



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

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Pristina, 1 March 2017  
Ref. No.:RK 1042/17

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI124/16**

Applicant

**Senad Rama**

**Constitutional review  
Decision PN. I. No. 1802/2016  
Court of Appeals  
13 October 2016**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

#### **Applicant**

1. The Referral was submitted by Senad Rama from Gjilan (hereinafter, the Applicant).

## **Challenged decision**

2. The Applicant challenges the Decision PN. I. No. 1802/2016 of the Court of Appeals of 13 October 2016, which rejected as ungrounded the Applicant's appeal filed against Decision of the Basic Court in Gjilan (hereinafter: the Basic Court) on continuation of the measure of house arrest of the Applicant.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged Decision which allegedly violated the Applicant's rights guaranteed by Articles 24 [Equality before the Law], 29 [Right to Liberty and Security], and 31 [Right to a Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 27 October 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
6. On 31 October 2016, the Applicant submitted additional documents to the Court.
7. On 14 November 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of the Judges Snezhana Botusharova (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
8. On 1 December 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeals.
9. On 19 December 2016, the Applicant submitted additional documents to the Court.
10. On 18 January 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

11. On 5 September 2016, the Applicant was arrested and placed in detention for 48 hours, on suspicion of having committed the criminal offences of abusing official position or authority and falsifying official documents.

12. On 6 September 2016, the Prosecutor requested (PP. I. No. 66/2016) the Basic Court to impose detention on remand to the Applicant.
13. On 7 September 2016, the Basic Court (Decision PPr.Kr. No. 174/2016) rejected the request of the Prosecutor to impose detention on remand to the Applicant and ordered instead the measure of house arrest for the duration of one (1) month and confiscation of his passport.
14. On 29 September 2016, the Prosecutor requested (PP. I. No. 66/2016) the Basic Court to continue the house arrest of the Applicant.
15. On 4 October 2016, the Basic Court (Decision PPr.Kr.No174/2016) approved the request of the Prosecutor to continue the house arrest for the Applicant until 4 November 2016.
16. The Applicant filed an appeal against that Decision, “*due to the substantial violations of the provisions of CCPK [Code of Criminal Procedure of Kosovo]*”.
17. On 13 October 2016, the Court of Appeals (Decision PN. I. No. 1802/2016) rejected as ungrounded the appeal of the Applicant and upheld the Decision of the Basic Court.

### **Applicant’s allegations**

18. The Applicant claims a violation of his rights guaranteed by Articles 24 [Equality before the Law], 29 [Right to Liberty and Security], and 31 [Right to a Fair and Impartial Trial] of the Constitution.
19. The Applicant states that the Prosecutor did not provide evidence that “*there is a grounded suspicion that [the Applicant] committed the criminal offences according to Articles 422 and 434 [...]. However, based on Article 29, paragraph 2, of the Constitution of the Republic of Kosovo the grounded reasoning is necessary for the limitation of my right to freedom.*”
20. The Applicant further states that “*the Prosecutor is delaying the procedure and therefore, my house arrest is being unnecessarily extended which is contrary to Article 5 [Right to Fair and Impartial Trial within a Reasonable Time], paragraph 3, of the CCPK [Code of Criminal Procedure Kosovo].*”
21. The Applicant requests the Constitutional Court to terminate the house arrest and impose a more lenient measure, and ascertain if his rights to freedom and equal treatment have been violated.

### **Admissibility of the Referral**

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

23. 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.*
24. However, the Court also refers to Article 48 [Accuracy of the Referral] of the Law, which provides:
- In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.*
25. In addition, the Court recalls paragraphs (1)(d) and (2)(d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which foresee:
- (1) *The Court may consider a referral if:*  
[...]  
*(d) the referral is prima facie justified or not manifestly ill-founded.”*
  - (2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*  
[...]  
*d) the Applicant does not sufficiently substantiate his claim.*
26. The Court recalls that the Applicant alleges that, due to erroneous application of the substantive law, the challenged decision violated his rights and freedoms guaranteed by the Constitution, primarily Article 29 [Rights to Liberty and Security].
27. In sum, the Applicant challenges the legal interpretation of the Court of Appeals on deciding his house arrest and the way in which they applied the procedural provisions and the substantive law.
28. The Court notes that two instances the regular courts assessed the facts and interpreted and applied the procedural and substantive law provisions regarding the grounded suspicion that the Applicant had committed the criminal offences for which he is charged. Their conclusion was reached after detailed examination of all the arguments presented by the Prosecutor and the Applicant.
29. The Court further notes that the Applicant repeats before the Court the same arguments as he had filed in the proceedings before the regular courts, in particular, regarding the establishment of the factual situation and the legality of the regular courts' decisions.

30. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
31. In fact, the role of regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, ECtHR case *García Ruiz v. Spain*, No. 30544/96, Judgment of 21 January 1999, para. 28).
32. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as “fourth instance court”. (See ECtHR case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65; see also, *mutatis mutandis*, Constitutional Court case KI86/11, Applicant *Milaim Berisha*, resolution on Inadmissibility of 5 April 2012).
33. In other words, the complete determination of the factual situation and the correct application of the law is within the full jurisdiction of the regular courts (matter of legality).
34. In fact, the Court notes that the Basic Court [Decision PPr. Lr. No. 174/2016 of 4 October 2014] reasoned its decision to continue the measure of house arrest as it follows:

*“[...] taking into consideration the nature and gravity of the criminal offence for the commission of which is suspected the [Applicant] and the fact that the State Prosecutor could not investigate the [Applicant] due to the complex investigations which are still collecting material evidence and also that it is suspected that other persons have committed criminal offences in co-perpetration with the [Applicant], this means that the investigations in this criminal matter are being conducted, taking into consideration all these, then the real risk exists that if he is found in complete freedom, he could eliminate, hide, modify or falsify the evidence of the criminal offence and he could obstruct the conduct of the criminal procedure”.*

35. The Court also notes that the Court of Appeals reasoned its decision as it follows hereunder.

*“[...] it exists the grounded suspicion that the [Applicant] committed the criminal offence for which he is charged, based on the Decision for initiation of investigations, report of the Police and the given statements. The court of the first instance provided sufficient reasons and acted correctly when it continued the measure of house arrest for the [Applicant] for period of 1 (one) month according to Article 183, paragraph 1, subparagraph 1.1 and 1.2, of the CPCK, taking into consideration the gravity and the circumstances in which the criminal offence was committed, it exists the risk that if the defendant is free, he could repeat the criminal offence or commit another criminal offence or he could escape*

since he is citizen of Austria and it could obstruct the normal conduction of the procedure.

[...]

Taking into consideration the above mentioned circumstances, the [Court of Appeal] considers that other measure foreseen by Article 173 of the CPCK, are not sufficient for securing the presence of the [Applicant] and the prevention from repeating the criminal offences with the purpose of successful application of the criminal procedure, therefore, the appeal of the defense counsel of the [Applicant] was rejected as ungrounded”.

36. The Court further notes that the regular courts assessed “the Decision for initiation of investigations, report of the Police and the given statements” when they concluded that there is “a grounded suspicion that the [Applicant] committed the criminal offence for which he is charged”.
37. The Court considers that regular courts have provided reasoning to justify the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the criminal offence. (See, *mutatis mutandis*, ECtHR case *Fox, Campbell and Hartley v. the United Kingdom* No. 12244/86; 12245/86; 12383/86, Judgment of 30 August 1990).
38. The Court reiterates that the task of the Court is to assess whether the regular courts’ relevant proceedings were in any way unfair or tainted by arbitrariness (matter of constitutionality). (See, *mutatis mutandis*, ECtHR cases *Shub v. Lithuania*, Decision on Admissibility of Application of 30 June 2009, paragraph 16; *Edwards v. United Kingdom*, Judgment of 66 December 1992, paragraph 34; *Barbera, and Messeque Jabardo against Spain*, Judgment of 6 December 1988, paragraph 68)
39. The Court considers that the decisions of the Basic Court and the Court of Appeals were justified and fair when deciding the continuation of the house arrest and thus cannot be said to have been unreasonable within the meaning of Article 29 [Rights to Liberty and Security] of the Constitution. (See, *mutatis mutandis*, ECtHR case *Merabishvili v. Georgia*, No. 72508/13, Judgment of 14 June 2016, para 87).
40. The Court finally notes that the Applicant has not presented facts showing that the proceedings before the regular courts were in any way a constitutional violation of his rights to equality before the law, to liberty and security and to fair and impartial trial.
41. Thus the Court considers that the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure have not been met.
42. Therefore, the Court concludes that the Referral is manifestly ill-founded on a constitutional basis and has to be declared inadmissible.

## FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Article 48 of the Law and Rules 36 (2) (d) and 56 of the Rules of Procedure, in the session held on 18 January 2017, unanimously

## DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. TO DECLARE this Decision effective immediately;

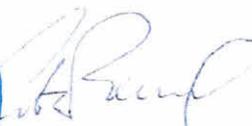
**Judge Rapporteur**



Almiro Rodrigues



**President of the Constitutional Court**



Arta Rama-Hajrizi