



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

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**Pristina, 1 April 2011  
Ref. No.: SQ 111/11**

**CLARIFICATION**

of

**JUDGMENT**

in

**Case No. KO 29/11**

**Sabri Hamiti and other Deputies**

**Constitutional Review of the Decision of the Assembly of the Republic of Kosovo, No. 04-V-04, concerning the election of the President of the Republic of Kosovo, dated 22 February 2011.**

**Requested Clarifications of the Majority's Decision, dated 30 March 2011.**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Altay Suroy, Judge  
Snezhana Botusharova, Judge  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

## Subject matter

1. Request for clarification of the President of Assembly, Mr. Jakup Krasniqi, the Presidency of the Republic of Kosovo, signed by Mr. Behgjet Pacolli and of the Government of the Republic of Kosovo, signed by the Prime Minister, Mr. Hashim Thaci.

## Legal basis

2. Article 113.5 of the Constitution, Article 42 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rules 56 (1) and 61 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## Proceedings before the Court

3. On 1 April 2011, the Court held a session to assess and decide on the above requests.

## Facts

4. On 31 March 2011, the Constitutional Court of the Republic of Kosovo received a request for clarification from the President of the Assembly of the Republic of Kosovo, Mr. Jakup Krasniqi, containing three questions in respect of the Judgment of this Court in case KO 29/11, adopted by majority vote on 30 March 2011, reading as follows:

“.....

*1. In practice, what does it mean that the Judgment does not have retroactive effect?*

*2. As a consequence of this Judgment, should the country go for early elections?*

*3. Currently, does the Country have a President, respectively an Acting President?*

.....”

5. On the same day, the Court received a letter from the Presidency of the Republic of Kosovo, signed by Mr. Behgjet Pacolli, requesting an answer to the question raised in respect of the same Judgment, reading as follows:

*“Does my removal from office create an institutional vacuum of the highest state institution, taking into consideration that no one has requested to assume the duty of Acting President until new election?”*

6. Furthermore, on 1 April 2011, the Court received a letter containing three questions from the Government of the Republic of Kosovo, signed by Prime Minister Hashim Thaci, raised in respect of the same Judgment, reading as follows:

*“The Government of the Republic of Kosovo in its meeting dates March 31, 2011, decided that it presents questions that follow to the CC in line with Art. 93 paragraph 10 of the Constitution of the Republic of Kosovo which says that “Government may refer constitutional questions to the Constitutional Court.*

...

*1. During the first two ballots for President, under Article 86(4), the President is elected by a two-thirds majority of all deputies of the Assembly. Thus, 80 votes are required for election. Does Article 86 require at least 80 deputies to be present during the voting, or must all 120 deputies be present during the voting? In other words, does Article 86 require a quorum of 80 or 120 deputies to begin voting in the first two ballots for President? If a President is not elected during the first two ballots, what is the quorum required for the third ballot which only requires majority vote to elect? If a deputy is present and does not cast a vote, does the deputy’s presence count towards the necessary quorum?*

*2. May the Acting President of Kosovo exercise power for a six month period beginning on 29 March 2011 or does the six month period of limitation of power date back to an earlier date in view of the fact that the President of the Assembly served as Acting President following the resignation on 27 September 2010 of President Sejdiu?*

*3. On 22 February 2011, more than forty deputies in the Assembly refused to participate during the first two ballots for President. One party has publicly announced that its deputies will refuse to participate and other parties may do the same, despite the Constitutional Court’s clear indication in Case No. KO 29/11 that Deputies should participate in the election as it is their Constitutional duty to do so. When the election is called and fewer than 80 Deputies are present to vote, despite being duly notified of the election, is it permissible under Article 86 to declare that the first and second ballot would fail to elect a President in that 40 or more Deputies chose not to be present and proceed immediately to the third ballot in Article 86(5) and elect the President of Kosovo by a majority of all Deputies, at least 61 votes?*

....”

### **Legal limits of assessing the Requests**

7. The Court notes that the questions raised by the three above mentioned institutions are of similar nature, except in relation to the request of the Government which was made under Article 93 of the Constitution. Even though, the Court will answer separately to each of them.
8. The answers to the requested questions are given by the Court taking into account the legal basis abovementioned, together with the exceptional importance of the case, the pertinence and relevance of the requests and the limits of the subject matter of the petition which is on the basis of the judgment taken in the case.

9. Therefore, bearing in mind that the Court is bound by the limits of its judgment and is not legally authorized to go beyond those limits, the questions are clarified as follows hereafter.

### **Answers to the requests**

#### **I. As to the questions contained in the letter of the President of the Assembly**

10. As to the first question whether the Judgment of this Court has retroactive effect, the answer is that the Judgment of the Court enters into force with immediate effect on 30 March 2011 and that the Decision of the Assembly of the Republic of Kosovo, No. 04-V-04, concerning the election of the President of the Republic of Kosovo, dated 22 February 2011, is no longer in force as of 31 March 2011, being the date of publication of the Judgment in the Official Gazette.
11. As to the second question whether the Judgment of this Court forces the dissolution of the Assembly and the holding of new elections, the answer is no.
12. As to the third question whether Kosovo has a President, respectively an Acting President, the answer is that Kosovo has an Acting President as of 31 March 2011. Thus, there is no institutional vacuum since the date of the publication of the Judgment.

#### **II. As to the question contained in the letter of Mr. Behgjet Pacolli**

13. As to the issues raised by Mr. Pacolli in his letter of 31 March 2011, reference is made to the answer provided in paragraph 12, that Kosovo has an Acting President as of 31 March 2011. Thus, there is no institutional vacuum since the date of the publication of the Judgment.

#### **III. As to the questions contained in the letter of the Prime Minister of the Government of the Republic of Kosovo**

14. As to the first question, the Court refers to its findings in the Judgment regarding this issue.
15. As to the second question whether Kosovo has an Acting President, the answer is that Kosovo has an Acting President as of 31 March 2011. Thus, there is no institutional vacuum since the date of the publication of the Judgment.
16. As to the third question, the Court recalls that the purpose of this Clarification is to clarify the Judgment and does not have the authority to go outside the subject matter of the Referral. Therefore, hypothetical situations as mentioned in the letter of the Prime Minister fall outside the ambit of the subject matter and may be the basis for a new case.
17. As to the request under Article 93 of the Constitution, the Court notes that Article 93 [Competencies of the Government] establishes that *"The Government has the following competencies:*

(...)

*(10) may refer Constitutional questions to the Constitutional Court”.*

18. The Court notes that the Government made the request under that provision. However, the Court considers that this request is not a new referral, as its content clearly has to do with clarification of the Judgment delivered in the case No. KO 29/11.

19. Therefore, the Court recalls that only with new facts and circumstances, the Government is entitled to avail itself of that constitutional provision to file a new referral with the Court.

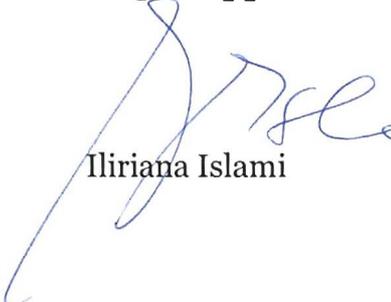
**FOR THESE REASONS,**

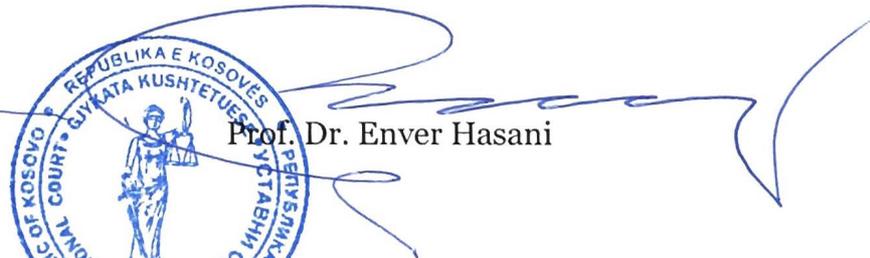
THE COURT, in its session held on 1 April 2011, decides, by majority, to clarify the requested questions as above

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.

**Judge Rapporteur**

**President of the Constitutional Court**

  
Iliriana Islami

  
Prof. Dr. Enver Hasani

