



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
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Prishtina, date: 26 February 2010
Ref. No. MP 06/10

**Decision on the Request for Interim Measures
in**

Case No. KI 73/09,

Mimoza Kusari-Lila

vs.

The Central Election Commission

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Constitutional Court composed of

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

Having deliberated on the request for interim measures of Ms Mimoza Kusari-Lila the Court adopts the following **Decision**:

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Introduction

The Applicant.

1. The Applicant is Ms Mimoza Kusari-Lila, representing the political party, New Kosovo Alliance (NKA).a candidate for Mayor of Gjakovë/Đakovica in the Local Government elections held Kosovo on 15 November 2009,

The Responding Party

2. The Responding Party is the Central Election Commission (CEC) as established by Article 139 of the Constitution of Kosovo.

Subject Matter

3. On 10 December 2009 the Applicant, Ms Mimoza Kusari-Lila, lodged a referral to the Constitutional Court of the Republic of Kosovo requesting:
 - a) An assessment of the constitutionality and legality of the decision of the CEC to declare the results of local elections, held on 15 November 2009, without having considered the results of all the complaints and appeals lodged.
 - b) The granting of interim measures annulling the election results in the Municipality of Gjakovë/Đakovica, at polling stations where the election process had been violated and ordering new elections under the supervision of the CEC.

The Facts

4. Following the local elections held in Kosovo on 15 November 2009 the NKA lodged a number of appeals to the ECAC concerning alleged irregularities observed during the election. However, following consideration of the matter the ECAC rejected these appeals. The NKA appealed two of these decisions of the ECAC to the Supreme Court of Kosovo. The Supreme Court of Kosovo rejected these appeals by Decisions given on 4 December 2009.
5. The NKA addressed a further appeal to the Supreme Court of Kosovo on the basis that the CEC declared the local elections results without all prior procedures being properly concluded, which they allege amounted to a violation of Article 106.1 of the Law on General Elections in the Republic of Kosovo. The Supreme Court of Kosovo also rejected this appeal on 4 December 2009.

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Legal Basis

6. Article. 116.2 of the Constitution of the Republic of Kosovo, Article 27 of the Law on the Constitutional Court of the Republic Kosovo and Article 52.1 of the Rules of Procedure of the Constitutional Court.

Holding

7. The Court after having considered the report of Judge Rapporteur Ivan Čukalović and having heard the parties at a public hearing on 9 February 2010 and having deliberated on the matter on 19 February 2010 concluded, without prejudice to any final Decision on the Referral as to admissibility or on the merits, that the request for interim measures should be rejected. The Court finds that the Applicant has not submitted sufficient evidence to justify the annulling of the elections and the ordering of new elections under the supervision of the CEC. The Applicant has not established that the interim measures are necessary to avoid any risk of irreparable damages nor that those interim measures are in the public interest, as required by Article 27 of the Law on the Constitutional Court.
8. For these reasons the Court unanimously decides:
 - i. To reject the request for interim measure;
 - ii. This Decision is to be notified to the parties;
 - iii. This Decision shall be published in accordance with Article 20.4 of the Law on the Constitution of Kosovo and is effective immediately.

Done at Pristina this 26 day of February 2010.

President of the Constitutional Court

Signed: Prof. Dr. Enver Hasani

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