate them. The Court concluded, by a majority decision, that President Sejdiu had committed a serious violation of Article 88.2 of the Constitution by holding both roles at the same time.
19. The deputies of the Assembly of Kosovo in secret ballot elect the President of Kosovo. Article 86.1 states that "*The President of the Republic of Kosovo shall be elected by the Assembly in secret ballot.*" The President acts as head of state and he or she represents the unity of the people of the Republic of Kosovo. The principle of representative democracy which underpins the institutions and decision making in the Republic of Kosovo gives the choice of President to the elected representatives of the citizens. The limited period of six months provided by Article 90 of the Constitution beyond which an Acting President may not exercise the position of President is there to ensure that it is the Assembly of Kosovo that chooses who occupies that important position on behalf of the people of Kosovo.
20. Article 90 of the Constitution provides that an Acting President shall be the President of the Assembly of Kosovo. The President of the Assembly is elected by the deputies of the Assembly from amongst their own numbers. Article 67 provides for the election of the President of the Assembly and his or her principle functions in the following terms:

Article 67 [Election of the President and Deputy Presidents]

- 1. The Assembly of Kosovo elects the President of the Assembly and five (5) Deputy Presidents from among its deputies.*
- 2. The President of the Assembly is proposed by the largest parliamentary group and is elected by a majority vote of all deputies of the Assembly.*
- 3. Three (3) Deputy Presidents proposed by the three largest parliamentary groups are elected by a majority vote of all deputies of the Assembly.*
- 4. Two (2) Deputy Presidents represent non-majority communities in the Assembly and are elected by a majority vote of all deputies of the*

Assembly. One (1) Deputy President shall belong to the deputies of the Assembly holding seats reserved or guaranteed for the Serb community, and one (1) Deputy shall belong to deputies of the Assembly holding seats reserved or guaranteed for other communities that are not in the majority.

5. The President and Deputy Presidents of the Assembly are dismissed by a vote of two thirds (2/3) of all deputies of the Assembly.

6. The President and the Deputy Presidents form the Presidency of the Assembly. The Presidency is responsible for the administrative operation of the Assembly as provided in the Rules of Procedure of the Assembly.

7. The President of the Assembly:

(1) represents the Assembly;

(2) sets the agenda, convenes and chairs the sessions;

(3) signs acts adopted by the Assembly;

(4) exercises other functions in accordance with this Constitution and the Rules of Procedure of the Assembly.

8. When the President of the Assembly is absent or is unable to exercise the function, one of the Deputy Presidents will serve as President of the Assembly.

21. The functions of the President of the Assembly as provided for in the above Article are solely in relation to the internal workings of the Assembly and do not have the much more substantive functions and competences of the President of the Republic. Their roles are different.
22. The deputies of Assembly elect the President of the Assembly in an election that is entirely separate to the election of the President of the Republic. Article 88 of the Constitution, in its entirety, provides as follows:

Article 88 [Incompatibility]

1. The President shall not exercise any other public function.

2. After election, the President cannot exercise any political party functions.

23. Particular attention is drawn to the terms of Article 88.2 which prohibits the exercise of political party functions but only “After election...”. These words, in their ordinary meaning, seem to imply that the prohibition from exercising any political party function applies only to a President of the Republic who has been elected by the Assembly of Kosovo. Dr Jakup Krasniqi was not elected as President of the Republic of Kosovo. He was elected as President of the Assembly only. There is no prohibition in the Constitution on the exercise of political party functions on the President of the Assembly.
24. It would be stretching the meaning of the prohibition too much to require a President of the Assembly to cease exercising any political party function merely because of his or her becoming Acting President of the Republic of Kosovo pursuant to the provisions of the Constitution. The Court therefore finds that the that the “acting” nature of the Presidency now occupied by Dr Jakup Krasniqi does not prohibit him from holding and exercising the position of Secretary-General of the Democratic Party of Kosovo (PDK). He

holds the position of Acting President. The functions of that role arise in accordance with the Constitution and they derive from the Constitution.

25. The Acting President is not an elected President and there may be questions as to the powers of an Acting President raised from time to time. No such question has been raised in the present Referral. Such questions are constitutional issues and the Court will address these issues upon proper request being made to it bearing in mind the doctrine of the separation of powers, as set out in Article 4.1 of the Constitution, and being alert of the obligation not to stray into the spheres of the other branches of government.

For these reasons the Court unanimously decides as follows

- I. The Referral is admissible;
- II. There is no prohibition on an Acting President of Kosovo exercising the party political functions mentioned in Article 88.2 of the Constitution;
- III. The temporary holding and exercise of the functions of President of the Republic of Kosovo and at the same time exercising the position of the Secretary-General of PDK is not incompatible with the Constitution;
- IV. 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 and,
- V. This Decision is effective immediately.

Judge Rapporteur


Dr. Iliriana Islami

President of the Constitutional Court


Prof. Dr. Enver Hasani

