



**Republika e Kosovës  
Republika Kosova - Republic of Kosovo  
Gjykata Kushtetuese / Ustavni sud / Constitutional Court**

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Prishtina, 28 September 2010  
Ref. no: AGJ 43/10

## **Judgment**

**Case No. KI 47/10**

**Naim Rrustemi and 31 other Deputies of the Assembly of the Republic of Kosovo**

**Vs.**

**His Excellency, Fatmir Sejdiu,  
President of the Republic of Kosovo**

### **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

#### **The Applicants**

1. The Applicants are Naim Rrustemi and 31 other deputies (See Appendix A) of the Assembly of Kosovo

#### **The Responding Party**

2. The responding party is His Excellency, Fatmir Sejdiu, President of the Republic of Kosovo.

## Legal Basis

3. Article 113 (6) of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"); Article 44 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law"); and Section 54(a) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## Procedure before the Constitutional Court

4. On 25 June 2010 Naim Rrustemi and 31 other deputies of the Assembly of Kosovo lodged a Referral with the Constitutional Court concerning whether the President of Kosovo had committed a serious violation of the Constitution by continuing "to also hold concurrently and at the same time (sic) the function of the President of the Democratic League of Kosovo (LDK), thus acting in contradiction with the Constitution of the Republic of Kosovo."
5. Pursuant to the Rules of Procedure and by letter dated the 29 June 2010 the Court sent the Referral to the President requesting his response.
6. Pursuant to the Rules of Procedure the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and appointed the following Judges as members of the Review Panel: Judges Snezhana Botusharova (presiding), Kadri Kryeziu (Deputy President) and Gjyljeta Mushkolaj.
7. The following is the sequence of correspondence received by the Court from a number of Members of the Assembly of Kosovo who were signatories to the Referral.
  - i. **29 June 2010:** Deputies Dragisa Miric, Mihailo Scepanovic and Vladimir Todorovic signed Information addressed to the Court withdrawing their signatures regarding this petition. This document had space for a fourth name, Numan Balic, but the document did not contain his signature.
  - ii. **2 July 2010:** Another Deputy, Berat Luzha delivered to the Constitutional Court a Statement withdrawing his signature from the list of Deputies. He stated that he was aware and convinced about the violation of the Constitution by the President and he sought to withdraw to avoid the creation of political crises.
  - iii. **5 July 2010:** The Constitutional Court received a letter from Muzejene Selmani who informed the Court that she "withdraws his signature" from the Petition.
8. A response was received from the Legal Advisor of the President in the Office of the President, dated 15 July 2010.
9. The Court wrote to the Central Elections Commission (CEC) by letter dated 7 July 2010 and the CEC replied to the Court on 22 July 2010.
10. The full Court deliberated in private on the Referral on 22 September 2010.

## Summary of the issues before the Court

11. Article 113.6 of the Constitution provides as follows;

*Thirty (30) or more deputies of the Assembly are authorized to refer the question of whether the President of the Republic of Kosovo has committed a serious violation of the Constitution.*

12. 32 deputies of the Assembly of Kosovo signed the Referral. They allege that the President of the Republic had violated and continued to violate Article 88.2 of the Constitution which prohibits the President from exercising any political party functions. They also allege that such a violation is a serious violation of the Constitution.

13. Article 88, in its entirety provides as follows:

*1. The President shall not exercise any other public function.*

*2. After election, the President cannot exercise any political party functions.*

#### **Arguments presented by the Applicants.**

14. The referral claims that at the local elections of 17 November 2009 the LDK participated as a registered party. The Referral stated that pursuant to the Law on Local Elections, applying the Law on General Elections Law No. 03/L-073, *mutatis mutandis*, the registration of a Political Party must include the position of President and that changes in the political party's President shall be reported to the Central Elections Commission.

15. The Referral also invoked UNMIK Regulation 2004/11, Article 12 and other unspecified Articles, as requiring a Political Party to have a President. This Regulation was effectively repealed but then re-enacted by the Law on General Elections dated 5 June 2008.

16. The Referral states that the fact of not presenting anyone else as the President of LDK leads the deputies to reach the conclusion that the party had as its elected President, since 9 October 2007, Mr Fatmir Sejdiu, the President of the Republic of Kosovo.

#### **Response of the President**

17. The Response of the President raised three main defenses to the Referral:

- i. The Deputies did not fulfill the criteria to be an authorised party in accordance with Article 113.6 of the Constitution;
- ii. The Referral was not submitted within the time limit required by Article 45 of the Law on the Constitutional Court, Law No. 03/L-121; and
- iii. The President has not exercised any function in a political party; therefore, he has not committed a heavy/serious violation of Article 88.2 of the Constitution.

18. In relation to the argument that the Applicants did not have the legal standing to bring the Referral to the Constitutional Court the President argued that the withdrawal of the Deputies, referred to in paragraph 7 above, reduced the number of number below 30 and that therefore there were not sufficient numbers for the remaining group of Deputies to be considered an authorised party as required by Article 113.6 of the Constitution.

19. Article 45 of the Law provides as follows:

**Article 45**

**Deadlines**

*The referral should be filed within a period of thirty (30) days starting from the day the alleged violation of the Constitution by the President has been made public.*

20. In relation to the argument about whether the Referral was made within the 30 day time limit as required by Article 45 of the Law the President argued that "the 30 day time limit begins counting from the moment when the challenged act has been made public, irrespective of the fact when such act occurs once or is a continued act." He argues that any of his acts that were made public earlier than 26 May 2010, being 30 days prior to the date the Referral was lodged with the Court, are no longer subject to challenge.
21. The President asserts that he wrote to the LDK Council as early as 28 December 2006, following his election by the Assembly of Kosovo as President of Kosovo notifying the Council of his decision to "freeze his exercising the function of Chairman of LDK." This election was ten months earlier on 10 February 2006, at a time when the Constitution of Kosovo was not in force.
22. He states that following the entry into force of the Constitution on 15 June 2008 he once again made public his decision to freeze "the exercising of the function of the Chairman of the Democratic League of Kosovo" by way of letter sent to the Council of the Democratic League of Kosovo on 16 June 2008. Thus, he states, the act that is alleged to be unconstitutional was made public since the dates of those two letters.
23. Alternatively, he states that if the claim of the violation is based on the date of the Local Elections, 17 November 2009, his decision to hold the post of Chairman of the LDK, but to "freeze the exercising" of the function, was known to the public at that time and the time limit for bringing the Referral was 17 December 2009, thirty days after the November 2009 elections.
24. In relation to the substantive issue the President sought to argue that a better framing of the issue before the Court would be as to "whether the freezing of the exercising of a party function, but the holding of the same by the President of the Republic, is a serious/heavy violation of the Constitution of the Republic of Kosovo." He argued that the freezing of the exercise of the party function irrespective of the holding of the same function denotes the avoidance of the serious violation of the Constitution.
25. He argued that Article 88.2 requires that the President not exercise (his emphasis) any political party function, but does not require the President after the election not hold (his emphasis) any party function. He laid emphasis on the significant difference between "holding" and "exercising" a function. He compared the role of one of the Deputy Presidents of the Assembly who would serve as President of the Assembly if the President were absent or unable to exercise the function of President of the Assembly. He also quoted the "acting" role of the President of the Assembly if the President of the Republic were unable to fulfill his/her responsibilities. He also pointed out that the President of the Constitutional Court may delegate to the Deputy President certain duties to support the President in performing his/her duties.
26. With regard to the exercising of the party function as prohibited by Article 88.2 the President maintained that there was not a shred of evidence that he had undertaken any unconstitutional act.

27. He maintained that the word "exercise" in the legal sense is defined as "making use of" or "put into action". In support of this he quoted Black's Law Dictionary (online 8<sup>th</sup> edition). Thus, he argued, to exercise a function one needs more than holding it, there needs also to be action.
28. In relation to the lodging by the LDK of party documentation with the Central Election Commission the President maintains that this was an act performed by the LDK and not by him. He says that the lodging of these documents was an act by LDK and that it cannot be attributed to him. He maintains that it is inconceivable to understand how he could be responsible for the actions of another, in this case the LDK, when the test for constitutionality for the dismissal under Article 91.3<sup>1</sup> of the Constitution has to do with the Acts of the President when "he/she" (his emphasis) has seriously violated the Constitution.
29. The President further argues that because the term "serious violation" is not defined in the Constitution it should be considered actions in contradiction or omissions related to the competencies of the President as enumerated in Article 84 of the Constitution (dealt with below). Thus the President maintains that the freezing of the exercise of the position of Chairman/President of the LDK is not a violation of constitutional article and is far from being a heavy/serious violation of the Constitution.

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

#### **Time**

30. The question that arises to be considered is whether the passing of thirty days from the making public of his decision to hold the position of President/Chairman of the LDK, "but to freeze the exercise of the function", is an outright bar to bringing the Referral. To consider this issue the Court should decide whether the holding of the office of President/Chairman of the LDK is a continuing situation that remains in violation of the Constitution every day that the President holds both offices or if it is an isolated event. If it is considered an isolated event, it would have required the deputies of the Assembly to make the Referral prior to 17 December 2009, 30 days after the holding of the Local Elections or the President's letter of 16 June 2008.
31. The commission of a serious violation of the Constitution by any President is contemplated in Article 88.2 of the Constitution and a special mechanism is established to ensure that such violations are dealt with at the highest level i.e. before the Constitutional Court. No other holder of a Constitutional office is subject to such oversight. It is only the actions of the President that may be referred for such consideration. This is likely to be a reflection of the importance of the position of the President within the constitutional framework and the necessity that this role is properly exercised.
32. In the case of President Sejdiu it is necessary to look at the factual situation to see whether the holding of the office of President/Chairman of the LDK, "but freezing that position", was a single event that occurred at one time or whether it amounts to a continuing day by day situation. If the latter, then there is no time limit within which

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<sup>1</sup> Constitution of Kosovo, Article 91.3. "If the President of the Republic of Kosovo has been convicted of a serious crime or if the Assembly in compliance with this article determines that the President is unable to exercise her/his responsibilities due to serious illness, or if the Constitutional Court has determined that he/she has seriously violated the Constitution, the Assembly may dismiss the President by two thirds (2/3) vote of all its deputies.

the deputies ought to bring a Referral to the Court in relation to his alleged violation. Moreover, the fact of "holding and freezing" the position, seems to imply that the freezing of the position remains in effect all the time. The President admits that he has continued to be the Chairman of LDK and President of Kosovo at all times since his election to the office of President in 2006.

33. If this is the case, the consequences of the freezing of the position continue and therefore there is a day by day ongoing situation. To conclude otherwise could result in a situation whereby the President of Kosovo could be barred from holding the Office of the President because of a constitutional violation, but be allowed to continue in office simply because a referral was not made to the Constitutional Court in a timely manner. Nowhere in the Constitution is there any authority for such an irrational result. Nor does Article 45 of the Law on the Constitutional Court envision such an irrational result.
34. This Court considers that the time limit of 30 days set by Article 45 of the Law on the Constitutional Court, for referral of serious violations to the Constitutional Court, applies to serious violations that were "one off" events in time or were continuing violations that ceased. The time cannot apply to serious violations that continue. However where a violation is continuing the thirty days cannot commence to run because the violation has not ceased. If the President had at some stage in his Presidency resigned from the position of Chairman/President of the LDK then the time limit for making the Referral to the Constitutional Court, into what was then a past violation, would expire after the passing of 30 days from the date of that resignation. In contrast, the simple act of publicly stating that he was "freezing" his position as President of LDK at a definite point of time and then into the future cannot cure the continuing nature of the violation.
35. The reality is that the position remains "held and frozen" as maintained in the President's response. The Court therefore finds that the ongoing situation continues to this day and that, therefore, the 30 day time limit set by Article 45 of the Law does not apply in this case.

#### **Authorised Party**

36. Article 113.6, quoted above at paragraph 11, undoubtedly requires 30 or more deputies of the assembly to refer the question of whether the President has committed a serious violation. It is recorded that 32 such deputies made and joined in the Referral to the Court. It is therefore clear that on 25 June 2010 there was a valid Referral before the Court.
37. The Court has also set out above the manner and dates of the purported withdrawal of some Deputies from the Referral. The Court will not speculate as to the motives behind why Deputies might choose to sign an original Referral to the Court or as to why they choose to withdraw their signatures from the Referral.
38. The Court is cognisant that the making of a Referral is a matter of some constitutional and political importance. The Deputies who originally signed the Referral could not but be aware of that importance. They are also aware of the collective nature of the Referral in that this had to be a joint enterprise by a minimum of 30 Deputies. On 25 June 2010 the original 32 Deputies were of the view that this important question should be referred to the Constitutional Court. Perhaps there were others who might have signed it, perhaps not. The important point is that the Referral was made with the required number of signatures and it was therefore pending with the Court on that date.

39. Article 23 of the Law on the Constitutional Court provides:

*The Constitutional Court shall decide on matters referred to it in a legal manner by authorized parties notwithstanding the withdrawal of a party from the proceedings.*

In its ordinary meaning this Article obliges the Court to decide matters referred in a legal manner. This is emphasised by the use of the word "shall".

40. The Rules of Procedure of the Constitutional Court elaborate on the issue of withdrawal in the following terms:

Section 32

*Withdrawal of Referral*

*(1) A party which has filed a referral may withdraw the referral any time before the beginning of a hearing on such referral.*

*(2) Irrespective of a withdrawal pursuant to paragraph (1), the Court may determine to decide on the referral. In such event, the Court shall decide without a hearing on the basis of the referral and a reply, if any, and any documents attached thereto.*

*(3) The Secretariat shall inform all parties in writing of a withdrawal by a party and of a determination by the Court to decide on the referral despite withdrawal of the referral.*

41. This Rule acknowledges that a party may withdraw a Referral at any time before the beginning of a hearing but it gives discretion to the Court to determine the referral. The Rule is silent as to the circumstances which would influence whether or not to exercise that discretion.

42. In the present case it is argued by the President that the purported withdrawal of the signature of certain Deputies from the Referral, to the extent that the number of supporters falls below 30, means that the group can not be considered an authorised party as required by Article 113.6 of the Constitution. The response of the President does not address the Court's obligation under Article 23 of the Law to decide on matters referred to it in a legal manner nor does his response address Section 32 of the Rules.

43. This Referral differs from a Referral from an individual person or other legal or natural person. It is required to be made by a minimum of 30 Deputies. No single Deputy or even a few Deputies has or have the authority to speak for all of the Deputies who initially requested the referral. Only the Deputies as a group, with 30 Deputies being the minimum number allowed to file a referral, can be the authorised party making the referral. Similarly, only all of the Deputies who initially signed the Referral can make a request to withdraw the referral once it has been filed. It could happen that some Deputies could seek to withdraw their signatures from the Referral and, knowing that they had done so, other Deputies could seek to add theirs in substitution. Would the addition of some new Deputies cure the withdrawal of others? Would it require a new Referral entirely to be made or would the old Referral lie in abeyance until new signatures were added? The unsatisfactory nature of such a situation is adequately dealt with by Article 23 of the Law on the Constitutional Court which clearly gives continued life to a Referral, when properly made, until the Court determines the matter.

44. An allegation of the commission of a serious violation of the Constitution by the President of the Republic is a grave matter and the Court can take judicial notice that the Deputies who signed the Referral certainly thought so when they appended their

signatures to it. Similarly, they should not now be allowed to withdraw their signatures without articulated, serious and substantial reasons.

45. All of the Deputies who submitted the original Referral acted in concert in a joint enterprise which became complete when lodged with the Court on 25 June 2010. The wishes of one, two, three or more individual Deputies who might now wish to withdraw their signatures, without substantial cause shown, can have no legal effect on the legality of the Referral made.
46. The Court therefore finds that on 25 June 2010 the matter was properly referred to the Constitutional Court. The Court was seized of it on that date and it remains seized of it until Judgment is given.
47. The Court therefore decides that the case is admissible.

### **The Merits**

48. The substance of the Referral refers to Article 88.2, quoted above, as to whether the President, after his election as President, exercised any party political function. To come to a conclusion on this issue it is necessary to examine the role of the President in its entirety within the constitutional framework. The Constitution has to be read in a holistic manner and the Court must interpret its provisions having regard to the interdependent nature of its varied provisions.

### **Role of the President**

49. Article 83 of the Constitution refers to the status of the President as head of state. It provides:

*The President is the head of state and represents the unity of the people of the Republic of Kosovo.*

50. Article 4 goes further than this when describing the form of government of the Republic and it states:

*1. Kosovo is a democratic Republic based on the principle of separation of powers and the checks and balances among them as provided in this Constitution.  
2. The Assembly of the Republic of Kosovo exercises the legislative power.  
3. The President of the Republic of Kosovo represents the unity of the people. The President of the Republic of Kosovo is the legitimate representative of the country, internally and externally, and is the guarantor of the democratic functioning of the institutions of the Republic of Kosovo, as provided in this Constitution.*

51. The functions and competencies of the President within the constitutional framework are extensive and they are, partly, set out in Article 84 of the Constitution. They are as follows:

*The President of the Republic of Kosovo:*

- (1) represents the Republic of Kosovo, internally and externally;*
- (2) guarantees the constitutional functioning of the institutions set forth by this Constitution;*
- (3) announces elections for the Assembly of Kosovo and convenes its first meeting;*
- (4) issues decrees in accordance with this Constitution;*
- (5) promulgates laws approved by the Assembly of Kosovo;*

- (6) has the right to return adopted laws for re-consideration, when he/she considers them to be harmful to the legitimate interests of the Republic of Kosovo or one or more Communities. This right can be exercised only once per law;
- (7) signs international agreements in accordance with this Constitution ;
- (8) proposes amendments to this Constitution;
- (9) may refer constitutional questions to the Constitutional Court.
- (10) leads the foreign policy of the country;
- (11) receives credentials of heads of diplomatic missions accredited to the Republic of Kosovo;
- (12) is the Commander-in-Chief of the Kosovo Security Force;
- (13) leads the Consultative Council for Communities;
- (14) appoints the candidate for Prime Minister for the establishment of the Government after proposal by the political party or coalition holding the majority in the Assembly;
- (15) appoints and dismisses the President of the Supreme Court of the Republic of Kosovo upon the proposal of the Kosovo Judicial Council;
- (16) appoints and dismisses judges of the Republic of Kosovo upon the proposal of the Kosovo Judicial Council;
- (17) appoints and dismisses the Chief Prosecutor of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council;
- (18) appoints and dismisses prosecutors of the Republic of Kosovo upon the proposal of the Kosovo Prosecutorial Council;
- (19) appoints judges to the Constitutional Court upon the proposal of the Assembly;
- (20) appoints the Commander of the Kosovo Security Force upon recommendation of the Government;
- (21) with the Prime Minister, jointly appoints the Director, Deputy Director and Inspector General of the Kosovo Intelligence Agency;
- (22) decides to declare a State of Emergency in consultation with the Prime Minister;
- (23) may request meetings of the Kosovo Security Council and chairs them during a State of Emergency;
- (24) decides on the establishment of diplomatic and consular missions of the Republic of Kosovo in consultation with the Prime Minister;
- (25) appoints and dismisses heads of diplomatic missions of the Republic of Kosovo upon the proposal of the Government;
- (26) appoints the Chair of the Central Election Commission;
- (27) appoints the Governor of the Central Bank of the Republic of Kosovo who will also act as its Managing Director, and appoints the other members of the Bank's Board;
- (28) grants medals, titles of gratitude, and awards in accordance with the law;
- (29) grants individual pardons in accordance with the law;
- (30) addresses the Assembly of Kosovo at least once a year in regard to her/his scope of authority.

52. Apart from the Article 84 competencies there are a great number of references to the President throughout the Constitution. Power, functions, duties and competencies are set out in many other Articles. These Articles are, 4, 18, 60, 66, 69, 79, 80, 82, 93, 94, 95, 104, 109, 113, 114, 118, 126, 127, 129, 131, 136, 139, 144, 150 and 158. Some of these Articles deal more thoroughly with the competences mentioned in Article 84, other Articles give competences to the President that are not so mentioned. For example, Article 84.1 and 84.2 repeat substantially what is contained in Article 4.3. However Article 79, where the President is given the power to initiate legislation, is not mentioned in Article 84 at all.

53. Some of the competences of the President are limited, in that the President may not exercise a particular function on his own initiative. Examples of these are:

- i. under **Article 84 (15) and (16)** where the President appoints and dismisses the President of the Supreme Court and other Judges under the proposal of the Kosovo Judicial Council and
- ii. under **Article 84 (17) and (18)** where the President appoints and dismisses the Chief Prosecutor and prosecutors upon the proposal of the Kosovo Prosecutorial Council, and
- iii. under **Article 93.8.** the President must act on the recommendation of the Government in the appointment and dismissal of the heads of diplomatic missions
- iv. under **Article 158** the President appoints the Governor of the Central Bank following consent of the International Civilian Representative, pending the end of the international supervision of the implementation of the Comprehensive Proposal for Kosovo Status Settlement, dated 26 March 2007

54. There are many examples, however, where the President has an independent role and where he may act on his own initiative without reference to other constitutional or statutory offices or officers. Some examples of these are under Article 69.4 where the President may convene an extraordinary meeting of the Assembly of Kosovo or where the President appoints the Chairperson of the Central Elections Commission from among the Judges of the Supreme Court under Article 139.

55. Some of the more important powers of the President touch very closely upon the political life of the country. Under Article 95.1 the President *"proposes to the Assembly a candidate for Prime Minister, in consultation with the political party or coalition that has won the majority in the Assembly necessary to establish the Government."*

56. Article 95.4 provides:

*If the proposed composition of the Government does not receive the necessary majority of votes, the President of the Republic of Kosovo appoints another candidate with the same procedure within ten (10) days. If the Government is not elected for the second time, the President of the Republic of Kosovo announces elections, which shall be held not later than forty (40) days from the date of announcement.*

57. Similarly, if the Prime Minister resigns or if for any other reason the office becomes vacant, Article 95.5 provides that the President *"appoints a new candidate in consultation with the majority party or coalition that has won the majority in the Assembly to establish the Government."*

58. Under Article 60 the Consultative Council for Communities acts under the authority of the President.

## **Law on the President**

59. The Law on the President of the Republic of Kosovo, Law No. 03/L-094 was passed on 19 December 2008 and was published in the Official Gazette on 25 January 2009.

60. Article 1 of that Law provides that the President is the head of State and represents the unity of the people of the Republic of Kosovo.

61. Article 5 of that Law sets out the form of the oath that the President gives before the Assembly, It is as follows:

*"I swear to commit all my powers to the preservation of independence, sovereignty and territorial integrity of Republic of Kosovo, to ensure human and citizen rights and freedoms, to respect and protect the Constitution and the laws, to maintain peace and welfare of all citizens of Republic of Kosovo and to conduct all my duties with consciousness and responsibility".*

62. Article 7 of that Law, quoted immediately below, reflect the provisions of Article 88 of the Constitution.

*Inconsistency*

- 1. "President may not exercise any other public function.*
- 2. After election, the President may not exercise any function within a political party."*

**Analysis of the position of the President**

63. The LDK is well represented in the Assembly of Kosovo. It participated actively in the Local Elections held in Kosovo on 17 November 2009. Its members are engaged on political discourse, discussion and disputes on a daily basis. The party has its political aims and is entitled to aspire to political office to advance those aims. In a democracy such as that of Kosovo political parties are given special recognition in the law. They are entitled to appeal to the citizens to vote for them and their selected candidates at election time. They are entitled to negotiate coalitions at the national level in the Assembly and in Municipalities in all parts of the Country.
64. Political parties advance their aims not just by being active in discourse in the political sphere but also by supporting candidates aspiring to political office. One of the ways that they persuade the electorate to vote for them is by the publication of their parties' aims and manifestos. They also do so by choosing candidates for election and by electing to office in their parties persons who will influence the electorate to vote for their candidates and their lists.
65. If one concludes that the stated public position of the President is correct, in that he has "frozen" the exercising of the function of the Presidency of his party, then the Court must consider what the reality of this freezing is. It is not the same as a Civil Servant of the Government taking a "leave of absence" from his or her technical civil service position to pursue an elected political career. It is the President of the Republic attempting to take a "leave of absence" from his or her position as Chairman of a major political party while still holding the official title of Chairman/President of that political party.
66. Political parties as their principal function wish to win support from citizens and influence people with respect to political issues and to win elections. One of the fundamental ways of winning the hearts and minds of the citizens who will vote in elections is the ability of a political party to be able to assert who is supportive of and will endorse the parties' positions and candidates. If a political party has the endorsement of the President of the Republic, it has a substantial political asset to further its political agenda and the election of its candidates for public office.
67. When the President of the Republic allows a political party to claim that he or she is the Chairman of their political party even under circumstances where he or she as Chairman will not make any active decisions on behalf of the party, he or she is

exercising a political activity or at least allowing the political party to "make use of" of his name and position as President of the Republic. The President has continued to permit his name to be associated with the LDK. LDK has permitted him to remain as their President and has permitted him to "freeze" the exercise of the functions of that party.

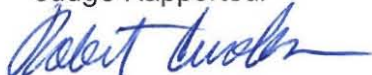
68. In reality, both the President and the LDK wish to benefit from their association with each other. The President may be able to "unfreeze" his exercising of the functions if and when he leaves the office of the President of Kosovo. The party may seek political advancement by being associated with a powerful constitutional officer, the President of the Republic of Kosovo. The symbiotic relationship remains between the President and his party to this day. They thus "make use of" each other by permitting this public association to continue. This "making use of" is one of the definitions for "exercise" that the President offers in his response.
69. In considering whether this violation is merely a technical violation of the Constitution or rather a serious violation the Court should assess the impact of the President's decision on the confidence of the public in the office of President of the Republic of Kosovo. Bearing in mind the considerable powers granted to the President under the Constitution is it reasonable for the public to assume that their President, "representing the unity of the people" and not a sectional or party political interest, will represent them all. Every citizen of the Republic is entitled to be assured of the impartiality, integrity and independence of their President. This is particularly so when he exercises political choices such as choosing competing candidates from possible coalitions to become Prime Minister.
70. The Court is of the view that this cannot be said when the President still holds high office in one of the most prominent political parties in the country and it concludes that the President has committed a serious violation of the Constitution under Article 88.2 of the Constitution by continuing to permit himself to be recorded as President of the LDK.

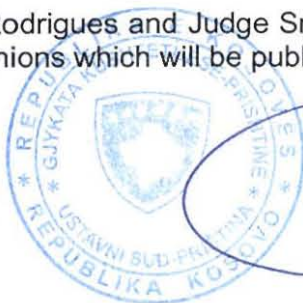
**FOR THESE REASONS THE COURT BY MAJORITY VOTE DECIDES AS FOLLOWS**

- I. That the Referral is admissible.
- II. That there is a serious violation of the Constitution of Kosovo namely, Article 88.2, by His Excellency, Fatmir Sejdiu holding the office of President of the Republic and at the same time holding the office of Chairman/President of the Democratic League of Kosovo.
- III. 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.
- IV. The Decision is effective immediately and may be subject to editorial revision.

In addition Judge Almiro Rodrigues and Judge Snezhana Botusharova announced that they would issue dissenting opinions which will be published by the Court in due course.

Judge Rapporteur

  
Robert Carolan



President of the Constitutional Court

  
Prof. Dr. Enver Hasani

## Appendix A

<u>Name</u>	<u>Surname</u>
1. Naim	Rrustemi
2. Driton	Tali
3. Ibrahim	Selmanaj
4. Shkumbin	Demaliaj
5. Ali	Lajçi
6. Naser	Rugova
7. Slaviša	Petković
8. Qamile	Morina
9. Ismajl	Kurteshi
10. Donika	Kadaj
11. Ahmet	Isufi
12. Dritë	Maliqi
13. Mark	Krasniqi
14. Synavere	Rysha
15. Emrush	Xhemajli
16. Melihate	Tërmkolli
17. Zafir	Berisha
18. Xhevdet	Neziraj
19. Haki	Shatri
20. Gani	Geci
21. Vladimir	Todorović
22. Berat	Luzha
23. Numan	Balić
24. Heset	Çakolli
25. Gjylnaze	Syla
26. Ardian	Gjini
27. Lulzim	Zeneli
28. Mihailo	Šćepanović
29. Dragiša	Mirić
30. Suzan	Novoberdaliu
31. Nait	Hasani
32. Besa	Gaxherri