



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

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Pristina, 17 August 2011  
Ref. No.: RK133 /11

## **DECISION TO STRIKE OUT THE REFERRAL**

in

**Case No. KO 107/10**

Applicant

**Gani Geci and other deputies**

**Constitutional Review of the Assembly Decision of 14 October 2010  
regarding the Draft Strategy and the Decision of the Government on the  
Privatization of Kosovo Post & Telecommunication**

### **THE 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

#### **Applicant**

1. The Applicants are 12 Deputies (whose names appear in the Annex to the Resolution), represented by one of them, Mr. Gani Geci.

## **Challenged decision**

2. The decision challenged by the Applicants is the Assembly Decision of 14 October 2010 on the Draft Strategy and Decision of the Government of Kosovo on the Privatization of Kosovo Post & Telecommunication (hereinafter: the “Draft Strategy PTK”).

## **Subject matter**

3. The subject matter of the Referral is the assessment by the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”) of the constitutionality of the Assembly Decision of 14 October 2010 by which the Draft Strategy and Decision of the Government on the Privatization of PTK was adopted.
4. The Applicants contest the constitutionality of the Assembly Decision of 14 October 2010, alleging a violation of Article 51 paragraphs (1), (2) and (3) of the Rules of Procedure of the Assembly of the Republic of Kosovo (hereinafter: the “Rules of Procedure of the Assembly”).
5. The Applicants claim, in particular, that Article 51, paragraphs (1), (2), and (3) of the Rules of Procedure of the Assembly has been violated because of the lack of the necessary quorum during the vote.

## **Legal basis**

6. Article 113.5 of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”), Article 42 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121) (hereinafter: the “Law”) and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

## **Proceedings before the Court**

7. On 22 October 2010, the Applicants submitted the Referral to the Court.
8. On 16 December 2010, the President, by Order No.GJR. 107/10, appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur. On the same date, the President, by Order No.KSH. 107/10, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Snezhana Botusharova and Kadri Kryeziu.
9. On 19 January 2011, the Referral was communicated to the President of the Assembly of the Republic of Kosovo (hereinafter: the “Assembly”).
10. On 3 May 2011, the Court requested additional documents from the Assembly, which submitted them on 5 May 2011.
11. On 6 July 2011, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of the facts**

12. On 12 October 2010, the President of the Assembly called for a plenary session of the Deputies to be held on 14 October 2010. On the session’s agenda appeared, amongst other issues, the adoption by the Assembly of the Draft Strategy and Decision of the Government on the privatization of PTK.

13. On 14 October 2010, the Assembly held its Plenary Session and voted on the Draft Strategy PTK. After the voting, the President of the Assembly declared that fifty(50) Deputies had been present and that, out of those fifty (50), forty seven (47) deputies had voted in favour, two (2) against with one (1) abstention.
14. After the voting, the President of the Assembly, Mr. Jakup Krasniqi, concluded that the Draft Strategy and the Decision of the Government of Kosovo on the Privatization of PTK had been approved.

### **Applicants' arguments**

15. The Applicants argue that the Speaker of the Assembly, Mr. Jakup Krasniqi, had put the decision on the privatization of PTK to the vote without having the necessary quorum of Deputies, as required by Article 51(1), (2) and (3) of the Rules of Procedure of the Assembly, i.e. more than half of all Deputies.

### **Response from the President of the Assembly of the Republic of Kosovo**

16. On 5 May 2011, the President of Assembly of the Republic of Kosovo, Mr. Jakup Krasniqi, submitted his comments on the Referral of the Applicants.
17. He replied that there was no signed decision on the approval of the Draft Strategy and the Decision of the Government of Kosovo on the Privatization of PTK.
18. He further submitted that, on 28 October 2010, he had taken the decision (Decision No. 03-V-448) not to adopt the Draft Strategy and Decision, since the Deputies had complained about the lack of quorum, and that these texts would be submitted for revision at a later stage.

### **Assessment of the admissibility of the Referral**

19. The Applicants allege that Article 51 [Quorum and Voting in the sessions of the Assembly] of the Rules of Procedure of the Assembly has been violated, when, on 14 October 2010, the Assembly adopted in plenary session the Draft Strategy PTK.
20. In this respect, the Court observes that, in order to be able to adjudicate the Applicants' complaint, it is necessary to first examine whether they have fulfilled all admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
21. As to the present complaint, the Court needs first to determine, whether the Applicants can be considered to have fulfilled the requirements of Article 113.5 of the Constitution, stating that: "Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed".
22. The Court notes that the present Referral was submitted by twelve (12) deputies contesting the constitutionality of the Assembly Decision on the Draft Strategy and the Decision of the Government of Kosovo regarding the Privatization of PTK.
23. Moreover, as to the requirement of Article 113.5 of the Constitution that the Applicants must have submitted the Referral "within eight (8) days from the date of adoption" of any law or decision by the Assembly, the Court notes that, by letter of 11

May 2011, the President of the Assembly informed the Court that, by Decision No. 03-V-448 of 28 October 2010, he had decided that, because of a lack of the necessary quorum at the plenary session of the Assembly on 14 October 2010, the decision of the Assembly to adopt the Draft Strategy and the Decision of the Government of Kosovo regarding the Privatization of PTK had to be considered as never having been taken.

24. In these circumstances, the Court concludes that the Assembly Decision of 14 October 2010, which the Applicants wished to challenge before this Court, has been invalidated by the Assembly President and, therefore, no longer exists.

25. In this respect, the Court refers to Rule 32 (4) of the Rules of Procedure of the Constitutional Court which, to the extent relevant, provides as follows:

*“The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.”*

26. The Court concludes that the Referral became moot upon the notification submitted to the Court on 5 May 2011 by the President of Assembly of the Republic of Kosovo, Mr. Jakup Krasniqi, providing that there was no signed decision on the approval of the Draft Strategy and the Decision of the Government of Kosovo on the Privatization of PTK.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.5 of the Constitution and Rule 32(4) and Rule 56 (2) of the Rules of Procedure, on 06 July 2011,

### **DECIDES**

- I. TO STRIKE OUT the Referral pursuant to Rule 32(4) of the Rules of Procedure of the Constitutional Court of Kosovo;
- 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

Dr. Gyljeta Mushkolaj

President of the Constitutional Court

Prof. Dr. Enver Hasani

## **Annex A**

1. Gani Geci
2. Lulzim Zeneli
3. Naser Rugova
4. Driton Tali
5. Besa Gaxherri
6. Ismajl Kurteshi
7. Brahim Selmanaj
8. Sinavere Rysha
9. Mark Krasniqi
10. Drita Maliqi
11. Zafir Berisha
12. Naim Rrustemi