



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

Prishtina, 23 July 2014
Ref.no.:VMP689/14

DECISION ON INTERIM MEASURE

in

Case No. KO119/14

Applicants

Xhavit Haliti and 29 other deputies of the Assembly of the Republic of Kosovo

Constitutional review of Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo on the election of the President of the Assembly of the Republic of Kosovo, dated 17 July 2014.

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
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was lodged by 30 Deputies of the Assembly of the Republic of Kosovo, Hashim Thaçi, Xhavit Haliti, Hajredin Kuçi, Enver Hoxhaj, Arsim Bajrami, Memli Krasniqi, Margarita Kadriu-Ukelli, Zenun Pajaziti, Elmi Reçica, Rafet Rama, Ganimete Musliu, Selvije Halimi, Safete Hadërgjonaj, Bekim Haxhiu, Flora Brovina, Fadil Beka, Xhevahire Izmaqu, Agim Aliu, Sala Berisha-Shala, Agim Çeku, Besim Beqaj, Raif Qela, Naim Fetahu, Blerta Deliu-Kodra, Mexhide Mjaku-Topalli, Adem Grabovci, Azem Syla, Nuredin Lushtaku, Nezir Çoçaj and Kadri Veseli (hereinafter: the “Applicants”). Before the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”), the Applicants have authorized Mr. Xhavit Haliti to represent them.

Challenged decision

2. The Applicants challenge Decision No. 05-V-001 voted by 83 Deputies of the Assembly of the Republic of Kosovo (hereinafter: the “Assembly”) on the election of the President of the Assembly of the Republic of Kosovo as regards its substance and as well the procedure followed in respect to the process of the Assembly being constituted on 17 July 2014.

Subject matter

3. The subject matter of the Referral is the assessment by the Court of the Constitutionality of the decision voted by 83 Deputies of the Assembly, by which, Mr. Isa Mustafa, was elected the President of the Assembly of the Republic of Kosovo.
4. The Applicants contest the constitutionality of the procedure for the election of the President of the Assembly of the Republic of Kosovo as applied during the constitutive session of the Assembly held on 17 July 2014, alleging a violation of Articles 67 [Election of the President and Deputy Presidents] of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”) and the Rules of Procedure of the Assembly of the Republic of Kosovo (hereinafter: the “Rules of Procedure of the Assembly”).
5. The Applicants also claim that the procedure to constitute the Assembly was not done in accordance with Article 67 [Election of the President and Deputy Presidents], paragraphs 2 and 3, of the Constitution and Chapter III [Inauguration of the Assembly] of the Rules of Procedure of the Assembly which determines the procedure to be followed for the constitution of the Assembly.
6. Furthermore, the Applicants request the Court to impose an interim measure, namely to suspend the constitutive process of the Assembly pending the final decision of the Court. The Applicants allege that *“The Interim Measure is in the public interest because irrecoverable damage can be caused to the functioning of the institutions of the Republic of Kosovo as well to the Republic of Kosovo as a democracy.”*

Legal basis

7. The Applicants base the Referral on Article 113.5 of the Constitution, Articles 27, 42 and 43 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the "Law"), and Rules 54, 55 and 56.3 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

8. On 18 July 2014 the Applicants submitted the Referral to the Court.
9. On 21 July 2014, pursuant to Rule 33 of the Rules of Procedure, the President of the Constitutional Court, by Decision No. GJR. KO119/14, appointed Judge Robert Carolan as Judge Rapporteur. On the same date, the President of the Constitutional Court, by Decision No. KSH. KO119/14, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and Ivan Čukalović.
10. The Court also refers to the written notification of Judge Kadri Kryeziu dated 26 June 2014 excluding himself from the deliberations for the period June-July 2014, until the Court will have decided regarding certain allegations raised against him.
11. On 21 July 2014 the Court notified the Applicants of the registration of the Referral.
12. On the same date the Court sent a copy of the Referral to the President of the Republic of Kosovo, the Caretaker Government of the Republic of Kosovo (hereinafter: the "Caretaker Government"), the Deputies of the Assembly of the Republic of Kosovo and the Secretary General of the Assembly of the Republic of Kosovo (hereinafter: the "Secretary General of the Assembly"). The latter was requested to submit to the Court a copy of the transcript of the constitutive session held on 17 July 2014.
13. On 23 July 2014, after having heard the Judge Rapporteur and having discussed the request for an interim measure submitted by the Applicants, the Court decided to grant the Request for Interim Measures pending the final decision of the Court.

Brief summary of facts

14. On 7 May 2014 the Assembly, in its extraordinary plenary session, decided for the dissolution of the fourth legislature of the Assembly of the Republic of Kosovo.
15. On 8 May 2014 the President of the Republic of Kosovo decreed the early election to take place on 8 June 2014.
16. On 8 June 2014 the elections took place in the Republic of Kosovo.

17. On 27 June 2014 the Central Election Commission (hereinafter: the CEC) published the election results.
18. On 4 July 2014 the CEC certified the election results.
19. On 7 July 2014 the President of the Republic of Kosovo decided to hold the constitutive meeting of the Assembly on 17 July 2014.
20. On 12 July 2014 the Presidency of the Assembly from the previous legislature held its meeting with the aim to prepare the agenda for the constitutive meeting.
21. On 17 July 2014 the Assembly held its constitutive session chaired by the oldest member of the Assembly, Mrs. Flora Brovina, (hereinafter: the "Chairperson") and assisted by the youngest member of the Assembly, Ms. Teuta Rugova. The Chairperson followed the following procedure:
 - a. the Chairperson requested from the representatives of the political parties to nominate their respective representative for the *ad hoc* Committee for the verification of quorum and mandates of Deputies;
 - b. the *ad hoc* Committee reported to the Assembly confirming that there are 120 Deputies present in the hall and verified, based on the list of the certified results of the election, the mandates of the Deputies;
 - c. the Chairperson requested from the Deputies to vote on the report of the *ad hoc* Committee, which was adopted by 117 deputies voting in favour and no one vote against;
 - d. the Chairperson requested the Deputies to take the oath, which they did;
 - e. the Chairperson requested, based on the report of the *ad hoc* Committee, a representative from the political party PDK to propose the candidate for the President of the Assembly of the Republic of Kosovo and the three largest political parties to propose their candidates for Deputy Presidents of the Assembly of the Republic of Kosovo;
 - f. the Chairperson put the candidate of the political party PDK to the vote, whereupon the representatives of the political parties LDK, VV, AAK, Nisma and Srpska Lista left the hall; and
 - g. the Chairperson declared the session closed until further notice, because there was no quorum, i.e. only 47 Deputies were present.
22. Thereafter, although the constitutive session of the Assembly was officially closed by the Chairperson, the political parties LDK, AAK, NISMA, VV and the deputies from the Serb minority (83 Deputies in total) returned to the hall of the Assembly where the youngest member of the Assembly, Deputy Ms. Teuta Rugova, chaired a meeting of the 83 Deputies present to vote the motion submitted by LDK, AAK, Nisma and VV replacing the Chairperson Deputy Flora Brovina. The motion was adopted with 82 votes in favour. Thereupon, Deputy Mrs. Milka Vuliq, the second oldest member of the Assembly and member of Srpska Lista continued to chair the meeting, which lead to Decision No. 05-V-001 by which Isa Mustafa was elected as President of the Assembly with 65 votes in favour out of the 83 Deputies present.

Arguments presented by the Applicants

23. The Applicants claims that *“The constituency of the Assembly of the Republic of Kosovo, in accordance with the Constitution, through the elected representatives after the held elections on 8 June 2014, represents a great importance for the deputies of the Democratic Party of Kosovo, and also directly affects the formation of other democratic institutions including the government.”*
24. However, the Applicants consider that *“During the preparation for the inaugural session of the Assembly there was a violation of the Constitution and the Rules of Procedure of the Assembly. During the meeting, dated 12.07.2014, the chairperson of the meeting, the President of the previous legislature Mr. Krasniqi, exceeded his powers set out in the Constitution, namely his interpretation on the largest parliamentary group, i.e. according to the former President the “Parliamentary group” established with 47 deputies during the registration process the fifth legislature has to sit in the center and consequently this Parliamentary Group has to propose the President of the Assembly. However, taking into consideration that the “Parliamentary Group LDK-AAK-NISMA” are not certified as the largest parliamentary group by the Central Election Commission, as determined by Article 15 and 18 of Law no. 03/L-073 on General Elections in the Republic of Kosovo (Official Gazette of the Republic of Kosovo/Pristina: Year III/no. 31/15 June 2008), the action of the President of the Assembly of the fourth legislature authorizing the merger of one Parliamentary Group consisted of the deputies of LDK, AAK and NISMA, without being certified as the largest parliamentary group, before the constituency of the fifth legislature of the Assembly of the Republic of Kosovo constitutes a violation of the Constitution of the Republic of Kosovo, respectively Article 64 (1) and Article 67 and Article 15 and 18 of Law no. 03/L-073 on General Elections in the Republic of Kosovo (Official Gazette of the Republic of Kosovo/Pristina: Year III / no. 31/15 June 2008). Also, the action of the President of the Assembly of the fourth legislature is also in conflict with the practices that have been confirmed so far by the Transcript of Meetings of the Presidency with representatives of parliamentary parties, held on 10.02.2011.”*
25. Furthermore, the Applicants allege that the *“Decision of the Assembly of the Republic of Kosovo, dated 17 July 2014 (No. 05-V-001), on the election of the President of the Assembly of the Republic of Kosovo, including the preparatory procedure followed in connection with the constituency process of the Assembly are not in accordance with the provisions of Article 67 of the Constitution of the Republic of Kosovo. Based on Article 67.2 of the Constitution and the Constitutional Court Judgment in Case no. KO103/14 filed by the President of the Republic of Kosovo, regarding the assessment of compatibility of Article 84 (14) (Competencies of the President) with Article 95 (Election of the Government) of the Constitution of the Republic of Kosovo (Ref No.: AG 671114, 1 July 2014), the President of the Assembly is proposed by the largest parliamentary group which won the majority of seats in the Assembly and is elected by a majority vote of all deputies of the Assembly.”*

26. Thus, based on the abovementioned articles, Articles 64 and 67 of the Constitution, the Judgment of the Constitutional Court in Case KO103/14, the alleged violation, which allegedly occurred during the preparatory procedure for the constitutive session of the Assembly and during the constitutive session held on 17 July 2014, the Applicants request the Constitutional Court to answer the following questions:
- a. *To assess the constitutionality of the Decision of the Assembly of the Republic of Kosovo, dated 17.07.2014 (no. 05-V-001) if the President of the Assembly has been proposed by the largest parliamentary group according to Article 67.2 of the Constitution of the Republic of Kosovo.*
 - b. *To clarify who is the largest parliamentary group, as defined in Article 67 (paragraph 2) of the Constitution of the Republic of Kosovo and Article 12 of the Rules of Procedure of the Assembly of the Republic of Kosovo (29 April 2010), respectively is it the Parliamentary group that has won in the election for the Assembly of 8 June 2014 or the grouping that has been formed during the registration of the deputies and, therefore, Who has the right to propose the candidate for President of the Assembly during the constitutive session of the Assembly?*
 - c. *To clarify whether there was a violation of the Constitution by the President of the Assembly from the previous legislature according to Article 67.7. What are the competences of the President of the Assembly from the previous legislature during the preparatory meeting dated 07.12.2014?*
 - d. *After the official closing of the constitutive session, was there a right to discharge the Chairperson and to continue with the constitutive session without inviting the members and taking into account this and the steps that have followed with the election of President and Deputy Presidents of the Assembly, has there during the constitutive session of the Assembly of the Republic of Kosovo been a violation of the Constitution and the Rules of Procedure of the Assembly?*

Request for Interim Measure

27. The Applicants request the Court to impose interim measure suspending the constitutive process of the Assembly pending the final decision of the Court. The Applicants allege that *“The Interim Measure is in the public interest because irrecoverable damage can be caused to the functioning of the institutions of the Republic of Kosovo as well to the Republic of Kosovo as a democracy.”*
28. In this respect, the Court refers to Article 116 [Legal Effect of Decisions], paragraph 2 of the Constitution, which establishes that *“While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages.”*

29. Furthermore, the Court refers to Rule 55 (4) of the Rules of Procedure, which provides that:

“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;

(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and

[...]

If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.”

30. In this respect, the Court notes that the Referral is prima facie admissible as it is submitted by more than 10 Deputies of the Assembly of Kosovo, within eight days from the date of the decision being adopted by the Assembly as regards its substance and the procedure followed. Thus, the requirements of Article 113, paragraph 5 of the Constitution are met.
31. Therefore, the Court, pursuant to Article 116 [Legal Effect of Decisions], paragraph 2 of the Constitution, Article 27 of the Law and Rule 55 (4) of the Rules of Procedure, finds that the Applicants have put forward enough convincing arguments to grant the request for Interim Measure.
32. Thus, the Court without prejudging the case on the merits grants the Applicants' request for Interim Measure.

FOR THESE REASONS

The Court, pursuant to Article 116, paragraph 2 of the Constitution, Article 27 of the Law and Rules 55 (4) and 56 (3) of the Rules of Procedure, unanimously

DECIDES

- I. TO GRANT the interim measure;
- II. TO GRANT the interim measure until the final decision is published and no later than 18 September 2014 from adoption of this Decision;
- III. TO IMMEDIATELY SUSPEND the Decision on the election of the President of the Assembly of the Republic of Kosovo, No. 05-V-001, voted by 83 deputies of the Assembly of the Republic of Kosovo on 17 July 2014;
- IV. TO IMPOSE upon the Assembly to refrain from any action until the final decision of the Court;

- V. TO NOTIFY this Decision to the Parties;
- VI. TO PUBLISH this Decision in accordance with Article 20 (4) of the Law; and
- VII. TO DECLARE this Decision effective immediately.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani