



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO  
**GJYKATA KUSHTETUESE**  
**USTAVNI SUD**  
**CONSTITUTIONAL COURT**

Prishtina, on 3 July 2023  
Ref. no.: AGJ 2228/23

*This translation is unofficial and serves for informational purposes only.*

## **JUDGMENT**

in

**case no. KI55/22**

Applicant

**Sasha Spasiq**

**Constitutional review of Decision [2022:19820] of the Basic Court in Ferizaj of 17 May 2022 and Decision [PN1 no. 704/2022] of the Court of Appeals of Kosovo of 31 May 2022**

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

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërzhaliu-Krasniqi, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge  
Nexhmi Rexhepi, Judge and  
Enver Peci, Judge

#### **Applicant**

1. The Referral was submitted by Sasha Spasiq, from village Gotovusha, municipality of Ferizaj, who is in the Detention Center in Mitrovica (hereinafter: the Applicant), represented by Predrag Miljković, a lawyer from North Mitrovica.

## **Challenged decision**

2. The Applicant challenges the Decision [2022:19820] of 17 May 2022 of the Basic Court in Ferizaj (hereinafter: the Basic Court) and the Decision [Pn1 no. 704/2022] of 31 May 2022 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals).

## **Subject matter**

3. The subject matter of this Referral is the constitutional review of the challenged Judgment [PN1. no. 704/2022] of the Court of Appeals of 31 May 2022, whereby it is claimed that the Applicant's fundamental rights and freedoms guaranteed by Article 29 [Right to Liberty and Security], 30 [Rights of the Accused] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Articles 5 (Right to liberty and security) and 6 (Right to a fair trial) of the European Convention of Human Rights (hereinafter: the ECHR) have been violated.
4. In addition, the Applicant before the Court also requests the imposition of an interim measure, emphasizing that in accordance with Rules 56 (Request for Interim Measures) and 57 [Decision on Interim Measures] of the Rules of Procedure: (a) the request for interim measure is approved; (ii) the execution of the detention measure is suspended *“against defendant Sasha Spasiq imposed by decision of the Basic Court in Ferizaj – Serious Crimes Department and that the defendant Sasha Spasiq must be defended in liberty in the further proceedings in the criminal procedure.”*

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 22 (Processing Referrals) and 47 (Individual Requests) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 (Filing of Referrals and Replies) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 26 April 2022, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) in which case he submitted the Decision [2022: 009453] of the Basic Court of 18 March 2022.
7. On 6 May 2022, the President of the Court by Decision no. GJR. KI55/22 appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of judges: Safet Hoxha (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
8. On 10 June 2022, the Court notified the Applicant's representative about the registration of the Referral and requested him to submit to the Court the completed referral form as well as the power of attorney for Applicant's representation before the Court. On the same date, a copy of the Referral was sent to the Basic Court and the Court of Appeals.
9. On 13 June 2022, the Applicant submitted additional documents (1) Decision [PN1 no. 138/2022] of the Court of Appeals of 2 February 2022; and (2) Decision [2022:19820] of

the Basic Court of 17 May 2022. The Applicant also submitted the Decision [2022:009453] of the Basic Court of 18 March 2022, which he had previously submitted on 26 April 2022.

10. On 29 June 2022, the Applicant's representative submitted the referral form, in which case he also submitted the Decision [PN1. no. 704/2022] of the Court of Appeals of 31 May 2022 and the express authorization to represent the Applicant before the Court. In the submitted form, the Applicant expressly challenged: (1) Decision [PN1. no. 704/2022] of the Court of Appeals of 31 May 2022; and (2) Decision [2022:19820] of the Basic Court of 17 May 2022.
11. On 20 July 2022, the Applicant's representative submitted a request for faster decision-making in this case.
12. On 16 December 2022, Judge Enver Peci took the oath in front of the President, in which case his mandate at the Court began.
13. On 30 January 2023, the Court in relation to the Applicant's Referral sent to the Supreme Court a request for the submission of information and clarification as follows:

*"In the context of the aforementioned allegation of the Applicants and in order for the Court to possess all relevant information, you are addressed with the request for information as follows:*

  - *If the aforementioned Applicants against the respective Decisions of the Basic Court in Ferizaj and the Court of Appeals have submitted a request for protection of legality to the Supreme Court?*
  - *If this is not the case, then, as far as possible, please inform the Court regarding the case law of the Supreme Court, if the legal remedy of the request for protection of legality in the procedure of imposition and extension of detention on remand is an effective legal remedy in the procedure. Please support and illustrate this information with decisions or case law of the Supreme Court in other similar cases".*
14. On 13 February 2023, the Court received the response of the Supreme Court, whereby, among other things, it notified that the Applicant against the challenged Decision of the Court of Appeals submitted a request for protection of legality.
15. On 23 May 2023, the Review Panel considered the report of the Judge Rapporteur and unanimously/with majority of votes recommended to the Court the admissibility of the Referral and the review of the merits.
16. On the same date, the Court voted, unanimously that (i) the referral be declared admissible; and (ii) to hold unanimously that there has been a violation of Article 29 [Right to Liberty and Security] of the Constitution of the Republic of Kosovo, in conjunction with Article 5 (Right to liberty and security) of the European Convention of Human Rights.
17. In accordance with Rule 62 (Concurring Opinions) of the Rules of Procedure, Judge Radomir Laban prepared a concurring opinion, which will be published together with this Judgment.

## Summary of facts

18. From the case file, it turns out that the Basic Prosecutor's Office in Ferizaj - Department for Serious Crimes (hereinafter: the Basic Prosecutor's Office) had initiated investigations related to the grounded suspicion for the commission of criminal offenses during the issuance of construction permits in the National Park "Sharri".
19. On 24 November 2021, the Basic Prosecutor's Office in Ferizaj-Department for Serious Crimes (hereinafter: the Basic Prosecutor's Office) rendered a Decision on Expanding Investigations against the Applicant and eight (8) other suspects. Specifically, in relation to the Applicant, the Basic Prosecutor's Office emphasized in its Decision that there was a grounded suspicion that he had committed the criminal offense "*Providing assistance to perpetrators after the commission of criminal offenses*", from Article 388, paragraph 1 in conjunction with paragraph 2, sub-paragraph 2.7 of Criminal Code no. 04/L-082 of the Republic of Kosovo (hereinafter: CCRK).
20. On 22 December 2021, the Basic Prosecutor's Office by the decision on beginning and expansion of the investigations, submitted to the Basic Court the request [KT.I. no. 138/21] proposing to the pre-trial judge that against the Applicant and the other defendants be imposed detention on remand.
21. The Basic Prosecutor's Office, in the hearing for the imposition of detention, proposed that the Applicant and the other defendants be detained on the basis of Article 187 par. 1, under par. 1.2, points 1.2.1 and 1.2.3 [Findings required for Detention on Remand] of the CPCRK. Basic Prosecutor's Office assessed that if they were free at this stage of the procedure, the Applicant and the other defendants could flee in order to avoid the procedure, they would destroy, change or falsify the evidence of the criminal offense by influencing one another. and on the witnesses who will be heard and who so far have not been heard as witnesses, because they could harm - risk the investigation procedure.
22. On 23 December 2021, the Basic Court by the Decision [2021:289261] imposed the measure of detention against the Applicant on the grounds of reasonable suspicion that he committed the criminal offense, the provision of assistance to the perpetrator after the commission of the criminal offense under Article 388 [Providing assistance to perpetrators after the commission of criminal offenses], paragraph 1 in conjunction with paragraph 2, subparagraph 2.7 of the Criminal Code of the Republic of Kosovo (hereinafter: CCRK).
23. The pre-trial judge, after assessing the request of the Basic Prosecutor's Office for the imposition of detention, reviewed all the documents of the case, also heard the allegations of the parties to the proceedings and came to the conclusion: "*The request of the Basic Prosecution in Ferizaj - Department for serious crimes, for imposing detention on the defendants is grounded.*" The pre-trial judge, after the comprehensive assessment of the allegations of the parties and the state of the evidence, has concluded that the legal requirements have been met for the defendants to be detained according to the basis provided for in Article 187 [Findings required for Detention on Remand], par. 1, subparagraph 1.1 and 1.2, points 1.2.1, 1.2.2 and 1.2.3 of the CPCRK.
24. Regarding the Applicant in particular, the pre-trial judge emphasized that there is a grounded suspicion that the Applicant received an amount of (eighty thousand) 80,000 euro from the investor L.D., to be handed over to B.N., to ensure the investor 6

construction permits and that in the preliminary agreement with the defendant B.N. Likewise, the Applicant, for reasons of covering the actions of the defendant B.N., has constructed two villa in his name, which actually belong to the defendant B.N. The pre-trial judge had emphasized that he examined the other measures provided for in Article 173 [Authorized Measures to Ensure Presence of Defendant] of the CPCRK and concluded that they were insufficient for ensuring the presence of the defendants in the procedure and successful implementation of criminal proceedings.

25. From the above, the Basic Court imposed the detention on the Applicant and the other defendants for a duration of 1 (one month), which will be counted from the date of the arrest, 21.12.2021, at 09:00 and will last until 20.01.2022.
26. The Applicant's defense filed an appeal with the Court of Appeals claiming essential violation of the provisions of the criminal procedure, erroneous application of the substantive law, erroneous and incomplete determination of the factual situation, with the proposal that the Court of Appeals, modifies the challenged decision and to impose more lenient measure on the defendant under Article 173 [Authorized Measures to Ensure Presence of Defendant] of the CPCRK, or to remand the case for retrial.
27. The defense of the Applicant in particular claimed that the legal requirements from the provisions of Article 187 [Findings Required For Detention on Remand], par. 1, subpar. 1.1 and 1.2, points 1.2.1, 1.2.2 and 1.2.3, of the CPCRK, because no evidence has been provided that the latter has committed the criminal offense which he is charged with. From the request for the imposition of the measure of detention, the suspicion based on the legal provisions of Article 19 [Grounded Suspicion], par. 1, point 1.9, of the CPCRK which, among other things, stipulates, "*Grounded suspicion must be based upon articulable evidence*". The defense of the Applicant, among others, emphasized that the Basic Court in Ferizaj-Department for serious crimes, erroneously concluded that there is a general suspicion – grounded, because there is a based suspicion that the Applicant will flee, because the latter has the citizenship of Kosovo, his residence is the village of Gotovusha in Shterpce where he is employed in the Health House, his family lives here, he and his wife have two children. The risk that the Applicant will affect the evidence or the normal course of the criminal proceedings does not exist because at this stage the witness is not known nor what are the evidence that will prove that the latter will damage the investigation of the evidence, as well as the risk of repetition of the criminal offense does not exist because the latter has never been related to the issuance of construction permits, he does not work in the responsible bodies, nor has he helped anyone to obtain a construction permit.
28. On 10 January 2022, the Court of Appeals by the Decision [PN1 no. 1549/2021] decided:  
**(i)** The appeal of the defense of the Applicant and other defendants is REJECTED as ungrounded, while **(ii)** the decision [2021:289260] of the Basic Court of 23.12.2021 is UPHELD.
29. Regarding the Applicant in particular, the Court of Appeals emphasized that there is a grounded suspicion that in 2016 in Shterpce, he helped the official in avoiding the disclosure of criminal offenses against corruption and official duty, so that based on the preliminary agreement with the defendant B.N., he received 80,000 euro, to hand over to the President of the Municipality B.N., so that 6 construction permits are issued to the investor L.D. as well as registered two villas in his name which were built in the cadastral plot 5837/0 in Brezovica, which were given as a gift to B.N., for issuing permits in the

“*Sharri*” National Park in Brezovica, in violation of the Law on constructions, the Law on the “*Sharri*” National Park as well as the “*Sharri*” Spatial Plan, and thereby committed the criminal offense of providing assistance in the commission of criminal offenses under Article 153, par. 1 in conjunction with par. 2, subpar. 2.7 of CCRK.

*Court proceedings for extension of detention on remand*

30. On 18 January 2022, the Basic Prosecutor's Office submitted a request for the extension of detention against the Applicant and the other defendants, emphasizing that the investigation has not been completed and that the legal reasons for which the detention of the Applicant and the other defendants has been ordered have not been completed.
31. On 20 January 2022, the Basic Court by Decision [2021:289260] extended the measure of detention for a duration of two (2) months against the Applicant and other defendants on the grounds of the suspicion that the Applicant committed the criminal offense under Article 388 [Providing assistance to perpetrators after the commission of criminal offenses], paragraph 1 in conjunction with paragraph 2, subparagraph 2.7 of the CCRK.
32. The Applicant's defense submitted an appeal to the Court of Appeals, alleging a violation of the criminal law, erroneous and incomplete determination of factual situation and essential violation of the provisions of the criminal procedure, with the proposal that the Court of Appeals approves the appeal as grounded and modifies the challenged decision and to remove the measure of detention to the Applicant so that he can be defended in liberty or that the measure be modified to house arrest.
33. The defense of the Applicant in particular claimed that the legal requirements from the provisions of Article 187 [Findings Required For Detention on Remand], par. 1, subpar. 1.1 and 1.2, points 1.2.1, 1.2.2 and 1.2.3, of the CPCRK, because no evidence has been provided that the latter has committed the criminal offense which he is charged with. From the request for the imposition of the measure of detention, the suspicion based on the legal provisions of par. 1, point 1.9 of Article 19 [Grounded Suspicion], of the CPCRK which, among other things, stipulates, “*grounded suspicion must be based upon articulable evidence*”. The defense of the Applicant, among others, emphasized that he is the owner of the villa which is located in the cadastral plot 5837-0, who earned in an orderly manner and bought two plots and merged them, took a loan from the NLB bank, built the villa and is not related to the defendant B.N., further adds that there is no reasonable suspicion that he will flee from the justice system because he has the citizenship of Kosovo, his residence is the village of Gotovusha in Shterpce, where he is employed at the Health Center, his family lives here, he supports his wife and two children. The risk that the Applicant will affect the evidence or the normal course of the criminal proceedings does not exist because at this stage the witness is not known nor what are the evidence that will prove that the latter will damage the investigation of the evidence, as well as the risk of repetition of the criminal offense does not exist because the latter has never been related to the issuance of construction permits, he does not work in the responsible bodies, nor has he helped anyone to obtain a construction permit.
34. On 2 February 2022, the Court of Appeals by the Decision [PN1 no. 138/2021] decided: **(i)** The appeal of the defense of the Applicant and other defendants is REJECTED as ungrounded, while **(ii)** the decision [2021:289260] of the Basic Court of 20.01.2022 is UPHELD.

35. The Court of Appeals assessed that the first instance court acted correctly when it extended the detention of the Applicant and the other defendants, because the pre-trial judge and this criminal panel also took into account the conditions set for concrete measures, in order to ensure the presence of the defendants, in the present case, the detention measure is currently the only measure for the unhindered development of the criminal procedure in this criminal-legal case. From the aforementioned reasons and based on the provision of Article 416 [Decisions on Appeals against Rulings], par. 2 of the CPCRK, it was decided as in the enacting clause of this decision.
36. On 16 March 2022, the Basic Prosecutor's Office submitted a request for extension of detention for the Applicant and other defendants to the Basic Court.
37. On 18 March 2022, the Basic Court by Decision [2022:009453] decided to extend the measure of detention against the Applicant for a duration of two (2) months, which will be calculated from 18 March 2022 to 17 May 2022.
38. Based on the assessment of the pre-trial judge, the Applicant received the amount of eighty-thousand-euro (80,000) from a construction investor L.D., to deliver to the third person B.N., in order to provide the person L.D. with six (6) construction permits based on a preliminary agreement concluded between the Applicant and persons L.D., and B.N. The pre-trial judge's conviction is that there is still a legal basis for the extension of detention, provided for in Article 187 [Findings Required For Detention on Remand], par. 1, subpar. 1.2, point 1.2.1 of the Criminal Procedure Code of the Republic of Kosovo (hereinafter: the CPCRK), so if they are at liberty, there is a possible risk that the Applicant and the other defendants would flee or hide in order to avoid criminal proceedings, given the punishment for the criminal offenses for which they are suspected.
39. On 26 April 2022, the Applicant submitted his referral to the Constitutional Court whereby he challenges the Decision [2022:009453] of 18 March 2022 of the Basic Court. The Applicant also pointed out that on 21 March 2022, he challenged the Decision of the Basic Court at the Court of Appeals but that for more than 30 days he had not received any response from the latter and therefore decided to submit a referral to the Constitutional Court.

*Court proceedings for extension of detention on remand after the Applicant submitted the Referral to the Constitutional Court*

40. On 13 May 2022, the Basic Prosecutor's Office submitted a request to the Basic Court for the extension of detention against the Applicant and the other defendants, and the measure of prohibiting the approach of the specified place or the specified person.
41. On 17 May 2022, the Basic Court by Decision [2022:19820] extended the measure of detention for a duration of two months against the Applicant and other defendants, which will be calculated from 17 May 2022 to 15 July 2022. The Applicant is in detention on remand from 21 December 2021, at 09:00 hrs.
42. The Basic Court decided to extend the measure of detention against the Applicant on the grounds of grounded suspicion that he committed the criminal offense, providing assistance to the perpetrator after committing the criminal offense under Article 388 [Providing assistance to perpetrators after the commission of criminal offenses], paragraph 1 in conjunction with paragraph 2, subparagraph 2.7 of the CCRK.

43. The Applicant's defense submitted an appeal to the Court of Appeal with the proposal that the latter modify the impugned decision and release the defendant to defend himself in liberty in accordance with the provision of Article 190 [Time limits of detention on remand] paragraph 2 point 1 of CPCRK.
44. The Applicant's defense emphasized that the criminal offense for which his client is suspected is punishable by imprisonment from six months to five years, according to the legal provision of Article 190 [Time limits for detention on remand] of the CPCRK, a time limit for deprivation of liberty is foreseen, in order that in paragraph 1 of the same article it is provided that before the indictment is filed the detention cannot be longer than four months if the procedure is conducted for a criminal offense punishable by less than five years of imprisonment. The defense of the Applicant further emphasized that he is already in detention for five months and the extension of the detention measure is contrary to the law.
45. On 31 May 2022, the Court of Appeals by the Decision [PN1 no. 704/2022] decided: **(i)** The appeal of the defense of the Applicant and other defendants is REJECTED as ungrounded, while **(ii)** the decision [2022:019820] of the Basic Court of 17.05.2022 is UPHELD.
46. The Court of Appeals emphasized that the finding of the first instance court for the extension of the measure of detention against the Applicant and the other defendants is fair and has a legal basis, which is necessary to ensure their presence in the further judicial proceedings. There is also a legal basis for the extension of the measure of detention in accordance with Article 187 [Findings Required For Detention on Remand], paragraph 1 subparagraph 1 and 1.2. point 1.2.2 of the CCRK, if the defendants were to be released, they could influence each other as accomplices or will influence the other defendants, in two cases the measure of detention was imposed on them, some of them are in escape, which are related to the criminal offense for which the defendants are suspected, as well as the risk of influencing the witness, about 40 witnesses whose names cannot be made public because there is a risk of further investigations and who have not been interviewed by the prosecutor, then the extension of the measure of detention against the defendants is necessary to ensure their presence in the course of the proceedings and the normal course of the procedure.
47. On 26 April 2022, the Applicant submitted the document the Decision [2022:009453] of the Basic Court of 18 March 2022.
48. On 13 June 2022, the Applicant submitted additional documents (1) Decision [PN1 no. 138/2022] of the Court of Appeals of 2 February 2022; and (2) Decision [2022:19820] of the Basic Court of 17 May 2022. The Applicant also submitted Decision [2022: 009453] of the Basic Court of 18 March 2022, which he had previously submitted on 26 April 2022.
49. On 29 June 2022, the Applicant's representative submitted the referral form to the Constitutional Court, in which case he submitted and expressly challenged: (1) Decision [2022:19820] of the Basic Court of 17 May 2022; as well as (2) Decision [PN1. no. 704/2022] of the Court of Appeals of 31 May 2022.

*Court proceedings for extension of detention on remand after the Applicant submitted the additional documents to the Constitutional Court*



50. On 15 July 2022, the Basic Court by Decision [2022:019280] extended the detention on remand of the Applicant and the other defendants for another two (2) months, namely from 15 July 2022 to 13 September 2022. This measure for extension of the detention of the Applicant was determined based on the grounded suspicion that he committed the criminal offense from Article 388 [Providing assistance to perpetrators after the commission of criminal offenses], paragraph 1 in conjunction with paragraph 2, subparagraph 2.7 of the CCRK.
51. Against the above-mentioned decision, the Applicant's defense submitted an appeal to the Court of Appeals, with the proposal that the decision be modified and the Applicant be defended in liberty. The Applicant's defense claimed that the first instance court extended the detention in violation of article 190.2 [Time limits of detention on remand] of the CPCRK, articles 29 [Right to Liberty and Security] and 30 [Rights of the Accused] of the Constitution and articles 5 [Right to liberty and security] and 6 [Right to a fair trial] of the ECHR.
52. The Appellate Prosecutor's Office proposed to reject as ungrounded the appeals of the Applicant's defense and of other defendants, while the appealed decision be upheld.
53. On 29 July 2022, the Court of Appeals by the Decision [PN1 no. 958/2022] decided: **(i)** the appeal of the counsel of the Applicant and the other defendants is approved, the decision [2022:019820] of the Basic Court in Ferizaj of 15.07.2022 is annulled, so the case is remanded to the same court for retrial; and **(ii)** the Applicant and several other defendants remain in detention pending a new decision.
54. The Court of Appeals emphasized that: **(i)** the first instance court did not give sufficient and consistent reasoning against the defendants when extending the detention of the defendants within the meaning of provision 190.3 [Time limits of detention on remand] of the CPCRK; **(ii)** the first instance court did not explain the reasons for the extension of the detention of the defendants and what are the concrete actions of the prosecutor for the completion of the investigations, but it is only emphasized that the examination of material evidence and the hearing of 40 witnesses are needed; **(iii)** the reasoning of the appealed decision of the first instance court does not refer to the allegations of the defense at all, although the court has an obligation to respond to the circumstances claimed by the defense of the defendants; **(iv)** The Court of Appeal recalls that the measure of detention is the most severe measure for ensuring the presence of the defendant in criminal proceedings and as such concrete and grounded reasoning must be given referring to the circumstances that apply to each defendant; **(v)** due to the lack of reasoning, in the retrial it must correct the flaws identified as in this decision, give concrete reasons regarding the claims of the defense and then render a fair and legal decision.
55. On 12 August 2022, the Basic Prosecutor's Office submitted a submission to the Basic Court regarding the actions taken by the Prosecutor's Office in the criminal case of the Applicant and other defendants. The Basic Prosecutor's Office emphasized that it does not agree with the decision of the Court of Appeals and that the latter has rather paraphrased the claims of the defendants than assessed the numerous evidence found in the case file. The Basic Prosecutor's Office proposed the extension of the measure of detention for the Applicant and the other defendants, emphasizing the large number of evidence that will still be assessed, the witnesses that will be questioned, the legal reasons that the

defendants may escape from justice, the impact of defendants on witnesses as well as the risk of repeating the criminal offense.

56. On 12 August 2022, the Basic Court by Decision [2020:019820] decided to extend the measure of detention to the Applicant and the other defendants until 13 September 2022. This measure to extend the detention of the Applicant was imposed under the grounded suspicion that the latter has committed the criminal offense from Article 388 [Providing assistance to perpetrators after the commission of criminal offenses], paragraph 1 in conjunction with paragraph 2, subparagraph 2.7 of the CCRK.
57. The defense of the Applicant filed an appeal with the Court of Appeals proposing that the appealed decision be annulled, and that the Applicant be defended in liberty based on Article 190 [Time limits for detention on remand] paragraph 2 point 1 of the CPCRK. The defense of the Applicant emphasized that there is no legal reason to extend the measure of detention until 13.09.2022 because the latter is in detention for eight (8) months in an illegal manner from 17.04.2022. The Applicant was imposed a detention measure on 21.12.2021 for a duration of one (1) month, until 20.01.2022 the detention measure was extended for another two (2) months. The detention of the Applicant was further extended from 16.03.2022 for another two (2) months. The defense of the Applicant further emphasized that the first instance court has extended the measure of detention until 13 September 2022, which means nine (9) months, which according to the law in force cannot be extended.
58. The Appellate Prosecutor's Office proposed to reject as ungrounded the appeals of the Applicant's defense and of other defendants, while the appealed decision be upheld.
59. On 5 September 2022, the Court of Appeals by the Decision [PN1. no. 1109/2022], rejected as ungrounded the appeal of the Applicant and the other defendants and upheld the Decision [2022:019280] of the Basic Court of 12 August 2022.
60. In the meantime, before the above-mentioned Decision was rendered by the Court of Appeals, the Basic Prosecutor's Office by the request [PPI.nr.138/20] of 2 September 2022, requested the Basic Court to continue the investigations against the Applicant and other defendants for a period of six (6) months.
61. On 7 September 2022, the Basic Court by Decision [2022:019820] decided to extend the investigations against the Applicant and the defendants for a period of six (6) months for various criminal offenses foreseen by the CCRK such as: receiving bribes, exercising influence, providing assistance to perpetrators after committing criminal offenses, giving bribes and abusing official position or authority.
62. On 9 September 2022, the Basic Prosecutor's Office submitted a request against the Applicant and other defendants for the extension of the measure of detention for a duration of two (2) months.
63. On 13 September 2022, the Basic Court by the Decision [2022:019280] extended the detention of the Applicant and the other defendants for another two (2) months, namely from 13 September 2022 to 11 November 2022. This measure for extension of the detention of the Applicant was determined based on the grounded suspicion that he committed the criminal offense from Article 388 [Providing assistance to perpetrators

after the commission of criminal offenses], paragraph 1 in conjunction with paragraph 2, subparagraph 2.7 of the CCRK.

64. The Court does not possess information regarding the procedures conducted by the Prosecutor's Office and the regular courts in the criminal proceedings against the Applicant. However, from the case file it turns out that until September 2022, the Basic Prosecutor's Office had not yet filed an indictment regarding the other defendants, including the Applicant.

### **Applicant's allegations**

65. The Court recalls that the Applicant alleges violation of Articles 29 [Right to Liberty and Security], 30 [Rights of the Accused] and 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Articles 5 (Right to liberty and security) and 6 (Right to a fair trial) of the ECHR.
66. The Applicant alleges that he is being accused of a criminal offence punishable from 6 months to 5 years. The Applicant refers to Article 190, paragraph 2 [Time limits for detention on remand] of the CPCRK, which establishes: *"Prior to the filing of an indictment, detention on remand shall not exceed four (4) months, if proceedings are conducted for a criminal offence punishable by imprisonment of less than five (5) years"*. The Applicant claims that he risks a sentence of less than 5 years of imprisonment, therefore, his detention can last a maximum of 4 months.
67. The Applicant claims that every day of the extension of detention from 17.04.2022 onwards is unlawful, considering that he was imposed the measure of detention by Decision [2021:289261] of the Basic Court in Ferizaj of 23.12. 2021.
68. The Applicant alleges: *"Thus, Sasha Spasiq [the Applicant] is currently in detention on remand in an unlawful manner. The courts of first and second instance have not paid attention to the complaints of the lawyers, so the impression is that the detention is extremely arbitrary, since as you will see from the explanation of the decisions, no replies have been given to the complaints that we have submitted. Instead, previous decisions are described without any meaning. Therefore, this detention can be considered arbitrary. Moreover, in one of the appeals, more precisely the appeal for the third extension of detention submitted on 21.03.2022, we have never received a decision of the Court of Appeals, which constitutes a violation of the right to trial within a reasonable time, if we consider that the Court of Appeals is obliged by law to decide within 48 hours, we have not received that decision until today."*
69. The Applicant claims that during this procedure his fundamental rights and freedoms guaranteed by Articles 29 and 31 of the Constitution in conjunction with Articles 5 and 6 of the ECHR have been seriously violated.
70. Regarding the use of the extraordinary remedy "request for protection of legality" in the Supreme Court, the Applicant alleges: *"We also believe that filing of this extraordinary legal remedy would be ineffective due to the speed of the resolution of the procedure, even though the courts do not act with special urgency in the case of detention, as provided by the Criminal Procedure Law. Moreover, every day of detention after the expiration of the legal deadline of 4 months is an unlawful deprivation of liberty. Sasha*

*Spasić [the Applicant] is currently in unlawful detention for more than two months and ten days.”*

71. From the above, the Applicant claims that the Constitutional Court itself can protect the Constitution and the fundamental rights and freedoms of the Applicant. Regarding the failure to file the extraordinary remedy “request for the protection of legality” in the Supreme Court, the Applicant, referring to the case of Sporrong and Lonroth v. Sweden, states that “*the European Court of Human Rights has consistently reiterated in its decisions that the complaint to the Constitutional Court is allowed even when all legal remedies have not been exhausted, if the exhaustion of legal remedies would be ineffective, and the damage caused is irreparable.*”
72. In the end, the Applicant requests the Court to: **(i)** APPROVE the constitutional complaint of the Applicant and HOLD that the Applicant has been illegally deprived of his liberty from 17.04.2022 onwards, and there has been a violation of articles 29, 30 and 31 of the Constitution of Kosovo; **(ii)** ANNUL the decision of the Basic Court in Ferizaj number [2022:19820] of 17.05.2022, as well as the decision of the Court of Appeals of Kosovo number [PN1. no. 704/2022], of 31.05.2022, and the Applicant in the criminal proceedings which is being conducted in the Basic Prosecutor’s Office in Ferizaj-Department for serious crimes PP.I.nr.138/2020, should be defended in liberty; **(iii)** TO HOLD that the actions of the Court of Appeals and the Basic Court in Ferizaj - Department for serious crimes, have resulted in the violation of the Constitution, more precisely the violation of the right to a fair trial, guaranteed by Article 31, paragraph 2 of Constitution of Kosovo; **(iv)** REQUEST FOR THE IMPOSITION OF INTERIM MEASURES, based on Rules 56 and 57 of the Rules of Procedure of the Constitutional Court of Kosovo, and that the latter renders a decision: a) TO APPROVE interim measure; b) TO SUSPEND the execution of the measure of detention against the Applicant determined by the decision of the Basic Court in Ferizaj - Department for serious crimes [2022:19820], of 17.05. 2022, upheld by decision of the Court of Appeals of Kosovo number [PN1. no. 704/2022] of 31.05.2022, and that the Applicant should be defended in liberty in the further course of the criminal proceedings.

## **Relevant constitutional and legal provisions**

### **Constitution of the Republic of Kosovo**

#### **Article 29**

#### **[Right to Liberty and Security]**

*1. Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court as follows:*

*(1) pursuant to a sentence of imprisonment for committing a criminal act;*

*(2) for reasonable suspicion of having committed a criminal act, only when deprivation of liberty is reasonably considered necessary to prevent commission of another criminal act, and only for a limited time before trial as provided by law.*

*(3) for the purpose of educational supervision of a minor or for the purpose of bringing the minor before a competent institution in accordance with a lawful*

order; (4) for the purpose of medical supervision of a person who because of disease represents a danger to society;

(5) for illegal entry into the Republic of Kosovo or pursuant to a lawful order of expulsion or extradition.

2. Everyone who is deprived of liberty shall be promptly informed, in a language he/she understands, of the reasons of deprivation. The written notice on the reasons of deprivation shall be provided as soon as possible. Everyone who is deprived of liberty without a court order shall be brought within forty-eight (48) hours before a judge who decides on her/his detention or release not later than forty-eight (48) hours from the moment the detained person is brought before the court. Everyone who is arrested shall be entitled to trial within a reasonable time and to release pending trial, unless the judge concludes that the person is a danger to the community or presents a substantial risk of fleeing before trial.

3. Everyone who is deprived of liberty shall be promptly informed of his/her right not to make any statements, right to defense counsel of her/his choosing, and the right to promptly communicate with a person of his/her choosing.

4. Everyone who is deprived of liberty by arrest or detention enjoys the right to use legal remedies to challenge the lawfulness of the arrest or detention. The case shall be speedily decided by a court and release shall be ordered if the arrest or detention is determined to be unlawful.

5. Everyone who has been detained or arrested in contradiction with the provisions of this article has a right to compensation in a manner provided by law.

6. An individual who is sentenced has the right to challenge the conditions of detention in a manner provided by law.

### **Article 30** **[Rights of the Accused]**

1. Everyone charged with a criminal offense shall enjoy the following minimum rights:

(1) to be promptly informed, in a language that she/he understands, of the nature and cause of the accusation against him/her;

(2) to be promptly informed of her/his rights according to law;

(3) to have adequate time, facilities and remedies for the preparation of his/her defense;

(4) to have free assistance of an interpreter if she/he cannot understand or speak the language used in court;

(5) to have assistance of legal counsel of his/her choosing, to freely communicate with counsel and if she/he does not have sufficient means, to be provided free counsel;

(6) to not be forced to testify against oneself or admit one's guilt.

### **Article 53**

## **[Interpretation of Human Rights Provisions]**

*Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.*

### **European Convention on Human Rights**

#### **Article 5 (Right to liberty and security)**

*1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*

*a) the lawful detention of a person after conviction by a competent court;*

*b) lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*

*[...]*

*c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*

*(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*

*(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*

*(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*

*2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him;*

*3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial..*

*4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*

5. *Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.*”

## **CRIMINAL CODE NO. 04/L-082 OF THE REPUBLIC OF KOSOVO**

### **Article 388**

#### **[Providing assistance to perpetrators after the commission of criminal offenses]**

1. *“Whoever harbors the perpetrator of any offense other than as provided in paragraph 2 of this Article or aids him or her to elude discovery or arrest by concealing instruments, evidence or in any other way or whoever harbors a convicted person or takes steps towards frustrating the arrest, execution of a punishment or an order for mandatory treatment shall be punished by a fine or by imprisonment of up to one (1) year.*

2. *When the offense provided for in paragraph 1 of this Article relates to one or more of the following criminal offenses the perpetrator shall be punished by imprisonment of six (6) months to five (5) years:*

2.1. *aggravated murder;*

2.2. *murder;*

2.3. *assault with grievous bodily injury;*

2.4. *any offense in violation of Chapter XIV-Criminal Offenses against the Constitutional Order and Security of Republic of the Republic of Kosovo;*

2.5. *any offense in violation of Chapter XV-Criminal Offenses against Humanity and Values Protected by International Law;*

2.6. *any offense in violation of Chapter XX-Criminal Offenses against Sexual Integrity;*

2.7. *any offense in violation of Chapter XXXIV-Official Corruption and Criminal Offenses against Official Duty;*

2.8. *any offense in violation of Chapter XXIII-Narcotics Offenses;*

2.9. *any offense in violation of Chapter XXX-Weapons Offenses.*

3. *When the offense provided for in paragraph 1 of this Article relates to a criminal offense punishable by life long imprisonment, the perpetrator shall be punished by imprisonment of one (1) to ten (10) years.*

4. *The punishment provided for in paragraph 1 of this Article may not be more severe, neither in manner nor in degree, than the punishment prescribed for the criminal offense committed by the perpetrator who was given assistance.*

5. Except for offenses involving child abuse and domestic violence, a person is not criminally liable under this Article if he or she is related to the perpetrator of the criminal offense as the parent, child, spouse, sibling, adoptive parent or adopted child or person with whom the perpetrator lives in an extra-marital communion.

[...]

**CODE NO. 04/L-123 OF THE CRIMINAL PROCEDURE OF THE REPUBLIC OF KOSOVO [repealed by CODE NO. 08/L-032 OF CRIMINAL PROCEDURE, [published in the Official Gazette on August 17, 2022]**

**Article 187**

**Findings Required For Detention on Remand**

1. *“The court may order detention on remand against a person only after it explicitly finds that:*

*1.1. there is a grounded suspicion that such person has committed a criminal offence;*

*1.2. one of the following conditions is met:*

*1.2.1. he or she is in hiding, his or her identity cannot be established or other circumstances indicate that there is a danger of flight;*

*1.2.2. there are grounds to believe that he or she will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or*

*1.2.3. the seriousness of the criminal offence, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit; and.*

*1.3. the lesser measures to ensure the presence of defendant listed in Article 173 of the present Code would be insufficient to ensure the presence of such person, to prevent reoffending and to ensure the successful conduct of the criminal proceedings.*

*2. When detention on remand is ordered pursuant to paragraph 1 subparagraph 1.2 of the present Article solely because a person’s identity cannot be established, it shall be terminated as soon as identity is established. When detention on remand is ordered pursuant to paragraph 1 subparagraph 1.2 of the present Article, it shall be terminated as soon as the evidence on account of which detention on remand was ordered has been taken or secured.*

*3. If the defendant has violated one of the lesser measures to ensure the presence of defendant listed in Article 173 of the present Code, this shall be taken into particular consideration by the court when establishing the existence of circumstances under paragraph 1 subparagraphs 1.2 and 1.3 of the present Article.”*



**Article 190**  
**Time Limits for Detention on Remand**

1. *“The detainee may be held in detention on remand on the initial order under Article 188 of this Code for a maximum period of one (1) month from the day he or she was arrested. After that time period he or she may be held in detention on remand only under a ruling of the pretrial judge, single trial judge or presiding trial judge ordering an extension of detention on remand.*

2. *Prior to the filing of an indictment, detention on remand shall not exceed:*

*2.1. four (4) months, if proceedings are conducted for a criminal offence punishable by imprisonment of less than five (5) years;*

*2.2. eight (8) months, if proceedings are conducted for a criminal offence punishable by imprisonment of at least five (5) years.*

3. *In exceptional cases where proceedings are conducted for a criminal offence punishable by imprisonment of at least five (5) years, the case is complex as defined under Article 19 of this Code and the delay is not attributable to the state prosecutor, in addition to the prescribed periods of time provided for in paragraph 2 of this Article, detention on remand prior to the filing of an indictment may be extended by up to four (4) months for a maximum of twelve (12) months in total.*

4. *Upon a convincing and grounded cause to believe that public danger or a threat of violence exists upon the pretrial release of a defendant, an extension of the detention on remand under Paragraph 3 of this Article can be extended for another six (6) months for a maximum of eighteen (18) months in total.*

5. *If the indictment is not filed before the expiry of the prescribed periods of time provided for under paragraphs 2, 3 and 4 of the present Article, the detainee shall be released.*

**Article 191**  
**[Extension of Detention on Remand]**

*“1. Detention on remand may only be extended by the pretrial judge, single trial judge or presiding trial judge upon the request of the state prosecutor, who shall show that there are grounds for detention on remand under Article 187 of the present Code, that the investigation has been initiated and that all reasonable steps are being taken to conduct the investigation speedily. The injured party or victim advocate may formally or informally ask the state prosecutor to request an extension of detention on remand.*

*2. The defendant and his or her defense counsel shall be informed of the motion no less than three (3) days prior to the expiry of the current ruling on detention on remand.*

3. Each ruling on the extension of detention on remand can be appealed. Article 189 paragraphs 3, and 4 of the present Code shall apply *mutatis mutandis*.

**Article 192**  
**[Court Oversight of Detention on Remand]**

1. At any time, the pre-trial judge may terminate *ex officio* detention on remand while the investigation is in progress, after giving three days notice to the state prosecutor, who may appeal to a review panel the decision of the pre-trial judge to terminate detention on remand. The review panel shall render a ruling within forty-eight (48) hours of receiving the appeal from the state prosecutor.

2. At any time, the detainee or his or her defense counsel may petition the pre-trial judge, single trial judge, presiding trial judge or president of the basic court to determine the lawfulness of detention or the lawfulness of the conditions of detention.

3. If the detainee is petitioning the lawfulness of detention, the pre-trial judge, single trial judge, presiding trial judge or president of the basic court may conduct a hearing in accordance with Article 188 paragraphs 3, 4, 5, and 6 of the present Code if the petition establishes a *prima facie* case that:

3.1. the grounds for detention on remand in Article 187 of the present Code no longer exist due to changed circumstances or the discovery of new facts since the last court order on detention on remand; or

3.2. detention is unlawful for some other reason.

4. If the detainee is petitioning the lawfulness of detention, at the hearing the pre-trial judge, single trial judge, presiding trial judge or president of the basic court shall order the immediate release of the detainee if:

4.1. the grounds for detention on remand in Article 187 of the present Code no longer exist;

4.2. the period of detention on remand ordered by the court has expired;

4.3. the period of detention on remand ordered by the court exceeds the time-limits set forth in Article 190 of this Code; or 4.4. detention is unlawful for some other reason.

5. If the detainee is petitioning the lawfulness of the conditions of detention, the pre-trial judge, single trial judge, presiding trial judge or president of the basic court may conduct a hearing or visit the detention facility if the petition establishes a *prima facie* case that the conditions of detention do not satisfy the requirements of the present code or conditions exist that do not comply with the European Convention on Human Rights and Fundamental Freedoms, as interpreted by decisions of the European Court on Human Rights.

6. If the detainee is petitioning the lawfulness of the conditions of detention, at the hearing or visit to the detention facility, the pre-trial judge, single trial judge, presiding trial judge or president of the basic court shall order changes to the

*conditions of detention if they do not comply with a reasonable interpretation of the requirements of the present code or conditions exist that do not reasonably comply with the European Convention on Human Rights and Fundamental Freedoms, as interpreted by decisions of the European Court on Human Rights.*

*7. Hearings or visits under this Article shall be held within seven (7) days of the receipt of the petition by the court.*

*8. A petition that is substantially similar to a previous petition shall be immediately dismissed ex officio.*

### **Article 193** **[Detention on Remand After Indictment is Filed]**

*“1. After the indictment has been filed and until the conclusion of the main trial, detention on remand may only be ordered, extended or terminated by a ruling of the single trial judge or presiding trial judge or the trial panel when it is in session. The single trial judge or presiding trial judge shall first hear the opinion of the state prosecutor, if proceedings have been initiated at his or her request, and the opinion of the defendant or the defense counsel. The parties may appeal against the ruling. Article 189 paragraphs 3 and 4 of the present Code shall apply mutatis mutandis.*

*2. Upon the expiry of two (2) months from the last ruling on detention on remand, the single trial judge or presiding trial judge, even in the absence of a motion by the parties, shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated. The parties may appeal against the ruling. Article 189 paragraphs 3 and 4 of the present Code shall apply mutatis mutandis.”*

### **Admissibility of the Referral**

73. The Court first examines whether the Applicants have met the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.

74. 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.”*

75. Regarding the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely the Decision [2022:19820] of 17 May 2022 of the Basic Court and the Decision [Pn1 no. 704/2022] of 31 May 2022 of the Court of Appeals of Kosovo.

76. The Court also examines whether the Applicant has fulfilled the admissibility criteria, as prescribed by Law. In this regard, the Court refers to Article 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

*Article 47*  
*[Individual Requests]*

*“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.  
2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.*

*Article 48*  
*[Accuracy of the Referral]*

*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.*

*Article 49*  
*[Deadlines]*

*The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision... “*

77. In assessing the fulfillment of the admissibility criteria as mentioned above, the Court notes that the Applicant is an authorized party, challenging an act of a public authority, namely Decision [PN1. no. 704/2022] of the Court of Appeals of 31 May 2022, after having exhausted all legal remedies provided by Law. The Applicant also clarified the rights and freedoms it alleges to have been violated, in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines set out in Article 49 of the Law
78. The Court reiterates that the Applicant on 26 April 2022 submitted the referral to the Court challenging the Decision [2022:009453] of 18 March 2022 of the Basic Court. The Applicant also reiterated that on 21 March 2022 he challenged the Decision of the Basic Court at the Court of Appeals but that for more than 30 days he had not received any reply from the latter and therefore decided to submit the referral to the Constitutional Court.
79. The Court recalls that on 13 and 29 June 2022, the Applicant submitted additional documents and the referral form to the Constitutional Court, expressly challenging Decision [2022:19820] of the Basic Court of 17 May 2022 as well as Decision [PN1. no. 704/2022] of the Court of Appeals of 31 May 2022. The Court reiterates that in the form submitted on 29 June 2022, the Applicant specifically challenges the Decision [2022:19820] of 17 May 2022 of the Basic Court as well as the Decision [PN1. no. 704/2022] of the Court of Appeals of 31 May 2022. Therefore, these decisions will be subject to constitutional review by the Constitutional Court.

80. From the above, the Court reiterates that in the present case, the admissibility criteria have been met in relation to the exhaustion of legal remedies, the submission of the referral within the legal deadline of four (4) months, and that the fundamental rights and freedoms which are allegedly violated have been clarified.
81. The Court also considers that the Referral cannot be considered manifestly ill-founded on constitutional basis as established in paragraph (2) of Rule 39 of the Rules of Procedure and therefore, it is declared admissible for review of merits (see also ECtHR case *Alimuçaj v. Albania*, no. 20134/05, Judgment of 9 July 2012, paragraph 144, as well as see Court cases [KI75/21](#), Applicants “*Abrazen LLC*”, “*Energy Development Group Kosova LLC*”, “*Alsi & Co. Kosovë LLC*” and “*Building Construction LLC*”, Judgment of 19 January 2022, paragraph 64; [KI27/20](#), Applicant, *VETËVENDOSJE! Movement*, Judgment of 22 July 2020, paragraph 43).

### **Merits of the Referral**

82. The Court first recalls that the subject of constitutional review are two court decisions, namely Decision [2022:019820] of 17 May 2022 and Decision [PN1. no. 704/2020] of 31 May 2022 of the Court of Appeals. By the Decision of the Basic Court the Applicant, who was in detention on remand for four (4) months, since 21 December 2021 his detention was extended for another two months, namely from 17 May 2022 until 15 July 2022. This Decision of the Basic Court was upheld also by the Decision of the Court of Appeals [PN1. no. 704/2022], of 31 May 2022. T the Court also recalls that the decisions of the regular courts for the imposition and extension of detention were collective decisions against several defendants in the proceedings before the indictment was filed.
83. Therefore, in the following Court will examine and elaborate whether the challenged decisions by which the detention was extended have addressed the essential allegation of the Applicant, namely the specific allegation that since in his case there is a grounded suspicion that he committed the criminal offense of “*Providing assistance to perpetrators after the commission of criminal offenses*” from article 388, paragraph 2, item 7 of the CCK and for which a prison sentence of 6 months to 5 years is provided, according to him, based on paragraph 2 of Article 190 of the CPCRK, his detention cannot last more than four (4) months. Having said that, the Court notes that the Applicant challenges the legality of the extension of his detention before the indictment was filed.
84. Following this, the Court notes that it will examine the aforementioned allegation of the Applicant in the context of his right to liberty and security, guaranteed by Article 29 of the Constitution, in conjunction with Article 5 of the ECHR. In this regard, the Court emphasizes that the rights and standards that must be guaranteed in the case of deprivation of liberty have been broadly interpreted by the European Court of Human Rights (hereinafter: ECtHR) through its case law, in harmony with which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, the Court is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.
85. Therefore, in relation to the allegations of violation of Article 29 [Right to Liberty and Security] of the Constitution in conjunction with Article 5 (Right to liberty and security) of the ECHR, the Court refers to the principles and standards established in the case law of the ECtHR related to the imposition of detention.

#### **1. The criteria defined regarding the imposition of detention**

86. In this regard, the Court recalls that, in order to comply with the Constitution and the ECHR, the arrest or deprivation of liberty must be based on one of the grounds for deprivation of liberty provided for in Article 29 [Right to Liberty and Security], paragraph 1, of the Constitution in conjunction with Article 5 (Right to liberty and security) of the ECHR.
87. The Court first recalls Article 29, paragraph 1, item 2 [Right to Liberty and Security], of the Constitution, which establishes:
- 1. Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court as follows:*
- [...]  
*(2) for reasonable suspicion of having committed a criminal act, only when deprivation of liberty is reasonably considered necessary to prevent commission of another criminal act, and only for a limited time before trial as provided by law;*
- [...].”
88. Secondly, the Court also refers to Article 5. 1 (c) (Right to liberty and security) of the ECHR which stipulates that:
- “Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:*
- [...] *c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;*
89. The Court notes that under Article 29 paragraph 1, item 2 [Right to Liberty and Security], of the Constitution and Article 5.1 (c) (Right to liberty and security) of the Convention, the deprivation of liberty may be conducted in the case of a grounded suspicion of committing the criminal offence, and when such a thing is considered necessary to prevent the commission of another offense or removal after its commission (see cases of the Court, [KI85/22](#), Applicant *Jadran Kostić*, Judgment of 26 April 2023, paragraph 68; and of [KI10/18](#), Applicant *Fahri Deqani*, Judgment, of 8 October 2019, paragraph 65).
90. Therefore, the Court notes that in order to comply with the Constitution and the ECHR, the detention on remand must be based on one of the grounds for deprivation of liberty set forth in Article 29 [Right to Liberty and Security] of the Constitution in conjunction with Article 5 (Right to liberty and security), paragraph 1 (c) of the ECHR.
91. The ECtHR, in its case law, has identified three basic criteria to be examined to assess whether deprivation of liberty is lawful and non-arbitrary (see ECHR case, [Merabishvili v. Georgia](#), application No. 72508/13, Judgment of 28 November 2017, paragraph 183,

see cases of the Court, KI85/22 Applicant *Jadran Kostić*, cited above, [KI10/18](#), Applicant *Fahri Deqani*, cited above, paragraph 67).

92. First, there must exist a “reasonable suspicion” that the person deprived of liberty has committed the criminal offense (see ECHR case, [Merabishvili v. Georgia](#), cited above, paragraph 184). Secondly, the purpose of deprivation of liberty “*is that it should in principle be in the function of the conduct of criminal proceedings*” (see, case of the Court [KI63/17](#), Applicant *Lutfi Dervishi*, Resolution on Inadmissibility of 16 November 2017, paragraph 57, and [KI10/18](#), Applicant *Fahri Deqani*, cited above, paragraph 68; [KI85/22](#) Applicant *Jadran Kostić*, cited above, paragraph 68; see also the case of the ECtHR, [Ostendorf v. Germany](#), No. 15598/08, Judgment of 7 March 2013, paragraph 68), and moreover, it must be proportionate in the sense that it should be necessary “*to ensure the appearance of the person affected by the relevant competent authorities*” (see, case of the Court [KI63/17](#), Applicant *Lutfi Dervishi*, Resolution on Inadmissibility of 16 November 2017, paragraph 57, see also the abovementioned ECtHR case [Merabishvili v. Georgia](#), paragraph 185). Third, the deprivation of liberty or the detention on remand must have been done following the procedure prescribed by law (see abovementioned cases of the Court, [KI85/22](#) Applicant *Jadran Kostić*, cited above, paragraph 71; [KI10/18](#), Applicant *Fahri Deqani*, cited above, paragraph 68; see also the abovementioned ECtHR case [Merabishvili v. Georgia](#), paragraph 186).

### ***1.1. Application of the criteria regarding the detention on remand in the Applicant’s case***

93. In the light of the foregoing, the Court notes that the imposition of the detention on remand in question is based on Article 29.1.2 [Right to Liberty and Security] of the Constitution in conjunction with Article 5.1 (c) (Right to liberty and security) of the ECHR.

### ***2. General principles regarding the legality of imposing and extending the detention on remand***

94. Initially, the Court emphasizes that in the circumstances of the Applicant the subject of review are the decisions on extension of the detention on remand before the indictment is filed.
95. In this case, the Court refers to paragraph 4 of Article 29 [Right to Liberty and Security] of the Constitution, which establishes that: “*Everyone who is deprived of liberty by arrest or detention enjoys the right to use legal remedies to challenge the lawfulness of the arrest or detention. The case shall be speedily decided by a court and release shall be ordered if the arrest or detention is determined to be unlawful.*”
96. While paragraph 4 of Article 5 (Right to liberty and security) of the ECHR, determines that: “*Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*”
97. The fact that the Court has found no breach of the requirements of paragraph 1 of Article 5 does not mean that it is dispensed from carrying out a review of compliance with paragraph 4 of Article 5 (Right to liberty and security) of the ECHR (see ECtHR cases, [Douiye v. The Netherlands](#) no. 31464/96, Judgment of 4 August 1999, paragraph 57).



98. The ECtHR has emphasized that Article 5, paragraph 4 (Right to liberty and security) of the ECHR stipulates that every person arrested or detained has the right to request the court to examine the procedural and substantive requirements that are essential for the “legality” of the deprivation of his liberty, within the meaning of Article 5, paragraph 1 of the ECHR (see, among many precedents, [Idalov v. Russia](#), no. 5826/03, Judgment, of 22 May 2022, paragraph 161; [Reinprecht v. Austria](#), no. 67175/01, Judgment, of 15 November 2005, paragraph 31).
99. The notion of “lawfulness” under Article 5 paragraph 4 (Right to liberty and security) of the ECHR has the same meaning as in Article 5 paragraph 1, so that the arrested or detained person is entitled to a review of the “lawfulness” of his detention in the light not only of the requirements of domestic law, but also of the ECHR, the general principles embodied therein and the aim of the restrictions permitted by Article 5 paragraph 1 of ECHR (see the case of [Suso Musa v. Malta](#), no. 42337/12, Judgment of 23 July 2013, paragraph 50).
100. The ECtHR has specified that in order to fulfill the requirements of the ECHR, the review by the domestic court must be in compliance with both the substantive and procedural rules of the domestic legislation and be developed in accordance with the purpose of Article 5 of the ECHR, namely the protection of the individual from arbitrariness (see in this context case of [Koendjiharie v. The Netherlands](#), no. 11487/85, Judgment of 25 October 1990, paragraph 27).
101. In this regard, and in accordance with the principles developed by the ECtHR, the reasoning of the courts’ decision to extend detention pending trial should always be evident, namely a detailed and well-founded reasoning on the facts and circumstances of the case. In this context, the ECtHR has consistently emphasized that “*it is only by giving a reasoned decision that there can be public scrutiny of the administration of justice*” (See ECtHR cases: [Suominen v. Finland](#), no. 37801/97, Judgment of 1 July 2003, paragraph 37, [Tase v. Romania](#), no. 29761/02, Judgment of 10 June 2008, paragraph 41).

### ***2.1 Application of the abovementioned criteria in the Applicant’s circumstances***

102. In the following, based on the foregoing explanation of the main principles of the ECtHR case law, the Court will examine whether the Applicant has proved and sufficiently substantiated the allegations of a violation of the procedural guarantees set out in the Constitution and the ECHR in relation to the extension of his detention on remand.
103. Initially, the Court reiterates that the extension of the Applicant’s detention on remand is based on Article 29, paragraph 1, point (2) [Right to Liberty and Security] of the Constitution and Article 5 paragraph 3 (Right to liberty and security) of the ECHR.
104. The Court recalls that the Applicant alleges that the extension of his detention pending the indictment after the lapse of time limit of four (4) months is in contradiction with Article 29 [Right to Liberty and Security] of the Constitution, and paragraph 2 of Article 190 [Time limits of detention on remand] of CPCRK.
105. Therefore, as regards the allegation of the Applicant, the Decision [Pn1 no. 704/2022] of 31 May 2022, of the Court of Appeals in conjunction with the Decision [2022: 19820] of



17 May 2022 of the Basic Court, related to the extension of his detention were rendered in violation of Article 29 [Right to Liberty and Security] of the Constitution, the Court will first refer to the content of these two decisions and the fact whether the Basic Court and the Court of Appeals have addressed the Applicant's essential allegation raised before these two instances that the extension of his detention pending the indictment after the four (4) month period has passed is contrary to the provisions of the CPCRK, and consequently also contrary to Article 29 [Right to Liberty and Security] of the Constitution, in conjunction with Article 5 (Right to liberty and security) of the ECHR.

106. In the present case, the Court notes that based on the decision of the Basic Court, of 23 December 2021, the Applicant was imposed the detention on remand, which detention was extended twice by the Basic Court, namely by the Decision [2021:289260] of 20 January 2022, his detention was extended from 20 January to 20 March 2022, and by the Decision of [2022:009453] of 18 March 2022, his detention was extended from 18 March to 17 May 2022. From this, it follows that after more than four (4) months of his stay in detention, the Applicant, by the Decision [2022: 19820] of the Basic Court, of 17 May 2022, his detention was extended for another two (2) months, from 17 May 2022 until 15 July 2022. Based on the case file submitted to the Court, it turns out that his detention before the indictment was filed, was extended until 11 November 2022. If his detention before the indictment was filed was further extended, and whether or not the indictment was filed in the meantime and the Applicant continues to be in detention, the Court has not received information.
107. However, the Court will only limit itself to assessing the content of the Decisions of the Basic Court of 17 May 2022 for the extension of his detention, upheld by the Decision of the Court of Appeals, of 31 May 2022, which decisions are also the subject of review of the Applicant's referral.
108. The Court recalls that by the Decision [2022:19820] of 17 May 2022 of the Basic Court, the detention of the Applicant and other defendants was extended for another two (2) months, namely from 17 May 2022 to 15 July 2022, which decision was based on paragraph 1 of Article 191 [Extension on Detention on Remand] in conjunction with paragraph 1, sub paragraphs 1.1 and 1.2, items 1.2.1, 1.2 and 1.2.3 of Article 187 (Time Limits for Detention on Remand) of the CPCRK.
109. In the following, the Court also recalls that on an unspecified date, the Applicant filed an appeal against the Decision [2022: 19820] of the Basic Court, of 17 May 2022, with the Court of Appeals. In his appeal, the Applicant specified that in his case, since the offense for which there is a suspicion that he committed is punishable from 6 months to 5 years, based on paragraph 2 of Article 190 (Time Limits for Detention on Remand) of the CPCRK, the measure of detention before indictment if filed cannot last more than four (4) months.
110. On 31 May 2022, the Court of Appeals by Decision [PN1 no. 704/2022] rejected as ungrounded the Applicant's appeal and upheld the Decision [2022:19820] of the Basic Court of 17 May 2022.
111. Returning to the Applicant's allegation, the Court recalls that Article 190 (Time Limits for Detention on Remand) of the CPCRK stipulates that:

1. *The detainee may be held in detention on remand on the initial order under Article 188 of this Code for a maximum period of one (1) month from the day he or she was arrested. After that time period he or she may be held in detention on remand only under a ruling of the pretrial judge, single trial judge or presiding trial judge ordering an extension of detention on remand.*
2. *Prior to the filing of an indictment, detention on remand shall not exceed:*
  - 2.1 *four (4) months, if proceedings are conducted for a criminal offence punishable by imprisonment of less than five (5) years;*
  - 2.2 *eight (8) months, if proceedings are conducted for a criminal offence punishable by imprisonment of at least five (5) years;*
3. *In exceptional cases where proceedings are conducted for a criminal offence punishable by imprisonment of at least five (5) years, the case is complex as defined under Article 19 of this Code and the delay is not attributable to the state prosecutor, in addition to the prescribed periods of time provided for in paragraph 2 of this Article, detention on remand prior to the filing of an indictment may be extended by up to four (4) months for a maximum of twelve (12) months in total.*
4. *Upon a convincing and grounded cause to believe that public danger or a threat of violence exists upon the pretrial release of a defendant, an extension of the detention on remand under Paragraph 3 of this Article can be extended for another six (6) months for a maximum of eighteen (18) months in total.*
5. *If the indictment is not filed before the expiry of the prescribed periods of time provided for under paragraphs 2, 3 and 4 of the present Article, the detainee shall be released.*

112. In the light of this elaboration, the Court notes that the subject of review of this referral will not be the interpretation of Article 190 of the CPCRK to determine which of the paragraphs of Article 190 (Time Limits for Detention on Remand) of the CPCRK is applicable in the case of the Applicant, namely if his detention may last four (4) or more months, as established in paragraphs 2, 3 and 4 of this article. This is due to the fact that such an allegation, which is claimed to have been made by regular courts, is related to the scope of legality and as such, in principle, is not within the Court's jurisdiction (see, among others, Court cases: [KI85/22](#) Applicant *Jadran Kostic*, cited above, paragraph 90; [KI06/17](#) Applicant *L.G. and five others*, Resolution on Inadmissibility, of 25 October 2016, paragraph 36; [KI122/16](#), Applicant *Riza Dembogaj*, Judgment of 30 May 2018, paragraph 56; and [KI75/17](#), Applicant *X*, Resolution on Inadmissibility, of 6 December 2017).
113. Having said that, the Court considers that an assessment and review of the Applicant's allegation whether his detention is based on the law or not should be addressed and reviewed by the latter. Consequently, in terms of paragraph 4 of Article 29 [Right to Liberty and Security] of the Constitution and paragraph 4 of Article 5 (Right to liberty and security) of the ECHR, the Court will assess whether the failure to address such an allegation or request by the Court of Appeals has resulted in arbitrary conclusions for the Applicant.
114. Following this, the Court recalls the reasoning of the Court of Appeals, of 31 May 2022, which emphasized that from the evidence provided there was a reasonable suspicion that the Applicant committed the criminal offense, since *"on the basis of an agreement received the amount of € 80,000 from the investor [L.D.], to deliver it to [B.N.], and to provide the investor with six permits in agreement with the defendant [B.N.], and to cover the actions of the defendant [B.N.], to build houses in his name, but in fact these*

*are villas of [B.N.] in violation of the Law on Construction and the Law on “Sharri 2” National Park as well as the National Park “Sharri”.*

115. The Court of Appeals further specified that there was a legal basis for the extension of detention in accordance with Article 187 [Findings required for Detention on Remand], of the CPCRK, because if “*if the accused were at liberty, they could influence each other as accomplices or influence on several of them [who] are on the run, as well as the danger of influencing forty (40) witnesses.*” Further, the Court of Appeals assessed that the Basic Court had rightly concluded that there is a legal basis according to Article 187, paragraph 1, sub-paragraphs 1.1 and 1.2, item 1.2.3 [Findings required for Detention on Remand], of the CPCRK, taking into account the way the criminal offense was committed by the defendants by abusing their official position, namely by receiving or giving large sums of money in the form of bribes, which present a general risk for the repetition of the criminal offense.
116. In this regard, the Court notes that in relation to the extension of the Applicant’s detention, the Court of Appeals upheld the position of the Basic Court but did not address the specific and essential allegation of the Applicant, raised in his appeal before this court, namely the allegation that the extension of his detention was contrary to Article 190 [Time Limits for Detention on Remand] of the CPCRK.
117. Having said this, the Court assesses that the failure to address such an essential allegation of the Applicant, which refers to the request for the assessment of legality of the extension of his detention in the procedure before the indictment was filed with the Court of Appeals, is not in compliance with the principles and the standards established by the ECtHR and as such has resulted in arbitrary conclusions for the Applicant.
118. This conclusion of the Court is based on the principle of the ECtHR for the reasoning of the court decision in cases of extension of detention, which principle also serves the proper administration of justice, as one of the essential components of the rule of law.
119. Therefore, the Court assesses that the extension of the detention of the Applicant in the procedure before the indictment was filed, upheld by the challenged Decision of the Court of Appeals, constitutes a violation of paragraph 4 of Article 29 [Right to Liberty and Security] of the Constitution, in conjunction with paragraph 4 of Article 5 (Right to liberty and security) of the ECHR.

## ***II. Regarding the Applicant’s allegation in relation to Article 31 of the Constitution***

120. The Court notes that the Applicant also alleges a violation of Articles 30 and 31 of the Constitution. However, based on the Court’s finding that the failure to address the Applicant’s allegation, raised in his appeal before the Court of Appeals, resulted in a violation of paragraph 4 of Article 29 [Right to Liberty and Security] of the Constitution, in conjunction with paragraph 4 of Article 5 (Right to liberty and security) of the ECHR, it does not consider reasonable to continue with the review of the Applicant’s allegation of violation of Articles 30 [Rights of the Accused] and 31 [Right to Fair and Impartial Trial] of the Constitution.

## **Request for interim measure**

121. The Court recalls that the Applicant submitted before it the request for the imposition of an interim measure requesting the suspension of the measure of detention so that during the criminal proceedings against him, he can be defended in liberty.
122. The Court concluded above that the Applicant's referral is admissible. Therefore, in accordance with paragraph 1 of Article 27 (Interim Measures) of the Law and Rule 57 (Decision on Interim Measures) of the Rules of Procedure, the request for the imposition of an interim measure is without subject of review and is rejected as such.

## **Conclusion**

123. The Court, in relation to the Applicant's allegation of violation of Article 29 [Right to Liberty and Security] of the Constitution, in conjunction with Article 5 (Right to liberty and security) of the ECHR, found that the failure to address the essential allegation of the Applicant that the extension of his detention was in violation of Article 190 of the CPCRK, resulted in a violation of paragraph 4 of Article 29 of the Constitution, in conjunction with paragraph 4 of Article 5 of the ECHR.
124. The Court considered the fact that the Applicant's case is pending in a criminal procedure, and that the effect of this judgment extends only to the imposition and extension of his detention in the procedure before the indictment is filed, and that as such it is not valid or produces effects on other decisions related to the measure of detention, issued after the indictment was filed.
125. Therefore, it is understandable that this judgment cannot produce any effect regarding the extension of detention after the indictment is filed. However, the Court considers that it is very important that by this Judgment of the Constitutional Court, a standard in the case law in the Republic of Kosovo is established so that the regular courts act in accordance with the principles and standards elaborated in this Judgment, which are interpreted in accordance with the case law of the ECtHR.
126. In this context, the Court, by this Judgment, conveys in a clear and direct manner the request and the instruction that should serve to the regular courts, that in order to be in accordance with the constitutional requirements of Article 29 [Right to Liberty and Security] of the Constitution, and also with the requirements of Article 5 (Right to liberty and security) of the ECHR, as broadly interpreted by the ECtHR in its case law, their reasoning for extension of the detention pending trial must address and contain individualized reasoning and assessment of the defendants' essential allegations and that are related to the legality of imposition and extension of their detention.
127. The Court further clarifies that it has no legal authorization to assign any type or method of compensation for cases where it finds a violation of the respective constitutional provisions, in the present case of Article 29 [Right to Liberty and Security] of the Constitution (see also the cases of the Constitutional Court [KI85/22](#) Applicant *Jadran Kostic*, cited above, paragraph 104; and [KI10/18](#), *Fahri Deqani*, cited above, paragraph 119).
128. In this regard, the Court refers to paragraph 5 of Article 29 [Right to Liberty and Security] of the Constitution, which stipulates that: *"Everyone who has been detained or arrested*

*in contradiction with the provisions of this article has a right to compensation in a manner provided by law”, whereas paragraph 5 of Article 5 of the ECHR establishes that: “Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation”.*

129. In the light of the reasons highlighted above, the Court notes that the Applicant enjoys the right for the period of extension of his detention against him after the challenged Decision of the Basic Court, of 17 May 2022 was rendered, until the filing of the indictment against him, to request compensation from the public authorities based on the applicable legal provisions.

### **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and in accordance with Rules 57 (4) and 59 (1) of the Rules of Procedure, in its session held on 23 May 2023, unanimously:

### **DECIDES**

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that the Decision [Pn1. No. 704/2022] of the Court of Appeals of Kosovo of 31 May 2022 is not in compliance with paragraph 4 of Article 29 [Right to Liberty and Security] of the Constitution in conjunction with paragraph 4 of Article 5 (Right to liberty and security) of the European Convention on Human Rights;
- III. TO REJECT the request for interim measure;
- IV. TO NOTIFY this Judgment to the Parties and in accordance with Article 20.4 of the Law to publish it in the Official Gazette.
- V. This Judgment is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Bajram Ljatifi

Gresa Caka-Nimani

***This translation is unofficial and serves for informational purposes only.***