



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

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Prishtina, 19 May 2011  
Ref. No.: RK 124/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 22/11**

Applicant

**Bojana Denić**

**Constitutional review of the Decision of the Election Complaints and Appeals  
Panel, A. No. 263/2010 dated 12 November 2010**

**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 Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge.

### **The Applicant**

1. The applicant is Ms. Bojana Denić from Parteš, represented by lawyer Bejtush A. Isufi from Prishtina.

## **Challenged Decision**

2. The Applicant challenges the Decision of the Election Complaints and Appeals Panel, A. No. 263/2010 dated 12 November 2010, by which a complaint against a decision of the Central Election Commission was rejected, registered as 757/10, and in regard to mandates of the political party Unified Serbian List.

## **Subject Matter**

3. The Applicant challenges the Decision of the Election Complaints and Appeals Panel A. No. 263/2010 claiming that Article 3.2, Article 21.3 and Article 45.1 of the Constitution of the Republic of Kosovo and Article 111 of the Law No. 03/L-073 on General Elections in the Republic of Kosovo have been violated.

## **Legal Basis**

4. Article 113.7 and Article 21.4 of the Constitution, Article 20, Article 22.7 and Article 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo dated 15 January 2009 (hereinafter referred to as: the "Law") and Rule 56(2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the "Rules of Procedure").

## **Proceedings before the Constitutional Court**

5. The Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the "Court") on 21 February 2011.
6. On 24 March 2011, the Constitutional Court informed Mr. Bejtush A. Isufi that the procedure has been initiated and that No. 22-11 was assigned to the case.
7. On the same date, the Constitutional Court informed the Election Complaints and Appeals Panel and the Central Election Commission that No. 22-11 was assigned to the case and that a procedure regarding review of the constitutionality of their decisions has been initiated.
8. On 19 May 2011, after having considered the Report of the Judge Kadri Kryeziu the Review Panel composed of Judges: Robert Carolan (presiding), Altay Suroy and Ivan Čukalović, recommended to the full Court to reject the Referral as inadmissible.

## **Summary of Facts**

9. Complainant Bojana Denić, as a candidate of the Unified Serbian List for a seat in the Parteš Municipal Assembly, won 15 votes and was ranked 3 in this political party.
10. Jasmina Vasić from the same political party, the Unified Serbian List, won the same number of votes as Bojana Denić, however on the list she was ranked as 9.
11. The Central Election Commission in Prishtina, in its Announcement, dated 16 July 2010, Protocol Number 757-10 and signed by the President of the Central Election Commission appointed Jasmina Vasić for a Municipal Assembly Member and rejected the request of Bojana Denić for confirmation and verification of her mandate as Parteš Municipal Assembly Member.

12. Unsatisfied with this decision Bojana Denić filed an appeal to the Central Election Commission, which rejected this appeal with justification that allegedly this Decision is final and that the unsatisfied party has the right of initiating an administrative dispute at the Supreme Court in Prishtina.
13. Dissatisfied with the Decision of the Central Election Commission, Bojana Denić complained to the Supreme Court of Kosovo with a request to annul the Decision of the Central Election Commission. However, the Supreme Court rejected this complaint with justification that they should first address the Election Complaints and Appeals Panel.
14. Following the recommendation of the Supreme Court, on 15 November 2010 Bojana Denić filed a complaint to the Election Complaints and Appeals Panel, in which she requests amendment of the Decision number 757-10 of the Central Election Commission and to confirm her as Parteš Municipal Assembly Member.
15. But, Election Complaints and Appeals Panel rejected the complaint as inadmissible with explanation that: "Elections results are final and binding when they are certified by the Central Election Commission".

### **Applicant's Allegations**

16. The Applicant alleges that Decision of Election Complaints and Appeals Panel by which a request to place Bojana Denić in the list of Parteš Municipal Assembly Members was rejected and that it violated her rights guaranteed by Article 3.2, Article 21.3 and Article 45.1 of the Constitution of the Republic of Kosovo.
17. Further, she claims that this decision violated her rights prescribed in Article 111 of the Law No. 03/L-073 on General Elections in the Republic of Kosovo.

### **Law on Elections in Kosovo**

18. Law in regard to organizing elections in the Republic of Kosovo is governed by Law No. 03/L-073 on General Elections in the Republic of Kosovo, Law No. 03/L-256 on Amending and Supplementing the Law No. 03/L-073 on General Elections in the Republic of Kosovo and Law No. 03/L-072 on Local Elections in the Republic of Kosovo.
19. According to the Law No. 03/L-073 on General Elections in the Republic of Kosovo and the Law No. 03L-072 on Local Elections in the Republic of Kosovo, Article 26 of the Law on Local Elections provides the following:

*"Chapter XVI (The counting of ballots and announcement of election results), and any provision relating to the subject matter thereof, of the Law on General Elections in the Republic of Kosovo shall mutatis mutandis apply to local elections unless otherwise provided by this Law."*

20. Article 101 of the Law on General Elections sets out general provisions for counting the ballots and announcement of election results, and gives authorization to the CEC to make rules in accordance with this. This Article provides for the following:

*"101.1 The procedures of counting of the ballots shall be governed by the following objectives: accuracy, transparency, efficiency, capability for recount and repeat elections, and protection of the secrecy of the vote.*

*101.2 Regular ballots cast at Polling Stations within Kosovo will be counted at those Polling Stations immediately after the close of voting.*

*101.3 The counting procedures shall be in accordance with the CEC rules.”*

21. The CEC has adopted rules which set out many election aspects. First of them was the rule No. 01/2008 on Registration and Operation of the Political Parties which entered into force on 29 June 2009. The latest was the election rule No. 15/2010 in regard to Early and Extraordinary Elections which entered into force on 2 March 2010.

22. The most important rule that is related to this case is the Election rule No. 09/2009 on Polling and Counting Inside Polling Stations on Municipal Election Commission Level, which entered into force on 25 June 2009. These rules are pertinent to the counting of ballots and counting and reconciliation of conditional ballots. ECAC decides on complaints in regard to the voting process. The Applicant filed a complaint to the ECAC and her complaint was rejected by the ECAC.

23. Article 106.1 of the Law No. 03/L-256 on Amending and Supplementing the Law No. 03/L-073 on General Elections sets forth the following:

*“The CEC shall certify the final election results after the completion of all polling station and counting centre procedures and when all outstanding complaints related to voting and counting have been adjudicated by the ECAP and any appeals of ECAP’s decisions on them have been determined by the Supreme Court of Kosovo.”*

24. Article 118.4 of the Law No. 03/L-256 on Amending and Supplementing the Law No. 03/L-073 on General Elections stipulates:

*“An appeal may be made from a decision of the ECAP, as ECAP may reconsider any of its decisions upon the presentation by an interested party. An appeal to the Supreme Court of Kosovo may be made within twenty four (24) hours of the decision by ECAP, if the fine involved is higher than five thousand Euro (€5,000) or if the matter affects a fundamental right. The Supreme Court shall decide within seventy two (72) hours after the appeal is filed.”*

25. Article 118.5 of the Law No. 03/L-256 on Amending and Supplementing the Law No. 03/L-073 on General Elections prescribes:

*“The ECAP decision is binding upon the CEC to implement, unless an appeal allowed by this law is timely filed and the Supreme Court determines otherwise.”*

### **Preliminary Assessment of Admissibility**

26. In order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure of the Constitutional Court.

27. The Court notes that the Applicant filed the Referral under Article 113.7 of the Constitution which provides for the following:

*“Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.”*

28. The Court wishes to emphasize that the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal

order will provide an effective remedy for the violation of constitutional rights (see, mutatis mutandis, ECHR, Selmouni v. France, No. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the rule for exhaustion of remedies is satisfied (see, mutatis mutandis, ECHR, Azinas v. Cyprus, No. 56679/00, decision of 28 April 2004).

29. Having this in mind, it is obvious from the submissions that the Applicant has not presented evidence to the Court that she has exhausted all legal remedies provided by law in her attempt to have her request approved by the court. Therefore, she didn't exhaust all remedies provided by law (complaint to the Supreme Court of Kosovo following the decision of the ECAC) in order to submit a Referral to the Constitutional Court in accordance with Article 113.7 of the Constitution.
30. Taking into consideration that the Applicant was represented by a lawyer during the entire proceedings, the Court assumes that the Applicant should have known all legal remedies which were at her disposal.
31. After having considered all presented facts and evidence, and after deliberating on the matter on 19 May 2011, the Court concludes that the Applicant has not exhausted all legal remedies available to her.

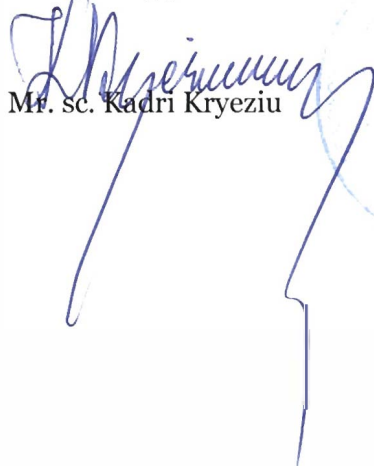
### **FOR THESE REASONS**

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 56.2 of the Rules of Procedure, on 30 May 2011, unanimously

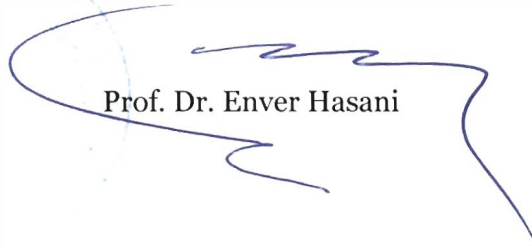
### **DECIDES**

- I. TO REJECT the Referral as inadmissible.
- II. 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 on the Constitutional Court.
- III. This Decision is effective immediately.

**Judge Rapporteur**

  
Mr. sc. Kadri Kryeziu

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani