



REPUBLIKA E KOSOVËS – РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

**Prishtina, 20 August 2014
Ref. No.: 698/14**

RESOLUTION

in

Case No. KK124/14

Inquiry into the allegation of constitutional misconduct by Judge Kadri Kryeziu

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.

Proceedings before the Constitutional Court

1. On 25 May 2014 news media in Kosovo alleged that on 24 May 2014 in the Municipality of Prizren Judge of the Constitutional Court, Kadri Kryeziu was observed attending a pre-election rally with caretaker Prime Minister Hashim Thaçi present as well as officials and candidates from the Political Democratic Party of Kosovo (hereinafter: "PDK") for the national elections of the Parliament of Kosovo for national elections to be held on 8 June 2014.

2. On 26 May 2014 the President of the Constitutional Court of the Republic of Kosovo (hereinafter: the “President”) requested clarification by Judge Kadri Kryeziu concerning the allegations in the news media.
3. On 27 May 2014 Judge Kadri Kryeziu replied to the President’s request for clarification.
4. On 2 June 2014 the President, pursuant to Article 11.1.1 of the Law and Rule 12.1 (a), (e) and (g) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”), appointed a Committee, composed of Judges Robert Carolan (Presiding), Altay Suroy (Member) and Almiro Rodrigues (Member), (hereinafter: the “Committee”). The Committee was tasked to gather facts and determine the circumstances alleged in the electronic media and in the printed media regarding the participation of Judge Kadri Kryeziu in the political events mentioned. (Decision No. KK124/14).
5. On 20 June 2014 the Committee delivered a Report to the Court.
6. On 25 June 2014 the Committee heard Judge Kadri Kryeziu to further determine the facts and allegations that Judge Kadri Kryeziu may have engaged in political activities in violation of the Law of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Law”) and Code of Conduct of the Judges of the Constitutional Court.
7. On 26 June 2014 Judge Kadri Kryeziu notified in writing the Court for his exclusion from the deliberations for the period June-July 2014 until the Court decides regarding certain allegations raised against him.
8. On 27 June 2014 the Committee delivered a supplemental Report to the Court.
9. On 18 August 2014 the Court heard Judge Kadri Kryeziu.
10. On 19 August 2014 the Court deliberated and voted on the Case.

Legal basis

11. Article 11.1.1 of the Law and Rule 12.1 (a), (e) and (g) of the Rules of Procedure.

Evidence

12. The Court has administered, analyzed and evaluated the following facts and evidence: electronic and printed media of 25, 26 and 27 May 2014 and the statement of Judge Kadri Kryeziu.

Allegations/Facts

13. On 25, 26 and 27 of May 2014 various news media in Kosovo alleged that on 24 May 2014 in the Municipality of Prizren that Judge Kadri Kryeziu was observed attending a pre-election rally with caretaker Prime Minister Hashim Thaçi present along with officials and candidates from PDK for the national elections

of the Parliament of Kosovo for national elections to be held on 8 June 2014. In addition, it was specifically alleged that:

PRIZREN, 25 May - The Judge of the Constitutional Court of Kosovo, Kadri Kryeziu, did not hesitate to participate on Saturday afternoon, in an activity of the Democratic Party of Kosovo, where the chairman of this political entity, Hashim Thaçi, promoted his governing platform, 'New mission'. He evaluated that he would participate even in the meetings of other parties, under a condition that there are discussed the projects that have to do with the development of the University of Prizren 'Ukshin Hoti', in which educational institution he is engaged as a lecturer of the sciences of law". He emphasized that in the PDK rally he was invited in the capacity of the UPZ Professor and not in the capacity of the guardian of the Constitution.

"My presence in this rally is something real. There was an invitation that I have received from the UPZ Rectorate, so we were invited together with the Rector and some professors. The reason, why I have decided to participate was the fact that it was a meeting with citizens, where would be discussed also the establishment of the UPZ campus, Kryeziu told Koha Ditore. He added that his presence in this activity does not constitute legal violation.

"The law does not allow me to support any party, but it allows me to be a citizen", said Kryeziu. He further added that the electoral campaign has not yet officially started, but he admitted that he would go even in the meetings of the LDK, AAK, VV or of another entity where the issue of the UPZ would be treated.

Only a few days ago, the LDK Branch in Prizren evaluated that "the University of Prizren has become an arena of the PDK propaganda", while the UPZ Rectorate had reacted, by stating that this is a academic apolitical institution open to cooperation with all entities, without any exception.

Meanwhile, Kadri Kryeziu insisted that he has acted in compliance with the law, since he has taken up the duty of Judge of the Constitutional Court and that he will continue to do that "up to the end of his mandate, namely during the 6 or 7 remaining months of his mandate".

Fisnik Minci, 25 May 2014 (Koha Ditore)

Hearing

14. Following the gathering of facts and the hearing with Judge Kadri Kryeziu, the Committee learned that:
 - a. On 8 May 2014 the caretaker Prime Minister made public in the media his slogan for the political campaign "New Mission".

- b. On 10 May 2014 the caretaker Prime Minister was in Barileva, Municipality of Prishtina discussing/promoting the “New Mission”.
- c. On the same day the caretaker Prime Minister was in Ferizaj discussing/promoting the “New Mission”.
- d. On 13 and 14 May 2014 the caretaker Prime Minister was in Hotel Emerald Prishtina discussing/promoting the “New Mission”.
- e. On 20 May 2014 the caretaker Prime Minister was in Prishtina discussing/promoting the “New Mission”.
- f. On 22 May 2014 the caretaker Prime Minister was in Gjilan discussing/promoting the “New Mission”.
- g. On 24 May 2014 the caretaker Prime Minister was in Therandë discussing/promoting the “New Mission”.
- h. On the same day, after the Assembly of Kosovo was dissolved and before the national elections were held on 8 June 2014, Judge Kryeziu attended a meeting at the League of Prizren public facility in the City of Prizren, Kosovo.
- i. The meeting was conducted and led by caretaker Prime Minister Hashim Thaçi, chairperson of PDK with an agenda entitled, “New Mission.” From 8 May 2014 at least 7 other public meetings with the same agenda were held in venues in Kosovo where caretaker Prime Minister and Chairperson Hashim Thaçi presided. This meeting was open to the public, not just university officials and employees, and it was not held on university property.
- j. Judge Kryeziu, who also serves as a professor at the University of Prizren, attended the meeting after he was orally invited by Zijadin Shemsedini, Rector of the University of Prizren, to do so. According to Judge Kryeziu, the deans of the various faculties and staff of the University also attended this meeting.
- k. According to Judge Kryeziu, he attended the meeting to listen to the Prime Minister, Hashim Thaçi, speaking about the concept of expanding the building and campus of the University of Prizren.
- l. No decision was made at this meeting about expanding the campus of the University of Prizren and the agenda for the meeting did not provide for a decision to be made.
- m. There was extensive discussion at this meeting, led by Prime Minister Hashim Thaçi, about the “New Mission” for Kosovo, that is 15 days before the national elections where many candidates with Hashim Thaçi’s political party were up for election.

- n. Judge Kryeziu stated that people in Prizren address him as both “mayor” and “professor” in acknowledgement of his previous service as Mayor of Prizren and as a professor at the University of Prizren.
- o. Judge Kryeziu stated that he was fully aware of his rights and obligations both as a citizen and as a judge of the Constitutional Court.
- p. Judge Kryeziu stated that he has not attended political meetings since becoming a judge of the Constitutional Court and that his attendance at the meeting on 24 May 2014 was at the request of the Rector of the University of Prizren for the sole purpose of supporting the expansion of the University of Prizren.
- q. When asked how could others attending this meeting or seeing him attend this meeting know that he was attending solely as a professor to the University and not as a judge of the Constitutional Court, he acknowledged that the public would not be able to know in what capacity he was attending this meeting that had an agenda that was clearly political in nature within 15 days of the national elections.
- r. When asked how the public would know that his attendance at this meeting was not meant to create the appearance that his decision-making capacity as a judge of the Constitutional Court could or would be influenced by political parties or officials, he acknowledged that it could be reasonable for members of the public to question his impartiality and independence even though that was not his intention.
- s. When asked about how Articles 1.2, 2.1 and 4.3 of the Code of Conduct for Judges of the Constitutional Court applied to him and his attendance at the meeting on 24 May 2014 he admitted that he may have been “negligent” in complying with the Code of Conduct.
- t. Article 1.2 of the Code of Conduct provides:

The Judges shall not engage in any activity or be a member of any association that may impact public perception and confidence in the independence of their decision-making.
- u. Article 2.1 of the Code of Conduct provides:

The Judges shall exercise all responsibilities impartially and shall ensure the appearance of impartiality in all actions.
- v. Article 4.3 of the Code of Conduct provides:

The Judges shall not hold membership in a political party or political organization and shall not participate in political activities.
- w. Judge Kryeziu admitted that, in attending this meeting on 24 May 2014, he was probably “negligent” in complying with Article 2.1 of the Code of Conduct prohibiting a judge, even with good intentions, from creating

the appearance that he would not be impartial in his role as a judge of the Constitutional Court.

15. On 18 August 2014 Judge Kryeziu appeared before the full Court and admitted that his conduct on 24 May 2014 violated, *inter alia*, Rule 6 of the Code of Conduct for Judges of the Constitutional Court as well as Article 10 of the Law on the Constitutional Court. On that date Judge Kryeziu proposed that the Court accept his letter of apology for his misconduct and that he should be publicly reprimanded by the Court for his misconduct. He also proposed that for the remainder of his mandate with the Court that he would be excluded from participating in the deliberations with respect to any referrals submitted to the Court involving political parties or individuals in political parties or on any other case having a political context, where a party, *inter alia*, may appear in the proceedings before the Court such as the President of the Republic of Kosovo, the Assembly, the Government, the Ombudsperson and Municipalities.

Assessment of the case by the Court

16. The Constitution, the Law, the Rules of Procedure and the Code of Conduct for the Judges of the Constitutional Court define the specific authority and responsibility of the Court with respect to allegations of misconduct by a judge of the Court. Article 118 of the Constitution provides:

Judges of the Constitutional Court may be dismissed by the President of the Republic of Kosovo upon the proposal of two thirds (2/3) of the judges of the Constitutional Court only for the commission of a serious crime or for serious neglect of duties.

17. Article 5 of the Law provides:

1. During his/her mandate, a judge of the Constitutional Court shall not have the right to be:

- 1.1. member of a party, movement or any other political organization;*
- 1.2. member of a steering board of a publicly owned enterprise; trade association or nongovernmental organization;[...]*

18. Article 10 of the Law provides:

1. The judges of the Constitutional Court are obliged to perform their functions with conscience and impartiality, to decide with their own free will in compliance with the Constitution.

2. Judges of the Constitutional Court are obliged to preserve the reputation and dignity of the Constitutional Court.

19. Article 4.1 and 4.3 of the Code of Conduct provide:

4.1 The Judges should not engage in additional activity that is inconsistent with independence, impartiality and the demands of the judicial appointment.

.....

4.3 The Judges shall not hold membership in a political party or political organization and shall not participate in political activities.

20. Article 6.1 and 6.2 of the Code of Conduct provide:

6.1 The Judges shall exercise their freedom of expression in a manner that is fully compatible with the dignity and respect of their judicial office.

6.2 The Judges, when exercising their freedom of expression, should avoid public statements or comments that may undermine the authority of the Court or give rise to reasonable doubt about the impartiality of the Judge.

21. The Court notes that one guarantee of independence of the Constitutional Court is related to the incompatibility clause, i.e. certain limitations ensuing from the very nature of constitutional judicial function. It refers to the extra-judicial activities, either public or private which are in some way incompatible with the function of being judge of a Constitutional Court.
22. In this respect, the Court notes that Judges should not be isolated from the society in which they live, since the judicial system can only function properly if judges are in touch with reality. However, such activities may jeopardize their impartiality or sometimes even their independence. A reasonable balance therefore needs to be struck between the degrees to which judges may be involved in society and the need for them to be and to be seen as independent and impartial in the discharge of their duties. In this regard one has to look at whether, in the particular social context and in the eyes of a reasonable, informed observer, the judge has engaged in an activity which could objectively compromise his or her independence or impartiality. If a judge is uncertain the Court should provide bodies or persons having a consultative and advisory role and available to judges whenever they have some uncertainty as to whether a given activity in the private sphere is compatible with their status of judge. Furthermore, in respect to the participation of judges in public debates of a political nature, judges should not expose themselves to political attacks that are incompatible with the neutrality required by the judiciary in order to preserve public confidence in the judicial system. Hence, judges, should refrain from any political activity liable to compromise their independence or jeopardise the appearance of their impartiality. (*See Consultative Council of European Judges (CCJE) Opinion no. 3 of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, Strasbourg, 19 November 2002*)
23. In a paper submitted to the World Conference on Constitutional Justice on behalf of the Supreme Court of Canada, Justice Ian Binnie stated that *"The restrictions on extra-judicial activity of a political nature are strict – judges are prohibited from engaging in partisan political activities while in office. They do not hold memberships in political parties, attend political gatherings, contribute to campaigns, participate in political discussions in public, or sign petitions. Furthermore, although spouses and other members of a judge's*

family are entitled to participate in politics, they should be mindful of the impact that their political activities could have on the perception of the judge's impartiality. Finally, judges are expected to disqualify themselves when they believe that a reasonable, fair-minded, and informed person would have a rational apprehension that the judge would be in a conflict of interest.” (See Judicial Independence in Canada submitted by Justice Ian Binnie on behalf of the Supreme Court of Canada)

24. In the present case, although the allegations are very serious, and if true, could be a violation of the Code of Conduct and perhaps the Law, they do not, however, allege the commission of a serious crime or serious neglect of duties or any condition that would make it impossible for Judge Kryeziu to act as a judge of the Court. Therefore, the Court must answer the question whether sanctions or discipline other than a recommendation of dismissal are appropriate in this case pursuant to Rule 6 which specifically provides:

(1) A Judge of the Constitutional Court may be dismissed only on the grounds of:

- (a) commission of a serious crime,*
- (b) serious neglect of duties,*
- (c) permanent loss of the ability to act, or*
- (d) illness or any other health problem which makes it impossible to exercise the responsibilities and functions of a Judge.*

25. As both the Law and the Code of Code of Conduct expressly state, judges of the Constitutional Court shall act impartially and independently, and in their actions they must not create any question with respect to their impartiality or independence with respect to any person or party.
26. In the present case, the Court has not found evidence that Judge Kadri Kryeziu is or was a member of a political party while he is serving as a judge of this Court. In fact, Judge Kadri Kryeziu admitted that his conduct on 24 May 2014 violated, *inter alia*, Article 6 of the Code of Conduct for Judges of the Constitutional Court as well as Article 10 of the Law on the Constitutional Court.
27. Therefore, according to Rule 6(5) of the Court's Rules of Procedure the Court has the authority, therefore, to take appropriate disciplinary steps, such as public or private reprimand, to ensure that the Law and the Code are followed and the respect for the Court's independence and impartiality is followed if the allegations of misconduct or the appearance of misconduct are proven.

FOR THESE REASONS

The Constitutional Court pursuant to Rule 6 of the Code of Conduct, Article 11.1.1 of the Law and Rule 12.1 (a), (e) and (g) of the Rules of Procedure and after reviewing the allegations and the response of Judge Kryeziu the Court unanimously

DECIDED

- I. TO ACCEPT Judge Kadri Kryeziu's letter of apology;
- II. TO REPRIMAND Judge Kadri Kryeziu for violating Articles 1 and 4 of the Code of Conduct for Judges of the Constitutional Court;
- III. TO EXCLUDE Judge Kadri Kryeziu from participating in the deliberations in all future referrals to the Constitutional Court involving political parties or individuals in political parties or on any other case having a political context, where a party, *inter alia*, may appear in the proceedings before the Court such as the President of the Republic of Kosovo, the Assembly, the Government, the Ombudsperson and Municipalities;
- IV. TO NOTIFY this Resolution to Judge Kadri Kryeziu and publish in the Official Gazette, in accordance with Article 20.4 of the Law; and,
- V. TO DECLARE this Resolution effective immediately.

**Presiding Judge
of the Committee**



Robert Carolan

President of the Constitutional Court



Prof. Dr. Enver Hasani