



REPUBLIKA E KOSOVES - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, 28 March 2017  
Ref. No.: VMP 1052/17

## **DECISION ON INTERIM MEASURES**

in

**Case No. KI34/17**

Applicant

**Valdete Daka**

**Constitutional review of Decision KGJK No. 50/2017 of the Kosovo  
Judicial Council, of 06 March 2017**

### **THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of

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

#### **Applicant**

1. The Referral was submitted by Valdete Daka, represented by lawyer Artan Qerkini from the Law Firm "Sejdiu & Qerkini" (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Decision KGJK No. 50/2017 of the Kosovo Judicial Council, of 06 March 2017 (hereinafter: the KJC).

## **Subject matter**

3. The subject matter is the constitutional review of the above-mentioned decision of the KJC, which the Applicant claims has violated her rights guaranteed by Article 45 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. The applicant requests the Court to impose an interim measure and to suspend the decreeing of Mr. Enver Peci to the position of the President of the Supreme Court pending the Court's decision on the Referral.
5. The applicant also requests the Court to order a hearing session in compliance with Rule 39 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Legal basis**

6. The Referral is based on Article 113.7 of the Constitution, Article 47 of Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 54, 55 and 56 (3) of the Rules of Procedure.

## **Proceedings before the Constitutional Court**

7. On 16 March 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 16 March 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel, composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Selvete Gërxhaliu-Krasniqi.
9. On 17 March 2017, the Court informed the Applicant and the KJC about the registration of the Referral.
10. The Court invited the KJC to submit their comments, if they have any, by 23 March 2017.
11. On 23 March 2017, the KJC submitted their comments to the Court.
12. On 23 March 2017, the comments of the KJC were communicated to the Applicant and she was invited to submit any additional comments by 5 April 2017.
13. On 27 March 2017, the Judge Rapporteur recommended to the Review Panel to grant an interim measure.

14. On the same date, the Review Panel recommended to the Court to grant an interim measure
15. On the same date, the Court decided unanimously to grant an interim measure until 16 May 2017.

### **Summary of facts**

16. On 08 December 2016, the KJC rendered Decision KGJK No. 152/2016 to announce the vacant position of President of the Supreme Court.
17. On 23 December 2016, the vacancy for this position was announced. The Applicant filed her application to this announcement and was enrolled in the evaluation cycle of the applicants.
18. On 13 January 2017, the KJC appointed the Commission for Evaluation and Interviews to review the candidates.
19. On 13 February 2017, the interviews were held and the Commission evaluated the applicants as follows:
  1. Valdete Daka 90 points
  2. Nesrin Lushta 87.3 points
  3. Enver Peci 85 points
  4. Erdogan Haxhibeqiri 83 points
20. On 06 March 2017, the KJC, by Decision KGJK No. 50/2017, after three rounds of voting, selected Enver Peci to be appointed President of the Supreme Court of Kosovo, and referred their nomination to the President of the Republic of Kosovo to appoint him by decree.

### **Applicant's allegations**

21. The Applicant alleges that, *"In the election procedure for position of President of the Supreme Court of Kosovo irregularities occurred that caused violation of the Applicant's rights guaranteed by the Constitution of the Republic of Kosovo and, inter alia, the right determined by Article 45, whereby every citizen of the Republic of Kosovo has the active voting right (the right to elect) and the passive voting right (the right to be elected)."*
22. The Applicant requests the Court to review, *"whether her constitutional right guaranteed by Article 45 of the Constitution of the Republic of Kosovo has been violated as a result of erroneous application of the KJC Regulation on election of President of the Supreme Court of Kosovo."*
23. The Applicant states that, *"[...] she does not request from the Court to have its stance on the manner how Article 4 of the aforementioned Regulation has been interpreted [...]"* but, she is, *"[...] requesting to ascertain whether its erroneous application has violated the Applicant's constitutional rights [...]"*



24. According to the Applicant, based on the above-mentioned Regulations, the KJC voted first for the candidate who had received the highest score in the evaluation; in the concrete case for her. In that vote, five (5) members voted "FOR", four (4) members "ABSTAINED", whereas one (1) member voted "AGAINST".
25. Further she states that *"according to the KJC's evaluation, the first candidate did not receive the simple majority of votes; therefore the voting procedure continued for the other two remaining candidates. The candidate placed as third, Mr. Enver Peci, after voting process of the KJC members received six (6) votes "FOR" and four (4) votes "AGAINST."*
26. The applicant notes that, *"Finally, according to the evaluation of the KJC, Mr. Enver Peci is proposed to be elected for the position of President of the Supreme Court of Kosovo in the manner as described above. It is worth mentioning that the list for selection of candidates has an exhaustive character, i.e. if the first candidate receives the simple majority of votes, the voting process ends and for other candidates will be not at all voted."*
27. The Applicant claims that, *"The selection procedure caused violation of paragraph 2 of Article 8 of Regulation No. 9/2016, reformulated by Article 4 of Regulation No. 14/2016 of KJC"*.
28. The Applicant states that, *"By no means the abstention vote may be considered as a negative or 'against' vote since such an effect is given to the vote "AGAINST," and the "Abstain" and "Against" voting cannot be considered as equal. Abstention means the will of the members to create the quorum and to enable carrying over with the procedure; it means not taking part in the voting process and accordance with the decision of the other members."*
29. She further notes that, *"the focus must be directed to the legal and logical interpretation of expression of the will of the KJC as a collective decision making authority. In respect to this specific case, when voting, five (5) members have expressed their will "FOR" election of the candidate, whereas only one (1) vote was "AGAINST", so a question shall be raised on the logic of the conclusion that the KJC has expressed their will against the candidate Valdete Daka"*.
30. The Applicant finally considers that, *"due to the abovementioned violations, in this procedure for selection of the President of the Supreme Court, the rights guaranteed by Article 45 of the Constitution of Kosovo were violated"*.

### **Request for Interim Measure**

31. The Applicant requests the Court to impose an Interim Measure based on Article 116 (2) of the Constitution, Article 27 of the Law and Rule 54 of the Rules of Procedure.
32. The Applicant considers that, *"The execution of the KJC's Decision, which contains a range of violations of individual rights guaranteed by the Constitution, would have presented further violation of guaranteed rights."*

*The execution of this anti-constitutional Decision would deprive the legality and constitutionality in functioning of the Supreme Court of Kosovo. All decisions rendered under the management of Mr. Enver Peci could be declared as unlawful; this would present a fact that would have violated the principle of judicial security for the Kosovo citizens. If a favorable judgment rendered by the Constitutional Court would have resulted to my election as President of the Supreme Court of Kosovo, the unification decisions of the Supreme Court rendered under the management of Mr. Peci with the aim to uniquely apply laws would have been considered as invalid”.*

### **Assessment of the Request on Interim Measures**

33. In assessing the request for interim measures, the Court will examine whether the requirements established by the Constitution, and further specified by the Law and the Rules of Procedure have been met.

34. In this respect, the Court refers to paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution, which establishes that,

*“[...] 2. While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages. [...]”*

35. In addition, the Court refers to Article 27 [Interim Measures] of the Law, which provides that,

*“1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.*

*2. The duration of the interim measures shall be reasonable and proportionate.”*

36. Finally, the Court recalls Rule 55, paragraphs 4 and 5, of the Rules of Procedure which specify that,

#### *Rule 55 (4) of the Rules of Procedure:*

*“4. [...] Before the Review Panel shall 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 and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*

*(b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*



*(c) the interim measures are in the public interest.”*

*[...] Rule 55 (5) of the Rules of Procedure (excerpt):*

*5. [...] No decision granting interim measures may be entered unless the expiration date is specified; however, expiration dates may be extended by further decision of the Court. [...]”*

37. Taking into account the importance of the human rights and freedoms guaranteed by the Constitution and in the interest of the proper administration of the justice system, the Court considers that there are substantial reasons of a public interest nature within the meaning of Article 27 of the Law and Rule 55, paragraph 4, under (c), of the Rules of Procedure to justify granting interim measures.
38. Therefore, the Court, without prejudice to any further decision which will be rendered by the Court, on the admissibility or the merits of the Referral in the future, concludes that the request for interim measures must be granted in order to protect the public interest.
39. The Court determines that, pursuant to Article 27 (2) of the Law and Rule 55 (5) of the Rules of Procedure, the duration of the interim measures shall be until 16 May 2017.
40. The interim measures will expire immediately if the Court determines the Referral to be inadmissible, in accordance with Rule 55(5) of the Rules of Procedure.

## FOR THESE REASONS

The Court, pursuant to Article 116(2) of the Constitution, Article 27 of the Law, and Rules 54 and 55 of the Rules of Procedure, on 27 March 2017, unanimously

## DECIDES

- I. TO GRANT, interim measures for a duration until 16 May 2017 from the date of the adoption of this Decision;
- II. TO IMMEDIATELY SUSPEND the appointment procedure of the candidate for President of the Supreme Court by the President of the Republic of Kosovo throughout the same duration;
- III. TO NOTIFY this Decision to the parties and to the President of the Republic of Kosovo;
- IV. TO PUBLISH this Decision in accordance with Article 20 (4) of the Law; and
- V. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

Snezhana Botusharova



**President of the Constitutional Court**

Arteta Rama-Hajrizi