



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

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Prishtina, on 15 August 2023  
Ref. no.: AGJ 2244/23

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

## **JUDGMENT**

in

**case no. KI129/22**

Applicant

**Saša Milosavljević**

**Constitutional review of  
Decision 2022:19820 of the Basic Court in Ferizaj of 12 August 2022 and  
Decision PN1 no. 1109/2022 of the Court of Appeals of Kosovo of 5 September 2022**

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

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërxhaliu-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 Saša Milosavljević, from Shterpce (hereinafter: the Applicant), represented by Nebojša Vlajić, a lawyer from Mitrovica.

## **Challenged decision**

2. The Applicant challenges the Decision [2022:19820] of the Basic Court in Ferizaj (hereinafter: the Basic Court) of 12 August 2022 in conjunction with the Decision [Pn1 no. 1109/2022] of the Court of Appeals (hereinafter: the Court of Appeals) of 5 September 2022.

## **Subject matter**

3. The subject matter of this Referral is the constitutional review of the challenged decision, 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 Article 5 (Right to liberty and security) and Article 6 (Right to a fair trial) of the European Convention of Human Rights (hereinafter: the ECHR) have been violated.
4. In addition, the Applicant also requests the Court to impose an interim measure, in relation to the challenged decision, in such a way as to annul the decision of the Basic Court, which imposed the detention on the Applicant.

## **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), 27 (Interim Measures) and 47 (Individual Requests) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 25 (Filing of Referrals and Replies) and Rule 44 (Request for Interim Measures) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).
6. On 7 July 2023, the Rules of Procedure of the Constitutional Court of the Republic of Kosovo no. 01/2023, was published in the Official Gazette of the Republic of Kosovo and entered into force 15 days after its publication. Therefore, when considering the referral, the Constitutional Court refers to the provisions of the abovementioned Rules of Procedure. In this regard, in accordance with Rule 78 (Transitional Provisions) of the Rules of Procedure no. 01/2023, exceptionally certain provisions of the Rules of Procedure no. 01/2018, continue to be applied to cases that were registered in the Court before its repeal, only if and to the extent they are more favorable for the parties.

## **Proceedings before the Constitutional Court**

7. On 30 August 2022, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
8. On 5 September 2022, the President of the Court by Decision [GJR. KI129/22] appointed Judge Selvetu Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Remzije Istrefi-Peci (members).

9. On 7 September 2022, the Court notified the Applicant about the registration of the Referral and requested him to submit to the Court the power of attorney. On the same date, a copy of the Referral was sent to the Basic Court and the Court of Appeals.
10. The Court notes that in view of the connection between cases KI55/22, KI85/22 and KI129/22, namely the fact that it is about the same case, the Court in case KI85/22, on 27 July 2022, requested the Basic Court to submit the complete case file to the Court. After that, the Basic Court notified the Court that the complete case file is in the Court of Appeals. Therefore, the Court requested the Court of Appeals to submit the complete case file to the Court. The Court of Appeals replied to the Court that the complete case file was returned to the Basic Court. The Court again requested the Basic Court to submit the complete case file to the Court. The Basic Court submitted the complete case file to the Court. After that, the Court returned the complete case file to the Basic Court.
11. On 14 September 2022, the Applicant submitted the power of attorney to the Court.
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 and referrals in cases KI55/22, KI85/22 and KI 129/22 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 please inform the Court, as far as possible, 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 25 July 2023, the reporting judge made a recommendation to the court about the inadmissibility of the request, the review panel did not accept the report of the reporting judge and the case was returned for reconsideration.
16. On 28 July 2023, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.
17. In accordance with Rule 57 (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) initiated investigations against the Applicant and other persons related to the grounded suspicion for participating and assisting the commission of criminal offenses during the illegal issuance of construction permits in the National Park "Sharri".
19. On 24 November 2021, the Basic Prosecutor's Office rendered a Decision on expanding investigations against the Applicant and 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 committed the criminal offense of abusing official position or authority under Article 422, paragraph 1 in conjunction with Article 31, accepting bribes under Article 428, paragraph 2, trading in influence under Article 431, paragraph 1 and unauthorized ownership, control or possession of weapons under Article 366, paragraph 1 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 request [KT.I. no. 138/21] requested the Basic Court that detention on remand be imposed on the Applicant and the other defendants.
21. On 23 December 2021, the Basic Court in Ferizaj, Department for Serious Crimes (hereinafter: the Basic Court) by the Decision [2021:289261] imposed the measure of detention against the Applicant and other defendants in duration of one (1) month.
22. On an unspecified date, against the decision [2021:289260] of the Basic Court in Ferizaj of 23 December 2021, the Applicant and the other defendants submitted an appeal to the Court of Appeals, alleging essential violations of the provisions of the criminal procedure, erroneous application of substantive law and erroneous and incomplete determination of factual situation, with a proposal that the Court of Appeals modifies the challenged decision and impose a more lenient measure on the defendant from Article 173 [Authorized Measures to Ensure Presence of Defendant] of the CPCRK or to remand the case for reconsideration.
23. On 11 January 2022, the Court of Appeals by the Decision [PN1 no. 1549/2021] rejected the appeal of the Applicant and upheld in entirety the decision [2021:289260] of the Basic Court in Ferizaj of 23.12.2021.

### *Court proceedings for extension of detention on remand*

24. On 20 January 2022, the Basic Court in Ferizaj by Decision [2021:289260] extended the measure of detention for a duration of two (2) months against the Applicant and other defendants, namely in duration from 20 January 2022 until 20 March 2022.
25. On an unspecified date, the Applicant submitted an appeal to the Court of Appeals against the decision [2021:289260] of the Basic Court in Ferizaj of 20 January 2022.
26. On 2 February 2022, the Court of Appeals by the decision [PN1 no. 138/2021] dismissed the appeal of the Applicant and upheld in entirety the decision [2021:289260] of the Basic Court in Ferizaj of 20 January 2022.

27. On 18 March 2022, the Basic Court in Ferizaj by decision [2022:009453] extended the measure of detention against the Applicant for a duration of two (2) months, namely in duration from 18 March 2022 to 17 May 2022.
28. On 13 May 2022, the Basic Prosecutor's Office by the request [P. P. I. no. 138/20] requested the Basic Court for the extension of detention against the Applicant and the other defendants.
29. On 17 May 2022, the Basic Court in Ferizaj by Decision [2022:19820] extended the measure of detention for a duration of two months against the Applicant namely from 17 May 2022 to 15 July 2022.
30. In the reasoning of the Decision of the Basic Court, of 17 May 2022, it was emphasized that the extension of the measure of detention is based on Article 191 (Extension of detention on remand) paragraph 1 in conjunction with Article 187 (Findings Required for Detention on Remand), paragraph 1, sub-paragraphs 1.1 and 1.2, items 1.2.1, 1.2.2 and 1.2.3 of Criminal Procedure Code No. 04/L-123 of the Republic of Kosovo (hereinafter: CPCRK) as there was a risk of escape; concealment and disposal of evidence; the impact on the course of the criminal procedure and the risk of repeating the criminal offense.
31. On an unspecified date, the Applicant filed an appeal against the Decision [2022: 19820] of the Basic Court in Ferizaj, of 17 May 2022, with the Court of Appeals.
32. On 31 May 2022, the Court of Appeals by the decision [PN1 no. 704/2022] rejected the appeal of the Applicant and upheld in entirety the decision [2022:019820] of the Basic Court in Ferizaj of 17 May 2022.
33. On 15 July 2022, the Basic Court in Ferizaj by Decision [2022:019280] extended the detention on remand of the Applicant for another two (2) months, namely from 15 July 2022 to 15 September 2022.
34. On an unspecified date, against the decision [2022:19820] of the Basic Court in Ferizaj of 15 July 2022, the Applicant and the other defendants filed an appeal with the Court of Appeals regarding the extension of the detention measure. In his appeal, the Applicant alleged erroneous application of the Criminal Code, erroneous and incomplete determination of factual situation and erroneous application of the law on criminal procedure, requesting for a more lenient measure.
35. On 25 July 2022, the Appellate Prosecutor's Office of Kosovo by letter [PAR/I. no. 912/22] proposed to the Court of Appeals to reject, as ungrounded, the appeal of the Applicant and the other defendants and requested that the decision [2022:019280] of the Basic Court of 15 July 2022 be upheld.
36. On 29 July 2022, the Court of Appeals by the decision [PN1 no. 958/2022] approved the appeal of the Applicant and the other defendants and annulled the decision [2022:019820] of the Basic Court of 15 July 2022, remanding the case to the same court for retrial.

37. In the reasoning of the abovementioned decision, the Court of Appeals assessed that the Basic Court did not provide sufficient reasons for the extension of the detention measure in terms of paragraph 3 of Article 190 of the CPCRK. In this regard, the Court of Appeals stated that the prosecutor's proposal for the extension of detention did not specify the investigative actions that were taken in the period of two (2) months, what stage the examination of evidence or the hearing of witnesses had reached. In addition, the Court of Appeals found that the abovementioned decision of the Basic Court did not respond to the allegations of the defense and that it was not explained in what way the defendants, considering that the names of the witnesses are not known, could influence them.
38. On 12 August 2022, the Basic Prosecutor's Office by submission [PP/I. no. 138/20] notified the Basic Court about the investigative actions taken, attaching the copies of the obtained evidence.
39. On 12 August 2022, the Basic Court in Ferizaj in the repeated procedure by decision [2020:019820] extended the measure of detention to the Applicant for 30 (thirty) days, namely from 12 August 2022 until 13 September 2022.
40. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against decision [2022:019280] of the Basic Court of 12 August 2022.
41. On 2 September 2022, the Basic Prosecutor's Office by request [PPI. no. 138/20] requested an extension of the investigation deadline against the defendants for another 6 (six) months in accordance with paragraph 2 of Article 159 [Time Limits of Investigation] of the CPCRK.
42. 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.
43. In the reasoning of its decision, the Court of Appeals emphasized that based on the submitted evidence, there is reasonable suspicion that the Applicant committed a criminal offense of accepting bribes for issuance of construction permits in contradiction with the Law on Construction and the Law on the National Park „Sharri 2“, as well as the national park „Sharri“.
44. The Court of Appeals further stated that there is a legal basis for the extension of detention on remand in accordance with Article 187 of the CPCRK because 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 on [...] forty (40) witnesses". Furthermore, the Court of Appeals assessed that the Basic Court correctly determined that there is a legal basis according to Article 187, paragraph 1, sub-paragraphs 1.1 and 1.2, item 1.2.3 of the CPCRK, taking into account the manner in which the defendants committed the criminal offense by abusing their official position, namely, by receiving and giving larger amounts of money in the form of bribes, which represents a general danger of repeating the criminal offence.
45. On 9 September 2022, the Basic Court by decision [2022:019820] approved the request of the Basic Prosecutor's Office to extend the investigation for a period of 6 (six) months.

46. On 9 September 2022, the Basic Prosecutor's Office by submission [PP/I. no. 138/20] filed with the Basic Court a proposal against the Applicant for the extension of the measure of detention for a duration of two (2) months.
47. 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.
48. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against the decision [2022:019280] of the Basic Court of 13 September 2022.
49. On 5 October 2022, the Court of Appeals by the decision [PN1. no. 1235/2022], rejected the appeal of the Applicant and other defendants and upheld the decision [2022:019280] of the Basic Court of 13 September 2022.

*Request for protection of legality submitted to the Supreme Court*

50. Based on the response of the Supreme Court submitted to the Court, on 3 April 2023, it results that the Applicant submitted a request for protection of legality to the Supreme Court against the decisions challenged by his referral to the Court, namely against the Decision [2022:019820] of 13 September 2022 and the Decision [PN1. no. 1235/2020] of the Court of Appeals, of 5 October 2022.
51. On 6 December 2022, the Supreme Court by the Decision [Pml. no. 476/2022] dismissed the Applicant's request for protection of legality as lacking the subject matter.
52. The Supreme Court concluded that the request lacks the subject matter on the grounds that: *“Considering the fact that the decision extending the defendant's detention was valid until 11.11.2022, it follows that the deadline for the latter has expired, therefore, this court considers that the request cannot be a subject for consideration and that as such it lacks the subject matter, because despite the alleged violations in the request, the defendant was held in detention for the time that was extended by the challenged decision, which deadline has expired. From what was presented above and within the meaning of Article 435 par. 2 of the CPCRK, it was decided as in the enacting clause of this decision”*.

**Applicant's allegations**

53. The Court recalls that the Applicant alleges violation of constitutional rights and freedoms guaranteed by 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 and 6 of the ECHR.
54. The Applicant claims that in his case the maximum length of the court detention prescribed by law was exceeded.
55. The Applicant in terms of the aforementioned, emphasizes that he:

*“[...] is charged [...] with an offense punishable by a prison sentence of over 5 years. This means that, according to him, the detention can last a maximum of 8 months. Every day of the extension of detention from 21.08.2022 onwards is unlawful. The first and second*

*instance courts did not pay attention to the appeals of the lawyers, so the impression is that the detention is extremely arbitrary, because as you will see from the reasoning of the decisions, the response to the appeals we submitted was not given. Instead, previous decisions are copied without making any sense. Therefore, this detention can be considered arbitrary”.*

56. The Applicant reasons the justification of his request by citing the Criminal Procedure Code, specifically Article 190, paragraph 2, point 2, stating that, *“The first and second instance courts did not pay attention to the appeals of the lawyers, so one gets the impression that the detention is extremely arbitrary, because as you will see from the reasoning of the decisions, the response to the appeals we submitted was not given. Instead, previous decisions are copied without making any sense. Therefore, this detention should be considered arbitrary.”*
57. The Applicant also states that during this procedure before the regular courts, his rights guaranteed by the Constitution were grossly violated, claiming that:
- “[...] the Constitution of Kosovo has been violated in Articles 29, 30 and 31 in terms of violations of the right to a trial within a reasonable time and unlawful deprivation of liberty, as well as the European Convention on Human Rights in Articles 5 and 6”.*
58. The Applicant requests the Court to: (i) approve his referral as admissible; (ii) to annul decision 2022:019820 of 12 August 2022 and Decision PN1 no. 1109/2022 of the Court of Appeals of Kosovo of 5 September 2022 and to allow the Applicant to defend himself in liberty; (iii) hold that there has been a violation of Article 31 of the Constitution and (iv) to approve the imposition of an interim measure.
59. The Applicant, also submitted a request for protection of legality to the Supreme Court, which by the decision [Pml. no. 476/2022] dismissed that request as lacking the subject matter. The Court recalls that the Applicant before the Court does not challenge the decision [Pml. no. 476/2022] of the Supreme Court of 6 December 2022.

### ***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.*



[...]

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 31** **[Right to Fair and Impartial Trial]**

1. *Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

2. *Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

3. *Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.*

4. *Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.*

5. *Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.*

6. *Free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice.*

7. *Judicial proceedings involving minors shall be regulated by law respecting special rules and procedures for juveniles.*

## **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;*

[...]

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;*

[...]

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.”*

[...]

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

[...]

**Article 366**  
**Destroying, damaging or removing public installations**

1. *Whoever destroys, damages or removes installations or equipment for electricity, gas, water, heating, communications, sewage, environmental protection, pipelines, underwater cables, dams or other similar equipment and in this way causes a disturbance to the supply of services to the population or to the economy shall be punished by imprisonment of up to five (5) years.*

[...]

**Article 422**  
**Abusing official position or authority**

1. *An official person, who, by taking advantage of his office or official authority, exceeds the limits of his or her authorizations or does not execute his or her official duties with the intent to acquire any benefit for himself or another person or to cause damage to another person or to seriously violates the rights of another person, shall be punished by imprisonment of six (6) months to five (5) years.*

[...]

**Article 428**  
**Accepting bribes**

[...]

2. *An official person who requests or receives, directly or indirectly, any undue gift or advantage, for himself or herself or for another person, or accepts an offer or promise of such gift or advantage, so that the official person acts or refrains from acting, in violation of his or her official duties, shall be punished by fine and imprisonment of three (3) to twelve (12) years.*

[...]

**Article 431**  
**Trading in influence**

[...]

2. *Whoever promises, offers or gives, directly or indirectly, any undue gift or advantage to another person, for himself or herself or another person, in order that this person exert an improper influence over the decision making of an official person or foreign public official, whether or not the influence is exerted or not and whether or not the supposed influence leads to the intended result, shall be punished by a fine or by imprisonment of up to five (5) years.*

[...]

[...]

**Article 366**  
**Unauthorised ownership, control or possession of weapons**

1. *Whoever owns controls or possesses a weapon in violation of the applicable law relating to such weapon shall be punished by a fine of up to seven thousand and five hundred (7,500) EUR or by imprisonment of up to five (5) years.*

**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.*

[...]

**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.*

**C. Request for Protection of Legality**

**Article 432**  
**Grounds for filing a request for protection of legality**

- 1. A request for protection of legality against a final judicial decision or against judicial proceedings which preceded the rendering of that decision may, after the proceedings have been completed in a final form, be filed in the following instances:*
  - 1.1. on the ground of a violation of the criminal law;*
  - 1.2. on the ground of a substantial violation of the provisions of criminal procedure provided for in Article 384, paragraph 1, of the present Code; or*
  - 1.3. on the ground of another violation of the provisions of criminal procedure if such violation affected the lawfulness of a judicial decision.*
- 2. A request for protection of legality may not be filed on the ground of an erroneous or incomplete determination of the factual situation, nor against a decision of the Supreme Court of Kosovo in which a request for the protection of legality was decided upon.*
- 3. Notwithstanding the provisions under paragraph 1 of the present Article, the Chief State Prosecutor may file a request for protection of legality on the grounds of any violation of law.*
- 4. Notwithstanding the provisions under paragraph 1 of the present Article, a request for protection of legality may be filed during criminal proceedings which have not*

*been completed in a final form only against final decisions ordering or extending detention on remand.*

[...]

#### **Article 434**

##### **Filing the request for protection of legality at the basic court**

- 1. A request for protection of legality shall be filed with the Basic Court which rendered the decision.*
- 2. The competent pretrial judge, single trial judge or presiding trial judge of the Basic Court shall dismiss a request for protection of legality by a ruling if:*
  - 2.1. the request was filed against a decision of the Supreme Court of Kosovo under Article 432, paragraph 2, of the present Code, except in cases referred to in Article 433 paragraph 4 of the present Code;*
  - 2.2. the request was filed by a person not entitled thereto under Article 433, paragraph 1, of the present Code; or*
  - 2.3. the request is belated under Article 433 paragraph 2 of the present Code.*

#### **Article 435**

##### **Consideration of Request for Protection of Legality by Panel of Supreme Court**

- 1. A request for protection of legality shall be considered by the Supreme Court of Kosovo in a session of the panel.*
- 2. The Supreme Court of Kosovo shall dismiss a request for protection of legality by a ruling if the request is prohibited or belated under Article 434, paragraph 2, of the present Code, otherwise it shall send a copy of the request to the opposing party who may reply thereto within fifteen (15) days of receipt of the request.*
- 3. Before a decision is taken on the request, the reporting judge may, if necessary, provide a report on the alleged violations of law.*
- 4. Depending on the content of the request, the Supreme Court of Kosovo may order that the enforcement of the final judicial decision be postponed or terminated.*

#### **Article 436**

##### **Benefits of the defendant regarding the request for protection of legality**

*When deciding on a request for protection of legality the Supreme Court of Kosovo shall confine itself to examining those violations of law which the requesting party alleges in his or her request [...]*

#### **Admissibility of the Referral**

60. The Court first examines whether the admissibility requirements established in the Constitution and further specified in the Law and in the Rules of Procedure have been met.
61. 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.”*

62. 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 the Basic Court of 12 August 2022 in conjunction with the Decision [Pn1 no. 1109/2022] of the Court of Appeals of Kosovo of 5 September 2022.
63. The Court also examines whether the Applicant has fulfilled the requirement of exhaustion of legal remedies, as provided by paragraph 7 of Article 113 of the Constitution, paragraph 2 of Article 47 of the Law and item (b) of paragraph (1) of Rule 34 (Admissibility Criteria) of the Rules of Procedure.
64. The Court refers to Article 47 (Individual Requests) of the Law and item (b) of paragraph (1) of Rule 34 of the Rules of Procedure, 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”.*

Rule 34  
(Admissibility Criteria)

*“1. The Court may consider a referral as admissible if:*

*[...]*

*(b) All effective remedies foreseen by law against the challenged act have been exhausted.”*

65. The Court first recalls that the rule for the exhaustion of legal remedies according to Article 113.7 of the Constitution, Article 47 of the Law and Rule 34 (1) (b) of the Rules of Procedure obliges those who wish to present their case before the Constitutional Court that they must first use the effective legal remedies available in accordance with the law, against a challenged judgment or decision.
66. Before the Court proceeds with the assessment of the criterion of exhaustion of legal remedies, the Court recalls that the circumstances of the present case are related to the procedure of imposition and extension of the measure of detention before the indictment is filed, against the Applicant and other defendants in this case, of which the Court has already decided in two cases KI55/22 and KI85/22. As stated in the factual chronology of the proceedings, the Court recalls that the Applicant was imposed detention on remand on 23 December 2021, which detention was extended four more times by the Basic Court,

by decision [2021:289260] of 20 January 2022, whereby it was extended from 20 January to 20 March 2022, by decision [2022:009453] of 18 March 2022, whereby it was extended from 18 March to 17 May 2022, by decision [2022:19820 ] of the Basic Court of 17 May 2022, whereby the Applicant's detention was extended from 17 May to 15 July and by decision [PN1 no. 704/2022] of the Court of Appeals of Kosovo from 31 May 2022, as well as the decision [2022:19820] of the Basic Court of 12 August 2022, whereby the Applicant's detention was extended from 12 August to 13 September and the decision [PN1 no. 1109/2022] of the Court of Appeals of Kosovo of 5 September 2022, which upheld the decision of the Basic Court of 12 August 2022.

67. However, the Court stresses that the Applicant before the Court as the last decision of the public authority challenges the Decision [2022:019820] of 12 August 2022 in conjunction with Decision [Pn1 no. 1109/2022] of the Court of Appeals of 5 September 2022, for which decision he alleges that the extension of detention after the expiration of the eight (8) months is contrary to Article 29, 30 and 31 of the Constitution, as well as Article 190 of the CPCRK and that the courts did not pay attention to the submissions of the Applicant because in their decisions they did not respond to the allegations and arguments of the Applicant.
68. Furthermore, the Court recalls that the Applicant had already raised this allegation in three court instances, which, in the procedure of extending the detention measure before the indictment was filed, did not answer whether the imposition of detention after the expiration of the period of eight (8) months was in accordance with or contrary to the provisions of the criminal procedure, namely Article 190 of the CPCRK. Therefore, the Court considers that in the Applicant's circumstances the criterion of exhaustion of legal remedies has been met and will further proceed to consider whether other admissibility criteria of his referral before the Court have been met.
69. The Court also finds that the Applicant's referral meets the admissibility criteria established in paragraph (1) of Rule 39 (Admissibility Criteria) of the Rules of Procedure. The latter cannot be declared inadmissible on the basis of the requirements established in paragraph (3) of Rule 39 of the Rules of Procedure.
70. In addition and finally, the Court assesses that this referral is not manifestly ill-founded as established in paragraph (2) of Rule 39 of the Rules of Procedure and therefore, it should be declared admissible and its merits examined.

### **Merits of the Referral**

71. The Court first recalls that the subject of constitutional review are the court decisions, namely Decision [2022:019820] of 12 August 2022 in conjunction with Decision [PN1. no. 1109/2020] of the Court of Appeals of 5 September 2022. By the Decision of the Basic Court the Applicant, who was in detention on remand for eight (8) months, his detention was extended for another two months, namely from 13 September to 11 November 2022. This Decision of the Basic Court was upheld also by the Decision of the Court of Appeals of 5 September 2022. In this regard, 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.
72. 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 since in his case there is a grounded suspicion that he committed the criminal offense of “*abusing official position or authority under Article 422, paragraph 1 in conjunction with Article 31, accepting bribes under Article 428, paragraph 2, trading in influence under Article 431, paragraph 1 and unauthorized ownership, control or possession of weapons under Article 366, paragraph 1 of of the CPCRK*” and that for these criminal offences the most severe sentence is imprisonment from 3 to 12 years, according to him, based on paragraph 2 of Article 190 of the CPCCK, his detention cannot last longer than eight (8) months and that the regular courts did not give any reasoning to this Applicant’s allegation, although the Applicant constantly stressed it. Following the above, the Court notes that the Applicant challenges the legality of the extension of his detention pending the filing of an indictment.

73. 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.

74. Therefore, in relation to the allegations of violation of Article 29 of the Constitution in conjunction with Article 5 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 principles and criteria defined regarding the imposition of detention**

75. 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, paragraph 1, of the Constitution in conjunction with Article 5 of the ECHR.

76. The Court first recalls Article 29, paragraph 1, item 2, 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;*

*[...].”*

77. Secondly, the Court also refers to Article 5. 1 (c) 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;*

78. The Court notes that under Article 29 paragraph 1, item 2 of the Constitution and Article 5.1 (c) 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 escaping after its commission (see case of the Court, KI10/18, Applicant *Fahri Deqani*, Judgment, of 8 October 2019, paragraph 65).
79. 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 of the Constitution in conjunction with Article 5, paragraph 1 (c) of the Convention.
80. 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*, [GC] application No. 72508/13, Judgment of 28 November 2017, paragraph 183, see case of the Court, KI10/18, Applicant *Fahri Deqani*, cited above, paragraph 67).
81. First, there must exist a “reasonable suspicion” that the person deprived of liberty has committed the criminal offense (see ECHR case, *Merabishvili v. Georgia*, [GC] application No. 72508/13, Judgment of 28 November 2017, 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; 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 case of the Court, KI10/18, Applicant *Fahri Deqani*, 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***

82. 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 of the Constitution in conjunction with Article 5.1 (c) of the ECHR.

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

83. 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.
84. In this case, the Court refers to paragraph 4 of Article 29 of the Constitution, which determines 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.”*
85. Paragraph 4 of Article 5 of the ECHR, also establishes 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.”*
86. 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 of the ECHR (see ECtHR cases, *Douiyebe v. The Netherlands* [GC], application no. 31464/96, Judgment of 4 August 1999, paragraph 57).
87. The ECtHR has emphasized that Article 5, paragraph 4 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* [GC], application no. 5826/03, Judgment, of 22 May 2022, paragraph 161; *Reinprecht v. Austria*, application no. 67175/01, Judgment, of 15 November 2005, paragraph 31).
88. The notion of “lawfulness” under Article 5 paragraph 4 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*, application no. 42337/12, Judgment of 23 July 2013, paragraph 50).
89. 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 *Koendjibiharie v. the Netherlands*, application no. 11487/85, Judgment of 25 October 1990, paragraph 27).
90. 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*, application no. 37801/97, Judgment of 1 July

2003, paragraph 37, *Tase v. Romania*, application no. 29761/02, Judgment of 10 June 2008, paragraph 41).

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

91. 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 established in the Constitution and the ECHR in relation to the extension of his detention.
92. Initially, the Court reiterates that the extension of the Applicant's detention on remand is based on Article 29 paragraph 1 item (2) of the Constitution, and Article 5 paragraph 3 of the ECHR.
93. The Court recalls that the Applicant claims that the extension of his detention pending the indictment after the expiry of the deadline of eight (8) months is in violation of Article 29 [Right to Liberty and Security] of the Constitution, as well as paragraph 2 of Article 190 of the CPCRK and that the regular courts did not give any reasoning to this Applicant's allegation, even though it was one of the main allegations of the Applicant in his submissions.
94. Therefore, as regards the allegation of the Applicant that the Decision [2022: 19820] of the Basic Court of 12 August 2022 in conjunction with Decision [Pn1 no. 1109/2022] of 5 September 2022, related to the extension of his detention were rendered in violation of Article 29 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 eight (8) month period has passed is contrary to the provisions of the CPCRK, and consequently also contrary to Article 29 of the Constitution, in conjunction with Article 5 of the ECHR.
95. 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 four times by the Basic Court, namely by the Decision [2021:289260] of 20 January 2022, whereby 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 as well as by Decision [2022:19820] of the Basic Court of 12 August 2022, which extended the Applicant's detention from 12 August to 13 September 2022. From this, it follows that after more than eight (8) months of his detention, the Applicant, by the Decision [2022: 19820] of the Basic Court, of 12 August 2022, his detention was extended from 12 August to 13 September. 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 about that.
96. However, the Court will only limit itself to assessing the content of the Decisions of the Basic Court of 12 August 2022 for the extension of his detention, upheld by the Decision of the Court of Appeals, of 5 September 2022, which decisions are also the subject of review of the Applicant's referral.

97. The Court recalls that by the Decision [2022:19820] of the Basic Court of 12 August 2022, the Applicant's detention was extended for one (1) month, namely from 12 August to 13 September 2022, which is based on paragraph 1 of Article 191 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 of the CPCRK.
98. 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 12 August 2022, with the Court of Appeals. In his appeal, the Applicant specified that in his case there is no sufficient evidence that he committed the criminal offense which he is charged with, as a main requirement for extension of detention in his case. The Applicant also claims that the reasoning of the regular courts is not adequate because the regular courts did not give any reasoning to his allegations regarding the applicability of Article 190 of the CPCRK.
99. On 5 September 2022, the Court of Appeals by the Decision [PN1. no. 1109/2022], rejected as ungrounded the appeal of the Applicant and upheld the decision [2022:019280] of the Basic Court of 12 August 2022.
100. Returning to the Applicant's allegation, the Court recalls that Article 190 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.*
101. 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 of the CPCRK is applicable in the case of the Applicant, namely if his detention may last eight (8) or more months, as established in paragraphs 2, 3 and 4 of this article. This is due to the fact that such an allegation, that a procedural error 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: 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).

102. In this regard, 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 of the Constitution and paragraph 4 of Article 5 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.
103. Following this, the Court recalls the reasoning of the Court of Appeals, of 5 September 2022, which emphasized that from the evidence provided there was a reasonable suspicion that the Applicant committed the criminal offense of accepting bribes for issuing construction permits in violation of the Law on Construction and the Law on "Sharri 2" National Park as well as the National Park "Sharri".
104. The Court of Appeals further specified that there is a legal basis for the extension of detention in accordance with Article 187 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 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 presents a general risk for the repetition of the criminal offense.
105. 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 the CPCRK.
106. Following the above, 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 his detention in the procedure pending the indictment which was filed with the Court of Appeals, is not in accordance with the principles and the standards established by the ECtHR and as such has resulted in arbitrary conclusions for the Applicant.
107. This finding of the Court is based on the principle of the ECtHR on the reasoning of the court's 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.
108. 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 Judgment of the Court of Appeals, constitutes a violation of paragraph 4 of Article 29 of the Constitution, in conjunction with paragraph 4 of Article 5 of the ECHR.

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

109. 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 of the Constitution, in conjunction with paragraph 4 of Article 5 of the ECHR, the Court does not consider it reasonable to continue with the review of the Applicant's allegation of violation of Articles 30 and 31 of the Constitution.

### **Request for interim measure**

110. 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.
111. 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**

112. 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.
113. The Court takes into account 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.
114. 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.
115. 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 of the Constitution, and also with the requirements of Article 5 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 that are related to the legality of imposition and extension of their detention.

116. The Court further clarifies that there is 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 of the Constitution (see also the case of the Constitutional Court in case KI10/18, Applicant *Fahri Deqani*, cited above, paragraph 119).
117. In this regard, the Court refers to paragraph 5 of Article 29 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”*.
118. 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 after the challenged Decision of the Basic Court of 12 August 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 45 (4) and 48 (1) of the Rules of Procedure, in its session held on 28 July 2023:

### **DECIDES**

- I. TO DECLARE, unanimously, the Referral admissible;
- II. TO HOLD , unanimously, that Decision PN1. no. 1109/2022 of the Court of Appeals of Kosovo of 5 September 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, with seven (7) votes for and one (1) against, the request for interim measure;
- IV. TO HOLD that this Judgment is effective on the date of its publication in the Official Gazette in accordance with paragraph 5 of Article 20 of the Law.
- V. This Judgment is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Selvete Gërxhaliu-Krasniqi

Gresa Caka-Nimani

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