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

Prishtina, on 15 August 2023
Ref. no.: MK 2245/23

CONCURRING OPINION

of Judge

RADOMIR LABAN

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

Expressing from the beginning my respect and agreement with the opinion of the majority of judges that 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 are 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 (hereinafter: ECHR). I as a judge of the Constitutional Court, consider that there has been a violation of the constitutionally guaranteed human rights committed against the Applicant and which refers to the violation of the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 [Right to a fair trial] of the ECHR, which I will try to reason below.

As a judge, I agree with the factual situation as stated and presented in the judgment and I accept the same factual situation as correct. I also agree with the way in which the Applicant's allegations were stated and presented in the judgment, except for the allegations of violation of Article 31 of the Constitution. However, I partially disagree with the legal analysis presented in the judgment as well as with the enacting clause of the judgment.

Due to the above, and in accordance with Rule 57 of the Rules of Procedure of the Constitutional Court, I will present my concurring opinion in writing. In order to follow the reasoning of my concurring opinion as easily and clearly as possible, I will explain **(I)** Regarding the Applicant's allegations of violation of the rights guaranteed by 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 allegations of violation of the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 [Right to a fair trial] of the ECHR; **(III)** Regarding the request for interim measure; **(IV)** Conclusion regarding alleged violations of the Applicant's rights.

(I) Regarding the Applicant's allegations of violation of guaranteed rights from 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

1. Regarding these allegations, I partly agree with the opinion of the majority and consider that 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 are 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 ECHR.

2. I fully agree with the legal analysis of majority of the judges of this Court, the fundamental principles and the conclusion that the challenged decision violated the Applicant's rights under Article 29 of the Constitution and Article 5 of the ECHR. However, I do not agree with the conclusion and enacting clause of this judgment.

3. I consider as correct analysis of majority of judges that from 5 September 2022, when the Court of Appeals by the Decision PN1. no. 1109/2022 rejected as ungrounded the Applicant's appeal and upheld the Decision 2022:19820 of the Basic Court of 12 August 2022, there has been a violation of the Applicant's rights and that he is in unconstitutional detention on remand from this date.

4. Furthermore, I consider that all the decisions on the extension of detention that were rendered subsequently were also rendered in violation of the constitutional guarantees from Article 29 of the Constitution and Article 5 of the ECHR, which is, more or less, concluded in the judgment.

5. Having said that, I consider that the Court had to annul all decisions of regular courts that are not in compliance with the Constitution and the conclusions of the judgment itself, because it is illogical to conclude that one of the most Applicant's fundamental rights guaranteed by the Constitution has been violated, namely [Right to Liberty and Security] and that the Applicant is in unconstitutional detention and that unconstitutional detention lasts longer than a year. At the same time, the decisions that the Court itself found to be against the Constitution have remained effective, and the Applicant himself is in unconstitutional detention, in this way the Court itself, regardless of the fact, that it has found a violation of constitutional rights, does nothing to remedy that violation and terminate unconstitutional situation.

6. Based on the factual situation presented in the judgment itself and the conclusions of the judgment itself, it is indisputable that the Applicant's constitutionally guaranteed right from Article 29 of the Constitution and Article 5 of the ECHR has been violated by Decision [2022:019280] of the Basic Court of 13 September 2022.

7. I repeat that the basic purpose of Article 5 is to prevent arbitrary or unjustified deprivation of liberty (McKay v. the United Kingdom [GC], paragraph 30). The right to liberty and security of the person is of the utmost importance in a „democratic society" within the meaning of the Convention (Medvedyev and Others v. France [GC], paragraph 76; Ladent v. Poland, paragraph 45, of 18 March 2008)

8. In order to satisfy the requirement related to legality, the deprivation of liberty must be „in accordance with the procedure prescribed by law." This means that the deprivation of liberty must be in accordance with the substantive and procedural rules of national law (*Del Río Prada v. Spain* [GC], paragraph 125) or international law, where appropriate (see, *inter alia*, the judgments in the cases of *Medvedev and others v. France* [GC], paragraph 79; *Toniolo v. San Marino and Italy*, paragraph 46). For example, the Court found a violation of Article 5 because the authorities did not submit a request for an extension of detention within the period prescribed by law (*G.K. v. Poland*, paragraph 76).

9. When it comes to deprivation of liberty, it is particularly important that the general principle of legal certainty be satisfied. Therefore, it is of crucial importance that the requirements for deprivation of liberty are clearly established in domestic legislation and that the legislation itself is predictable from the point of view of application, in order to meet the standard of „legality" set by the Convention, because it is a standard that requires that all legislation be sufficiently precise in order to enable the person - if necessary, and with appropriate advice - to anticipate, as far as is reasonable in the circumstances, the consequences that a certain action may entail (see, *inter alia*, the recent judgments in the cases of *Del Río Prada v. Spain* [GC], paragraph 125; *Creangă v. Romania*, paragraph 120; and *Medvedyev and Others v. France* [GC], paragraph 80)

10. In addition, I would like to emphasize another important fact, which is that the ECtHR concluded in its case law that compliance with Article 5, paragraph 3 of the ECHR requires the judicial authority to review all issues related to detention, and to render a decision on detention by referring to the objective criteria provided by law. The existence of reasonable suspicion that the person arrested has committed a criminal offence charged with is a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices, it must be assessed whether there are relevant and sufficient reasons for detention (see ECtHR, *Trzaska v. Poland*, judgment of 11 July 2000, application number 25792/94, paragraph 63). The Constitutional Court also points to the practice of the ECtHR, which concluded that when deciding on the justification of imposing and extending detention on remand on the suspect or the accused the severity of the criminal offence he is charged with is a relevant element for decision-making. Due to this, the ECtHR accepts that in view of the seriousness of the accusation and the severity of the faced sentence against the applicant the authorities could justifiably consider that such an initial risk was established. However, the ECtHR has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see ECtHR, *Ilijkov v. Bulgaria*, Judgment of 26 July 2001, application number 33977/96, paragraphs 80-81).

11. Given this situation, I cannot accept the arguments that the regular courts have consistently stated in their decisions, where they explained the imposition of detention and later the extension by the fact, among other things, "*that there is a danger that the applicant may personally or indirectly try to influence witnesses or possible accomplices*". Namely, the mere existence of assumptions that such conduct of the applicant would be possible is not sufficient, because the court cannot just assume such a possibility, but must have arguments that there are some objective circumstances or specific and reasoned actions and proceedings that would be a valid legal basis for imposing detention, and later the basis for extending it.

12. In such circumstances, I am of the opinion that the regular courts failed to give a more precise and specific reasoning on what they base their conclusion that the applicant will influence or try to influence the witnesses and possible co-perpetrators, especially the witnesses who have already been heard and given statements, as well as an explanation clarifying why they consider that only the detention measure, as a procedural measure which affects the accused the most, can achieve the goal, and if this is the requirement of Article 5 paragraph 3 of the ECHR

13. In this regard, in particular, I would like, to emphasize, that Article 22 of the Constitution stipulates, among other things, that the rights and freedoms specified in the European Convention and its protocols are directly applied in the Republic of Kosovo, and that they have priority over any other law. In this way, the constitutional obligation of all courts to apply the standards of human rights and fundamental freedoms in the proceedings they conduct and the decisions they render within their jurisdiction, which is additionally indicated in Article 53 of the Constitution, and which, in my opinion, the regular courts, did not fulfill this obligation in the present case. Based on all what was said above, I AGREE with the position of the majority TO HOLD that the 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.

14. At the end of the analysis of Article 29 of the Constitution and Article 5 of the ECHR, I CONSIDER THAT the Court had to DECLARE the Decision PN1. no. 1109/2022 of the Court of Appeals of Kosovo of 5 September 2022 invalid, the Court also had to DECLARE Decision [2022:019280] of the Basic Court of 13 September 2022 invalid, namely, all subsequent decisions by which the Applicant was held in unconstitutional detention in accordance with the legal analysis and conclusions of the judgment.

(II) Regarding the Applicant's allegations of violation of the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 [Right to a fair trial] of the ECHR

15. As to the Applicant's allegation regarding the violation of the rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 [Right to a fair trial] of the ECHR, I recall that the Applicant's main allegation is that "*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 described without making any sense. Therefore, this detention should be considered arbitrary.*"

A. Assessment of allegation of lack of a reasoned decision

(i) General principles regarding the right to a reasoned decision

16. The guarantees established in Article 6 paragraph 1 of the ECHR also include the obligation for the courts to give sufficient reasons for their decisions (see the case of the ECtHR, *H. v. Belgium*, no. 8950/80, Judgment of 30 November 1987, paragraph 53). A reasoned decision shows the parties that their case has really been heard.

17. Despite the fact that the domestic court has a certain margin of appreciation regarding the selection of arguments and the decision on the admissibility of evidence, it is obliged to justify its actions by giving reasons for all its decisions (see the cases of the ECtHR, *Suominen v. Finland*, no. 37801/97, Judgment of 24 July 2003, paragraph 36; as well as the Judgment *Carmel Saliba v Malta*, no. 24221/13, Judgment of 24 April 2017, paragraph 73).

18. The lower Court or state authority, on the other hand, must give such reasons and justifications as will enable the parties to effectively use any existing right of appeal (see the ECtHR case, *Hirvisaari v Finland*, no. 49684/99, Judgment of 25 December 2001, paragraph 30).

19. Article 6 paragraph 1 obliges the courts to give reasons for their decisions, but this does not mean that a detailed answer is required for each argument (see the ECtHR case, *Van de Hurk v. The Netherlands*, no. 16034/90, Judgment of 19 April 1994, paragraph 61; *García Ruiz v. Spain*, no. 0544/96, Judgment of 29 January 1999, paragraph 26; *Perez v. France*, no. 47287/99, Judgment of 12 February 2004, paragraph 81).

20. Whether the Court is obliged to give reasons depends on the nature of the decision taken by the court, and this can only be decided in the light of the circumstances of the case in question: it is necessary to take into account, among other things, the different types of submissions that a party can submit to the court, as well as the differences that exist between the legal systems of the countries in relation to legal provisions, customary rules, legal positions and the submission and drafting of judgments (see the cases of the ECtHR, *Ruiz Toria v. Spain*, no. 18390/91, Judgment of 9 December 1994, paragraph 29; *Hiro Balani v. Spain*, no. 18064/91, Judgment of 9 December 1994, paragraph 27).

21. However, if a party's submission is decisive for the outcome of the proceedings, it requires that it be answered specifically and without delay (see ECtHR cases, *Ruiz Toria v. Spain*, cited above, paragraph 30; *Hiro Balani v. Spain*, cited above, paragraph 28).

22. Therefore, the courts are obliged to:

    (a) examine the main arguments of the parties (see ECtHR cases, *Buzescu v. Romania*, no. 61302/00, Judgment of 24 August 2005, paragraph 67; *Donadze v. Georgia,* no. 74644/01, Judgment of 7 June 2006, paragraph 35), and

    (b) to examine with particular rigor and care the requirements regarding the rights and freedoms guaranteed by the Constitution, the ECHR and its Protocols (see ECtHR cases: *Fabris v. France*, 16574/08, Judgment of 7 February 2013, paragraph 72; *Wagner and JMWL v. Luxembourg*, no. 76240/01, Judgment of 28 June 2007, paragraph 96).

23. Article 6, paragraph 1, does not require the Supreme Court to give a more detailed reasoning when it simply applies a certain legal provision regarding the legal basis for rejecting an appeal because that appeal has no prospect of success (see ECtHR cases, *Burg and others v. France*, no. 34763/02, Decision of 28 January 2003; *Gorou v. Greece* (no. 2), no. 12686/03 , Decision of 20 March 2009, paragraph 41).

24. Similarly, in a case involving a request for leave to appeal, which is a prerequisite for proceedings in a higher court, as well as for a possible decision, Article 6, paragraph 1, cannot to be interpreted in the sense that it orders a detailed reasoning of the decision for rejecting the request for the submission of the appeal (see the cases of the ECtHR, *Kukkonen vs. Finland* (no. 2), no. 47628/06, Judgment of 13 April 2009, paragraph 24; *Bufferne v France*, no. 54367/00, Decision of 26 February 2002).

25. In addition, when rejecting an appeal, the appellate court can, in principle, simply accept the reasoning of the decision given by the lower Court (see the ECtHR case *García Ruiz v. Spain*, cited above, paragraph 26; see, contrary to this, *Tatishvili vs. Russia*, no. 1509/02, Judgment of 9 July 2007, paragraph 62). However, the concept of a fair trial implies that a domestic court that has given a narrow reasoning for its decisions, either by repeating the reasoning previously given by a lower court or otherwise, was in fact dealing with important issues within its jurisdiction, which means that it did not simply and without additional effort accept the conclusions reached by the lower court (see the ECtHR case, *Helle v. Finland*, no. (157/1996/776/977), Judgment of 19 December 1997, paragraph 60). This requirement is all the more important if the party in dispute has not had the opportunity to present its arguments orally in the proceedings before the local court.

26. However, the appellate courts (in the second instance) which have jurisdiction to reject unfounded appeals and to resolve factual and legal issues in the contentious procedure, are obliged to justify why they refused to decide on the appeal (see the case of ECtHR *Hansen v. Norway*, no. 15319/09, Judgment of 2 January 2015, paragraphs 77–83).

27. In addition, the ECtHR did not determine that the right was violated in a case in which a specific clarification was not provided regarding a statement that referred to an irrelevant aspect of the case, namely the absence of a signature and stamp, which is an error of a more formal than material nature and that error was immediately corrected (see the ECtHR case, *Mugoša v. Montenegro*, no. 76522/12, Judgment of 21 September 2016, paragraph 63).

(ii) Application of the abovementioned principles to the present case

28. Regarding the allegation of the reasoned decision, I recall that the Applicant's main allegation throughout the entire procedure of challenging all decisions on the extension of detention was that there has been essential violation of the provisions of the criminal procedure and the criminal law, erroneous application of substantive law and erroneous determination of factual situation. The Applicant stated in his appeal that there has been a violation of Article 29 of the Constitution, because based on Article 188 (Procedure for Order of Detention on Remand) of the CPCRK, a person in detention on remand can be detained for a maximum of one (1) month from the date he was arrested and on the basis of Article 190 (Time Limits for Detention on Remand) of the CPCRK, before the indictment is filed, the measure of detention on remand cannot be longer than eight (8) months "*if the proceedings are conducted for a criminal offense that is punishable by imprisonment of at least five (5) years* ".

29. Based on the above, it is assessed that the regular courts did not provide an explanation for the central allegations in the Applicant's case, as required by the procedural

guarantees from Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR, including the specification of the fulfillment of the criteria established by Article and based on Article 190 (Time Limits for Detention on Remand) of the CPCRK, before the indictment is filed, the measure of detention on remand cannot be longer than eight (8) months "*if the proceedings are conducted for a criminal offense that is punishable by imprisonment of at least five (5) years* ".

30. In other words, the regular courts in their decisions on the extension of detention on remand did not explain:

    (i) Article 190 (Time Limits for Detention on Remand) of the CPCRK before filing the indictment;
    (ii) did not provide reasoning for the measure of detention on remand, which cannot be longer than eight (8) months if the proceedings are conducted for a criminal offense punishable by imprisonment of at least five (5) years.

31. Given that the Applicant has not received a specific answer to the specific and essential allegations, I note that the challenged decision PN1. no. 1109/2022 of the Court of Appeals of Kosovo of 5 September 2022does not provide the guarantees embodied in Article 31 of the Constitution and Article 6 of ECHR that contain the obligation for courts to give sufficient reasons for their decisions (see, the ECtHR case, *H. v. Belgium*, cited above, paragraph 53; and see also cases of the Court KI230/19, Applicant *Albert Rakipi*, cited above, paragraph 139 and KI87/18, Applicant *IF Skadiforsikring*, cited above, paragraph 44 and case KI202/21, Applicant *Kelkos Energy L.L.C.*, cited above, paragraph 134).

32. I recall that the ECtHR in its consolidated case law has determined that courts with appellate jurisdiction do not need to provide a detailed reasoning in cases where they agree with the reasoning given by the courts of first instance, even though they must also be sufficiently reasoned (see ECtHR case *Garcia Ruiz v. Spain*, cited above, paragraph 31). However, in the circumstances of the case under consideration, I note that the Court of Appeals only upheld the decisions of the lower courts, respecting their position and reasoning in those decisions.

33. Accordingly, taking as a basis that even the Court of Appeals did not examine the allegations of the Applicant, which he presented before the Basic Court, I assess that the essential criteria of the right to a reasoned decision - in one way or another - establish that the Court of Appeals had an obligation to respond to the central allegations of the Applicant, and not to bypass them completely or to respond only to some of them with only a brief and generalized reasoning (see, *mutatis mutandis*, case KI202/21, applicant *Kelkos Energy L.L.C.*, cited above, paragraph 135).

34. Based on the above, the Court emphasizes once again that the Court of Appeals had the obligation to answer the essential questions of the Applicant, which did not happen in the circumstances of the present case.

35. Finally, the Court reiterates that procedural justice requires that the essential claims raised by the parties in the regular courts must be answered in the appropriate way - especially if they are related to decisive allegations that in the present case refer to decisive facts and legal conditions related to allowing the postponement of the execution of the decisions of the Ministry (see Court case KI202/21, *Kelkos Energy L.L.C.*, cited above, paragraph 140).

36. I further conclude that the Applicant's main allegations were not answered either by subsequent decisions extending the Applicant's detention, namely by the Decision

[2022:019280] of the Basic Court of 13 September 2022. Therefore, I conclude that these decisions on the extension of detention do not provide the guarantees contained in Article 31 of the Constitution and Article 6 of the ECHR, which include the obligation for the courts to give sufficient reasons for their decisions (see the ECtHR case *H. v. Belgium*, cited above, paragraph 53; see also Court cases KI230/19, Applicant *Albert Rakipi*, cited above, paragraph 139 and KI87/18, Applicant *IF Skadiforsikring*, cited above, paragraph 44 and case KI202/21, Applicant *Kelkos Energy D.O.O.*, cited above, paragraph 134).

37. Based on all the above, I CONSIDER THAT the Court should have HELD that the Decision PN1. no. 1109/2022 of the Court of Appeals of Kosovo of 5 September 2022 is not in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 [Right to a fair trial] of the ECHR.

38. Also, I CONSIDER THAT the Court should have HELD that also Decision [2022:019280] of the Basic Court of 13 September 2022, is not in accordance with Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 [Right to a fair trial] of the ECHR,

39. At the end of the analysis of Article 31 of the Constitution and Article 6 of the ECHR, I CONSIDER THAT the Court had to DECLARE invalid Decision [PN1. no. 1109/2022] of the Court of Appeals of Kosovo of 5 September 2022 and Decision [2022:019280] of the Basic Court of 13 September 2022, that is, all subsequent decisions by which the Applicant was held in unconstitutional detention on remand in accordance with the legal analysis and conclusions of the judgment.

(III) As to the request for interim measure

40. I recall that the Applicant also submitted a request for the imposition of an interim measure, whereby he requested that the detention measure be annulled to defend himself in liberty during the criminal proceedings against him.

41. The Court concluded that the Applicant’s referral is admissible. Therefore, and 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 lacks the subject matter and is rejected as such.

42. I completely disagree with this conclusion of the Court because the request of the Applicant cannot possibly be without subject matter, as long as the Applicant is in detention, which is the factual situation in this case.

43. I particularly disagree because the Court has already found that the extension of the Applicant's detention was done in an unconstitutional manner by the Court's decision to DECLARE that the challenged 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.

44. The question arises when the Court will impose an interim measure, if not in a situation where the Court held that the detention in which the Applicant is being held is unconstitutional and that Article 29 of the Constitution and Article 5 of the ECHR have been violated, and that the Applicant is still detained in an unconstitutional manner.

45. Also, I CONSIDER THAT the Court should have IMPOSED an interim measure, ordering the regular courts that in accordance with the conclusions of the judgment IMMEDIATELY annul the unconstitutional detention against him and replace it with a more lenient measure of ensuring the presence of the accused in the criminal proceedings.

(IV) Conclusion regarding the alleged violations of the Applicant's rights

46. Based on the above, and taking into account the considerations of the Applicant's allegations in his referral:

    I. **I AGREE** with the opinion of majority **TO DECLARE** the referral admissible;

    II. **I AGREE** with the opinion of the majority **TO HOLD** that the challenged 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. **I DISAGREE** with the opinion of the majority **TO REJECT** the request for the imposition of an interim measure.

    IV. **I CONSIDER THAT** the Court should have **HELD** that also Decision [2022:019280] of the Basic Court of 13 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.

    V. **I CONSIDER THAT** the Court should have **HELD** that the challenged Decision PN1. no. 1109/2022 of the Court of Appeals of Kosovo of 5 September 2022 and Decision [2022:019280] of the Basic Court of 13 September 2022 are not in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo in conjunction with Article 6 [Right to a fair trial] of the ECHR.

    VI. **I CONSIDER THAT** the Court should have **DECLARED** invalid the challenged Decision PN1. no. 1109/2022 of the Court of Appeals of Kosovo of 5 September 2022 and Decision [2022:019280] of the Basic Court of 13 September 2022.

    VII. **I CONSIDER THAT** the Court should have **IMPOSED** an interim measure, ordering the regular courts that in accordance with the conclusions of the judgment **IMMEDIATELY** annul the unconstitutional detention and replace the latter with a more lenient measure of ensuring the presence of the accused in the criminal proceedings.

Concurring Opinion is submitted by Judge;

Radomir Laban, Judge

____

On 3 August 2023 in Prishtina