



REPUBLIKA E KOSOVËS – РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

**Prishtina, 2 December 2013
Ref.no.VTK512/13**

DECISION TO STRIKE OUT THE REFERRAL

in

Case No. KI17/13

Applicant

Bujar Bukoshi

**Constitutional Review of the Decision of the District Court in Prishtina
Ka, No. 562/12 of 8 October 2012**

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
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is Bujar Bukoshi, residing in Prishtina, represented by Besnik R. Berisha, a lawyer from Prishtina.

Challenged Decision

2. The Applicant challenges the Decision Ka. No. 265/12, of the District Court in Prishtina, adopted on 8 October 2012, and served on the Applicant on 10 October 2012.

Subject matter

3. The subject matter of the Referral is the assessment of the Constitutionality of the Decision Ka. No. 265/12 of the District Court in Prishtina, which confirmed the indictment against the Applicant. The Applicant claims that *“the allegations against him in the indictment are unconstitutional, since the actions and decision that he has taken fall within the scope of competences as a Minister of Health.”*
4. The Applicant further request from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose interim measures suspending the criminal investigations against him until this Court takes the final decision.

Legal basis

5. Article 113.7 of the Constitution, Articles 22, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 15 January 2009 (hereinafter: the "Law") and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 11 February 2013, the Applicant submitted the Referral to the Court.
7. On 13 February 2013, the Applicant submitted additional documents to the Court.
8. On 25 February 2013, the President of the Court, with Decision No. GJR. KI. 17/13, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, with Decision No. KSH. KI. 17/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Ivan Čukalović and Kadri Kryeziu.
9. On 8 March 2013, the Constitutional Court informed the Applicant that the Referral had been registered and informed the Appellate Court in Prishtina as a successor of the District Court in Prishtina.
10. On 14 March 2013, the Constitutional Court adopted the Decision Rk 388/13, rejecting the Applicant's request for interim measure.
11. On 7 October 2013, pursuant to Article 32 of the Rules of Procedure, the Applicant submitted a request to withdraw the Referral, stating that *“the criminal matter in which Mr. Bukoshi was involved as an accused person, at*

the Basic Court in Prishtina, after the conclusion of the judicial review by the first instance Mr. Bukoshi was released from all charges of the Prosecution.”

[...]

“Therefore, as we now have a new procedural situation in the criminal matter against Mr. Bukoshi, it seems unnecessary to further proceed with Referral KI17/13”.

12. On 18 November 2013, in the light of the above developments, the Judge Rapporteur recommended to the Review Panel, to discontinue further examination of the Referral.

The Court’s Assessment

13. In order to be able to decide what further steps to take following the communication from the Applicants’ representatives the Court refers to Article 23 of the Law and Rule 32 of the Rules of Procedure of the Court.

14. Article 23 of the Law stipulates that:

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

15. Whilst Rule 32 of the Rules of Procedure reads as follows:

Rule 32

Withdrawal of Referrals and Replies

- (1) *A party may withdraw a filed referral or a reply at any time before the beginning of a hearing on the referral or at any time before the Court decision is made without a hearing.*
 - (2) *Notwithstanding a withdrawal of a referral, the Court may determine to decide the Referral.*
 - (3). *The Court shall decide such a referral without a hearing and solely on the basis of the Referral, any replies, and the documents attached to the filings.*
 - (4) *The Court may dismiss a referral when the Court determines a claim to be moot or does not otherwise present a case or controversy.*
 - (5) *The Secretariat shall inform all parties in writing of any withdrawal, of any decision by the Court to decide the referral despite the withdrawal, and of any decision to dismiss the referral before final decision.*
16. The Court notes that there are no special circumstances concerning the protection of the human rights of the Applicants which would require further examination of the Referral. Thus, the Court considers that there is no matter to be decided.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 23 of the Law and Rule 32 paragraphs 1 and 4 of the Rules of Procedure, unanimously, on 18 November 2013, unanimously:

DECIDES

- I. TO STRIKE OUT the Referral.
- 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.
- III. This Decision is effective immediately.

Judge Rapporteur



Snezhana Botusharova

President of the Constitutional Court



Prof. Dr. Enver Hasani

