



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE**  
**УСТАВНИ СУД**  
**CONSTITUTIONAL COURT**

Prishtina, 29 February 2016  
Ref. no.:VHK897/16

## **DECISION TO DISMISS THE REFERRAL AND REJECT THE REQUEST FOR INTERIM MEASURE**

In

**Case No. KI143/15**

Applicant

**Donika Kadaj-Bujupi**

**Constitutional review of  
Decision PN1. No. 2059/2015 of the Court of Appeal,  
of 23 November 2015**

Composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu, Judge and  
Gresa Caka-Nimani, Judge.

### **Applicant**

1. The Applicant is Mrs. Donika Kadaj-Bujupi (hereinafter, the Applicant), a deputy of the Assembly of the Republic of Kosovo (hereinafter, the Assembly), who is represented by Mr. Arianit Koci, a lawyer.

## **Challenged Decision**

2. The Applicant challenges Decision PN1. No. 2059/2015 of the Court of Appeal, of 23 November 2015, which upheld Decision PPRKR. No. 415/2015 of the Basic Court in Prishtina, of 18 November 2015.

## **Subject Matter**

3. The subject matter of the Referral is the constitutional review of the challenged Decision, which allegedly violated the rights guaranteed by Article 24 [Equality before the Law] and paragraph 1 and 2 of Article 75 [Immunity] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).
4. In addition, the Applicant requests the Court to impose an interim measure, *“by which would be immediately terminated the measure on detention on remand against Mrs. Donika Kadaj-Bujupi until the decision on merits on this matter is rendered”*.

## **Legal Basis**

5. The Referral is based on Article 113.7 and 116.2 of the Constitution, Articles 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law), and Rules 29 and 54 of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 2 December 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 3 December 2015, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
8. On 4 December 2015, the Court informed the Applicant of the registration of the Referral and requested her to clarify whether any judicial proceedings before the regular courts are being conducted on the same matter or whether any legal remedy was filed. A copy of the Referral was sent to the Court of Appeal.
9. On 8 December 2015, the Applicant informed the Court that she has submitted a request for protection of legality to the Supreme Court.
10. On 14 December 2015, the Court requested additional information from the Applicant to update the Court on the course of the proceedings regarding the extraordinary legal remedy, including an eventual final decision.
11. On 22 December 2015, the Applicant informed the Court that the Supreme Court issued a Judgment (PML 277/2015, of 9 December 2015) on her request for protection of legality.

12. On 24 December 2015, the Court requested the Supreme Court to submit a copy of its Judgment PML 277/15, of 9 December 2015. On the same date, the Supreme Court provided the requested copy of its Judgment.
13. On 8 February 2015, the Court deliberated on the case and decided to dismiss the Referral.

### **Summary of facts**

14. On 18 November 2015, the Basic Court in Prishtina (Decision PPRKR. no. 415/2015) imposed on the Applicant the measure of detention on remand from 18 November 2015 until 18 December 2015.
15. The Applicant filed an appeal with the Court of Appeal, alleging that her actions should not be qualified as a criminal offence, but as political action for which she enjoys parliamentary functional immunity.
16. On 23 November 2015, the Court of Appeal (Decision PN1. no. 2059/2015) rejected as ungrounded the Applicant's appeal, explaining that the Basic Court in its decision has provided sufficient reasoning regarding the existence of the suspicion of having committed the criminal offense, and that the matter of immunity of the deputies had already been dealt with by the Constitutional Court in its Judgment in the case KO98/11, of 20 September 2011.
17. On 3 December 2015, the Court became aware that the Applicant also filed with the Supreme Court a request for protection of legality.
18. On 8 December 2015, following the Court's request for additional information on that filed request, the Applicant informed the Court that she also filed with the Supreme Court a request for protection of legality after having filed her Referral with the Constitutional Court on 2 December 2015.
19. On 9 December 2015, the Supreme Court (Judgment, PML 277/2015) partially approved the Applicant's request for protection of legality, replacing the measure of detention with the measure of house arrest until 18 December 2015. The Supreme Court also addressed the Applicant's claim related with the alleged violation of Article 75 of the Constitution.
20. On 14 December 2015, the Court once again requested additional information on *"the progress of the procedure concerning the extraordinary remedy"*.
21. On 22 December 2015, the Applicant informed the Court that the Supreme Court rendered a Judgment, by which the detention on remand was replaced by the measure of house arrest.
22. The Court has not received any further information on the progress of other proceedings related to the Applicant's case.

## **Applicant's allegations**

23. The Applicant claims that the challenged Decision of the Court of Appeal has violated her right to immunity guaranteed by paragraphs 1 and 2 of Article 75 of the Constitution. She alleges that a deputy of the Assembly cannot be arrested nor detained while performing his/her duties and responsibilities in the Assembly.
24. The Applicant also claims a violation of Article 24 [Equality Before the Law] of the Constitution. In this respect, she alleges that "*the Court of Appeal acted in a discriminatory manner against the Applicant*", because "*in another case in which was involved another deputy of the Assembly of the Republic of Kosovo terminated the detention on remand, by referring to Article 75, paragraph 2 of the Constitution of the Republic of Kosovo*".
25. Furthermore, the Applicant requests the Court to impose an interim measure by terminating the detention on remand, because of the suffering of irreparable damage due to her further stay in the detention and because she is denied the right to represent the citizens of the Republic of Kosovo.

## **Admissibility of the Referral**

26. The Court recalls that the Applicant challenged Decision PN1. No. 2059/2015 of the Court of Appeal of 23 November 2015 and also filed against that same Decision a request for protection of legality, which the Supreme Court decided on 9 December 2015.
27. The Court notes that the Applicant has not challenged before the Constitutional Court the Judgment of the Supreme Court. Moreover, the Supreme Court Judgment was delivered to the Court on its own initiative. The Court reiterates that it was up to the Applicant to take procedural initiative, provide active assistance and present all relevant information and evidence regarding the Referral and finally substantiate her allegations. The Court cannot replace the Applicant in making her case.
28. The Court further notes that the Judgment of the Supreme Court considered and assessed the challenged Decision of the Court of Appeal. Then the Judgment of the Supreme Court is now the final decision on the contested subject matter. Therefore, the challenged Decision of the Court of Appeal is not anymore a final decision of public authority for the purpose of having filed a Referral with the Court.
29. The Court recalls that, on 4 December 2015, the Applicant was requested "*to inform the Court and to keep it informed as to whether there is any judicial proceedings pending before the regular courts on the same legal matter or whether you have filed any other legal remedy on the same legal matter*".
30. In addition, on 14 December 2015, the Court requested the Applicant to inform on "*the progress of the procedure concerning the extraordinary remedy, including an eventual final decision*" and notified her that, "*in the absence of*

*any information, the Court will proceed to review the Referral based on the existing case files”.*

31. The Court observes that the existing case files does not contain anymore a final decision of a public authority allegedly violating the Applicant’s individual rights and freedoms guaranteed by the Constitution and subject to be challenged by the Applicant. Moreover, the Court recalls that it was up to the Applicant to clarify and precise whether and how she wanted to proceed with the Referral pending before the Court.
32. In this respect, the Court refers to Article 113 (7) of the Constitution, which establishes:

*“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.”*

33. The Court also refers to Article 22 (Processing Referrals) and 48 (Accuracy of the Referral) of the Law, which provide:

Article 22

*4. “(...) The Judge Rapporteur may request additional facts that are required to assess the admissibility or grounds for the claim”.*

Article 48

*“In his/her referral, the claimant should accurately clarify (...) what concrete act of public authority is subject to challenge”.*

34. The Court also takes into account Rule 32 (Withdrawal, Dismissal and Rejection of Referrals) of the Rules, which foresees:

*(4) The Court may dismiss a referral when the Court determines a claim (...) does not otherwise present a case (...)”.*

35. In that respect, the Court notes that the Decision of the Court of Appeal cannot be considered anymore as the final Decision as it was initially challenged by the Applicant.
36. The Court considers that the Referral does not present anymore a legal dispute, as the Judgment of the Supreme Court resolved the matter.
37. Therefore, the Court determines that the subject matter of the Referral does not present a case anymore.
38. In conclusion, the Court finds that the Applicant’s claim is without any object and the Referral is dismissed, in accordance with Article 113 (7) of the Constitution, Article 22 (4) and 48 of the Law, and Rule 32 (4) of the Rules.



## **Request for Interim Measure**

39. The Court recalls that the Applicant requested the Court to impose interim measure, namely to terminate the measure of detention on remand until a decision on the merits is rendered.
40. The Applicant alleges that the approval of the interim measure is of particular importance, because of the suffering of irreparable damage and of denial of her right to represent the citizens of the Republic of Kosovo.
41. In that regard, the Court takes into account Rule 55 (4) of the Rules of Procedure, which foresees:

*“Before the Review Panel may recommend that the request for interim measures be granted, it must find that:*

*“(a) the party requesting interim measures has shown a prima facie case on the merits of the referral (...)”.*

42. The Court also recalls that the Supreme Court, acting upon the Decision of the Court of Appeal, replaced the measure of detention on remand with the measure of house arrest.
43. In addition, on 3 December 2015, the court became aware of the Applicant having filed a request for an extraordinary legal remedy. This fact was confirmed by the Applicant on 8 December. The request for extraordinary legal remedy against the Decision of the Court of Appeal was decided by the Supreme Court on 12 December 2015.
44. Moreover, the Court notes that, as reasoned above, the Referral is dismissed as the Applicant’s claim became without any object.
45. Thus, the Court considers that the request for interim measure lost its ground to be decided by the Court since the filing of the request for extraordinary legal remedy.
46. Therefore, pursuant to Rule 55 (4) of the Rules, the Applicant's request to impose interim measure is rejected as ungrounded.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 22.4 and 48 of the Law, and the Rule 32 (4), 55 (4) and 56 (3) and (5) of the Rules of Procedure, on 8 February 2016, unanimously

## DECIDES

- I. TO DISMISS the Referral;
- II. TO REJECT the request for interim measure;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- V. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Vjosa Rama-Hajrizi