



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

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Prishtina, on 30 January 2018  
Ref. no.: RK 1189/18

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI75/17**

Applicant

**X**

**Constitutional review of Decision Pml. No. 66/2017 of the Supreme  
Court, of 20 April 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 Applicant is X (hereinafter: the Applicant), represented by Blerim Mazreku, a lawyer from Prizren.

## **Challenged decision**

2. The challenged decision is Decision Pml. No. 66/2017 of the Supreme Court of Kosovo, of 20 April 2017, which rejected as inadmissible the Applicant's request for protection of legality against Judgment Pn. No. 164/2017 of the Court of Appeals of 7 March 2017.
3. The Applicant claims that the challenged Judgment was served on him on 8 May 2017.

## **Subject matter**

4. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights guaranteed by paragraph 7 of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Articles 3 and 40 of the Convention of the Right of the Child.
5. The Applicant requests that his identity be not disclosed.

## **Legal basis**

6. The Referral is based on Article 113 of the Constitution, Articles 22 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (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 Constitutional Court**

7. On 29 June 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 30 June 2017, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Ivan Čukalović.
9. On 13 July 2017, the Court notified the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.
10. On 6 December 2017, after having considered the preliminary report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of Referral.

## **Summary of facts**

### ***Criminal Procedure***

11. On 8 October 2010, the District Court in Prizren (Judgment Pm. No. 5/09) after finding that the Applicant deprived the victim Y of life, found him guilty

of committing the criminal offenses: aggravated murder and unauthorized ownership, control, possession and use of weapons.

12. Given the fact that the Applicant was at the time of committing the criminal offense still minor, the District Court in Prizren, by applying the provisions of the Juvenile Justice Code, sentenced him to an aggregate punishment of imprisonment.
13. On 26 January 2011, the abovementioned Judgment of the District Court in Prizren became final.

#### ***Arrest warrants and request for extradition***

14. Based on the case file it follows that the Applicant did not respond to the summon of the competent Court for sending him to serve the sentence.
15. As a consequence, the competent court issued an arrest warrant and a wanted notice for the territory of the Republic of Kosovo for the purpose of arresting and sending the Applicant to serve the sentence.
16. As a result of the Applicant's escape and police reports that the Applicant was outside the territory of the Republic of Kosovo, on an unspecified date, the competent court through the Ministry of Justice issued an international arrest warrant.
17. On 8 February 2017, the Applicant was arrested in the territory of Switzerland on the basis of a provisional arrest warrant order issued by the Swiss Federal Office of Justice.
18. On 24 February 2017, the Ministry of Justice of the Republic of Kosovo filed a formal request for extradition of the Applicant in the Republic of Kosovo with the Federal Office of Justice in Switzerland.
19. On 7 March 2017, the Federal Office of Justice ordered the immediate release of the Applicant.
20. On 16 March 2017, the Federal Tribunal of Geneva in Switzerland (hereinafter: the Federal Tribunal) rejected the request for extradition of the Republic of Kosovo as inadmissible.
21. The Federal Tribunal, in its decision, *inter alia*, noted that:

*[...] the Juvenile Justice Code [of Kosovo] does not foresee the interruption of the statutory limitation.*

*Since it is about the criminal Juvenile Justice Code, we are also dealing with a legal gap, because it makes no sense to apply the same rules of statutory limitation within a punishment for criminal offenses committed by juveniles and for criminal offenses committed by adults. [...] The wording of Article 36 of Juveniles Justice Code [of Kosovo] is clear and*

*should be understood word by word. In fact, the statutory limitation herein is successful undoubtedly.*

*[...]*

22. In conclusion, the Federal Tribunal found that the request for extradition is inadmissible because *"[...] the statutory limitation was reached in accordance with the law of the requesting State [Republic of Kosovo] and that of the requested State [Switzerland]."*

***Court proceedings regarding the request for issuance of decision ordering the execution of the sentence***

23. On 24 February 2017, the Applicant, through his authorized representative filed with the Basic Court in Prizren, Branch in Suhareka (hereinafter: the Basic Court) a request for issuance of a decision on statutory limitation of the execution of sentence.
24. On 27 February 2017, the Basic Court (Decision Ed. No. 6/2011) rejected as ungrounded the Applicant's request.
25. In its judgment, the Basic Court held that: *"[...] Article 36 of the Juvenile Justice Code does not provide the commencement and end of statutory limitation period of execution of the punishment, namely absolute statutory limitation."*
26. The Basic Court further held that: *"As in this context such provision in the Juvenile Justice Code does not exist, the court analogically has applied Article 110 item 6 of CCK No. 04/L-082 which states: "The execution of a punishment shall be prohibited in every case when twice the period of statutory limitation has elapsed", the absolute statutory limitation of the execution of the sentence, while relative statutory limitation was terminated by orders and arrest warrant issued for the convict."*
27. On 24 February 2017, the Applicant filed an appeal with the Court of Appeals.
28. In his appeal, the Applicant, *inter alia*, stated that: *"when deciding upon this matter, the court did not consider the fact that in the present case we are dealing with a juvenile imprisonment that is defined only by the Juvenile Justice Code and it cannot under any form be compared to the imprisonment of adults that is defined by the Criminal Code of Kosovo. For this reason, any other allegedly adequate application of the Criminal Code or any other Law would be publicly contrary to the spirit and the purpose of the Constitution of Kosovo, Juvenile Justice Code and judicial system of Kosovo for giving a special procedural and material - criminal position to the juveniles."*
29. On 7 March 2017, the Court of Appeals (Decision No. 164/2017) rejected as ungrounded the Applicant's appeal.
30. The Court of Appeals in its Decision held that: *"[...] The fact that pursuant to Article 36 of the Juvenile Justice Code is provided that the juvenile*

*imprisonment cannot be executed after the period of 5 years has passed from the final Decision which imposed the juvenile imprisonment for more than 5 (five) years. However, this Code did not specify the commencement and interruption of periods of the statutory limitation on the execution of the sentence, namely, relative and absolute time limit of statutory limitation on the sentence. While pursuant to Article 5 of the Juvenile Justice Code, the provisions of the Criminal Code, Criminal Procedure Code of Kosovo and Law on Execution of Penal Sanctions and any other relevant law will be applied for the juvenile except the cases when this Code regulates otherwise."*

31. The Court of Appeals concluded that: *"[...] the Court of the first instance acted correctly when analogically applied the provisions of the Criminal Code, namely Article 110, item 6, of the CCK. [...] From the case file it follows that Judgment PM. No. 06/2009, of the District Court in Prizren became final on 26 January 2011 but when considering that the relative statutory limitation was terminated by orders and issuance of the international arrest warrant, based on the above mentioned provision, it results that the absolute statutory limitation of the execution of the sentence was not met."*
32. On 14 March 2017, the Applicant submitted a request for protection of legality to the Supreme Court.
33. On 20 April 2017, the Supreme Court, by Decision Pml. No. 66/2017, rejected as inadmissible the Applicant's request for protection of legality.
34. The Supreme Court in its Decision found that: *"[...] the request for protection of legality submitted against the above mentioned decisions, is inadmissible due to the fact that pursuant to the provisions of Article 432, paragraph 1, of the CPCK [Criminal Procedure Code], the request for protection of legality can be submitted against the final Decision of the Court or against the judicial procedure that preceded the issuance of such Decision, after the conclusion of the criminal procedure in final form. [...] In the present case, we are not dealing with the criminal procedure but with the execution of penal sanction; therefore, a Decision which was not issued in the criminal procedure and due to this reason, the above mentioned condition for the admissibility of filing this extraordinary legal remedy has not been met."*

### **Applicant's allegations**

35. The Applicant alleges that the regular courts, namely the Basic Court and the Court of Appeals have violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], paragraph 7 of the Constitution, and Articles 3 and 40 of the Convention on the Rights of the Child.
36. The Applicant alleges that regular courts should apply only the provisions of the Juvenile Justice Code, which *"[...] as special law which regulates rules and procedures against juveniles and not the provisions of the Criminal Code related to statutory limitations period for execution of juvenile imprisonment as this matter specifically is regulated by the Juvenile Justice Code."*

37. The Applicant alleges that: *"The Basic Court of Prizren – Branch in Suhareka and the Court of Appeals, when deciding on this matter did not take into account the fact that in this specific case we are dealing with juvenile imprisonment which is solely provided in the Juvenile Justice Code and by no means shall be compared with adult imprisonment as provided in the Criminal Code of Kosovo. Therefore, alleged mutatis-mutandis application of Article 110 of the Criminal Code is openly in contradiction with the spirit and the purpose of the Constitution of Kosovo and with the Juvenile Justice Code as well as with judicial system of Kosovo whereby is envisaged to provide juveniles with special position in the criminal and material proceedings."*
38. The Applicant further alleges that: *"[...] the Basic Court of Prizren – Branch in Suhareka and the Court of Appeals have erroneously decided when they rejected this request, thus erroneously applied the Criminal Code by violating also the rights guaranteed by the Constitution and by the Convention on the Rights of the Child."*
39. In his Referral, the Applicant proposes to the Court:
- "[...] to approve this Referral and to oblige the Basic Court of Prizren to render a decision on statutory limitation of the execution of Judgment P. no. 5/09 of the District Court in Prizren of 08 October 2010, which became final on 26 January 2011."*

## **Relevant legislation**

### ***Convention on the Rights of the Child***

#### ***Article 3***

*"1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*  
*[...]*

#### ***Article 40***

*1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

*2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:*  
*[...]*

*(vii) To have his or her privacy fully respected at all stages of the proceedings.*

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

[...]

### **Criminal Code No. 04/L-082**

#### **Article 110**

#### **[Commencement and interruption of periods of statutory limitation on the execution of punishments]**

1. The period of statutory limitation on the execution of a punishment commences on the day when the judgment becomes final and, in the case of a revocation of an alternative punishment, on the day when the decision on revocation becomes final.
2. The period of statutory limitation does not run for any time during which the execution of the punishment may not be initiated by law.
3. If the punishment is reduced by the act of a pardon or a decision of the court upon extraordinary legal remedy, the time for commencement of statutory limitation is determined according to the new punishment, while the time of calculation of the statutory limitation is based on the original punishment.
4. The period of statutory limitation is interrupted by every act undertaken by a competent authority for the purpose of executing the punishment.
5. A new period of statutory limitation will commence after each interruption.
6. The execution of a punishment shall be prohibited in every case when twice the period of statutory limitation has elapsed
7. The provisions of paragraphs 2 to 5 of this Article shall also apply to the statutory limitations on the execution of accessory punishments and measures of mandatory treatment.

### **Juvenile Justice Code No. 03/L-193**

#### **Article 5**

"The provisions of the Criminal Code of Kosovo, the Kosovo Code of Criminal Procedure, the Law on Execution of Penal Sanctions and any other relevant legislation shall apply to minors, unless otherwise regulated by the present Code."

**Article 36**  
**[Statutory limitation on the execution of juvenile imprisonment]**

*The punishment of juvenile imprisonment cannot be executed after the following periods have elapsed:*

- 1.1. Five (5) years from a final decision imposing juvenile imprisonment of more than five (5) years;*
- 1.2. Three years from a final decision imposing juvenile imprisonment of more than three (3) years; and*
- 1.3. Two (2) years from a final decision imposing juvenile imprisonment of up to three (3) years.*

**Admissibility of Referral**

40. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution and as further specified by the Law and foreseen by the Rules of Procedure.

41. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

*“1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*

*[...]*

*7. 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.”*

42. The Court notes that the Applicant is an authorized party in accordance with the Constitution, has exhausted all necessary legal remedies and has submitted his Referral within a period of 4 (four) months after the receipt of the Judgment.

43. However, the Court refers to Article 48 [Accuracy of the Referral] of the Law, which provides:

*“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge”.*

44. The Court also refers to Rule 36 (1) (d) and 36 (2) (b) and (d) of the Rules of Procedure, which provides that:

*“(1) The Court may consider a referral if:*

*d) the referral is prima facie justified or not manifestly ill-founded.*

*(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

*[...]*

*(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, [...]*

*(d) the Applicant does not sufficiently substantiate his claim”*

45. At the outset, the Court recalls that the final decision in the Applicant's case is Decision Pml. No. 66/2017 of the Supreme Court, of 20 April 2017, which rejected as inadmissible the Applicant's request for protection of legality against Judgment Pn. No. 164/2017 of the Court of Appeals, of 7 March 2017. In fact, the Supreme Court pursuant to Article 432 of the CPCK found that the request for protection of legality within the procedure for the application of criminal sanctions was inadmissible.
46. Accordingly, the Court notes that the decision addressing the Applicant's allegations is the abovementioned decision of the Court of Appeals of 7 March 2017.
47. The Court recalls that the Applicant specifically alleges a violation of paragraph 7 of Article 31 [Right to Fair and Impartial Trial] of the Constitution, which provides:

*“Judicial proceedings involving minors shall be regulated by law respecting special rules and procedures for juveniles.”*
48. The Applicant also alleges violations of Articles 3 and 40 of the Convention on the Rights of the Child, which, in accordance with Article 22 [Direct Applicability of International Agreements and Instruments] of the Constitution, *“are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions”*.
49. In this connection, the Court notes that the essence of the Applicant's allegations raised in the Referral relates to the manner of interpretation and the application by the regular courts of the Juvenile Justice Code and the Criminal Code, concerning the statutory limitation of the sentence for juveniles.
50. In this regard, the Applicant alleges that there has been an erroneous interpretation and application of the law by the Basic Court and the Court of Appeals. According to the Applicant, the courts should have applied only the provisions of the Juvenile Justice Code as a law which provides for special rules and procedures for juveniles. This allegation was also filed by the Applicant in his appeal filed with the Court of Appeals.
51. The Applicant alleges that if the Basic Court and the Court of Appeals applied only the provisions of the Juvenile Justice Code, then the statutory limitation of the sentence in the Applicant's case would have been reached.

52. The Court notes that, in relation to the Applicant's allegation, the Court of Appeals in its decision upheld the Decision of the Basic Court, finding that: *"The fact that pursuant to Article 36 of the Juvenile Justice Code the juvenile imprisonment cannot be executed after the period of 5 years has passed from the final Decision which imposed the juvenile imprisonment for more than 5 (five) years. However, this Code did not specify the commencement and interruption of periods of the statutory limitation on the execution of the sentence, namely, relative and absolute time limit of statutory limitation on the sentence. While pursuant to Article 5 of the Juvenile Justice Code, the provisions of the Criminal Code of Kosovo, the Kosovo Code of Criminal Procedure, the Law on Execution of Penal Sanctions and any other relevant legislation shall apply to minors, unless otherwise regulated by the present Code."*
53. In addition, the Court notes that the Basic Court and the Court of Appeals referred to the Juvenile Justice Code, which not only prohibits, but also expressly provides in Article 5 that: *"The provisions of the Provisional Criminal Code of Kosovo ("Provisional Criminal Code"), the Provisional Criminal Procedure Code of Kosovo ("Provisional Criminal Procedure Code"), the Law on Execution of Penal Sanctions and any other relevant legislation shall apply to minors, unless otherwise regulated by the present Code"*.
54. The Court notes that the Basic Court and the Court of Appeals have interpreted the Juvenile Justice Code, assessing that the latter does not foresee the commencement and termination of the time limits for the execution of punishment. Consequently, the courts have applied in an analogous way the provisions of the Criminal Code only in respect of the commencement and termination of the statutory limitations on the execution of the sentence. As a result of this interpretation, the courts in question have come to the conclusion that the punishment in the Applicant's case has not been statute-barred.
55. The Court refers to its case-law, where it has repeatedly stated that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and insofar as they may have violated the rights and freedoms protected by the Constitution (constitutionality), (See cases of the Court, KI53/15, Applicant: *Heset Neziri*, Resolution on Inadmissibility of 10 November 2015, para. 38 and KI112/15, Applicant: *Feride Bulliqi and others*, Resolution on Inadmissibility of 23 May 2016, paragraph 41, KI06/17, Applicant: *L.G. and others* Resolution on Inadmissibility, paragraph 36).
56. The Court recalls also the case law of the European Court on Human Rights (hereinafter: ECtHR), which *inter alia*, stated that: *[...] the Court reiterates that its jurisdiction to verify that domestic law has been correctly interpreted and applied is limited and that it is not its function to take the place of the national courts, its role being rather to ensure that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable."* (*Anheuser-Busch Inc. v. Portugal*, Application No. 73049/01, Judgment of 11 January 2007, para. 83, see also, *mutatis mutandis*, the ECtHR

case, *Bochan v. Ukraine* [GC], application no. 22251/08, Judgment of 5 February 2015, paragraph 61).

57. The Court reiterates that it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (See, *mutatis mutandis*, ECtHR case *García Ruiz v. Spain*, Application No. 30544/96, Judgment of 21 January 1999, para. 28). Therefore, the Constitutional Court cannot act as “*fourth instance court*” (see Constitutional Court: case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
58. The Court considers that it is primarily the role of the courts to deal with the interpretation of the law, while the role of the Constitutional Court is to verify whether the consequences of such interpretation are in accordance with the Constitution (see, *mutatis mutandis*, Resolution on Inadmissibility of the Constitutional Court of 20 December 2017, in Case KIO6/17, Applicant: L.G. and others, see also the case of the ECtHR, *Miragall Escolono and Others v. Spain*, applications Nos. 38366/97, 38688/97, 40777/98, 40843/98, 41015/98, 41400/98, 41446/98, 41484/98, 41487/98 and 41509/98, Judgment of 25 January 2000, paragraphs 33-39).
59. Accordingly, the Constitutional Court can only make the assessment of legal interpretation of the regular courts and only if those interpretations are arbitrary or manifestly unreasonable (See *mutatis mutandis* the ECHR case, *Bochan v. Ukraine* [GC], application no. 22251/08, Judgment of 5 February 2015, paragraph 61).
60. However, in the present case it cannot be established that there is an arbitrariness in the interpretations given by the regular courts. Furthermore, the Court considers that the reasoning of the decisions of the regular courts, regarding the Applicant's allegations of erroneous application of the criminal law, criminal procedure and of the juvenile law, is clear and sufficiently reasoned.
61. In conclusion, the Court notes that the Applicant in his Referral failed to substantiate and support his allegation that the Basic Court and the Court of Appeals when interpreting and applying the substantive law have violated Article 31, paragraph 7 of the Constitution, and Articles 3 and 40 of the Convention on the Rights of the Child.
62. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and 36 (2) (b) and (d) of the Rules of Procedure.

#### **Applicant's request to not disclose his identity**

63. The Court recalls that the Applicant in his Referral filed request to not disclose his identity.
64. In this connection, the Court refers to Rule 29 (6) of the Rules of Procedure, which provides that:

*"The party filing the referral may request that his or her identity not be publicly disclosed and shall state the reasons for the request. The Court may grant the request if it finds that the reasons are well-founded."*

65. The Court recalls that the Applicant in his request for non-disclosure of identity refers to the sensitivity of the case, that he was a juvenile when the offense was committed and the potential consequences for the Applicant's and the victim's family members.
66. Taking into account the fact that the Applicant was a juvenile at the moment of the commission of the criminal offense, the reasoning provided by the Applicant and the circumstances of the case, the Court grants his request for non-disclosure of identity.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, pursuant to Article 113, paragraph 7 of the Constitution, Article 48 of the Law and Rules 29 (6) and 36 (1) (d) and 36 (2) (b) and (d) of the Rules of Procedure, in the session held on 6 December 2017, unanimously

### **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO APPROVE the request to not disclose his identity;
- 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. This Decision is effective immediately.

  
**Judge Rapporteur**  
Bekim Sejdiu

  
**President of the Constitutional**  
Arta Rama-Hajrizi

