



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

Prishtina, 21 December 2015
Ref. No.:RK874/15

RESOLUTION ON INADMISSIBILITY

in

Case No. KI131/14

Applicant

Agron Alaj

**Constitutional review of Judgment Pml. no. 115/2014,
of the Supreme Court, of 16 June 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge, and
Bekim Sejdiu, Judge

Applicant

1. The Referral was submitted by Mr. Agron Alaj from village Drenoc, Municipality of Deçan (hereinafter: the Applicant), represented by Mr. Rifat Abdullahi.

Challenged decision

2. The challenged decision is Judgment Pml. no. 115/2014, of the Supreme Court, of 16 June 2014.
3. The Applicant did not mention when he was served with the challenged Judgment.

Subject matter

4. Subject matter is the request for constitutional review of the abovementioned Judgment of the Supreme Court. The Applicant considers that the regular courts in their decisions on imposing the detention on remand, have violated Article 29 of the Constitution of the Republic of Kosovo [Right to Liberty and Security] and Article 5 (Right to liberty and security), of the European Convention on Human Rights and Freedoms.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of the Law on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 22 August 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 5 September 2014, the President of the Court by Decision GJR. KI131/14, appointed Judge Ivan Čukalović as Judge Rapporteur. On the same date, the President, by Decision KSH. KI131/14, appointed the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 9 September 2014, the Court informed the Applicant about the registration of the Referral. On the same date, the Court sent a copy of the Referral to the Supreme Court.
9. On 23 September 2014, the Applicant submitted an additional document to the Court.
10. On 12 May 2015, the Applicant submitted an additional document, request to expedite the procedure.
11. On 10 November 2015 the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral inadmissible.

Summary of the facts

12. On 6 February 2013, the Basic Court in Ferizaj, Department for Serious Crimes, acting upon the request of the Basic Prosecution Office of EULEX, imposed the measure of detention on remand in duration of 1 (one) month, under the grounded suspicion that the Applicant, in co-perpetration, has committed the criminal offence of organized crime, facilitating prostitution and the criminal offense of money laundering.
13. On 23 May 2013, the Basic Court in Ferizaj, (Decision PPR. no. 2/13, GJPP. no. 180/12), approved the proposal of the Prosecutor and of the Applicant on termination of detention on remand. The court reasoned that the requirements for release of the defendant from the detention on remand on bail have been met.
14. On 11 December 2013, the Basic Court in Ferizaj, upon the request of the Prosecution Office imposed the measure of detention on remand against the Applicant in duration of 1 (one) month. The Prosecutor reasoned his request for extension of detention on remand, with reference to new evidence obtained in the investigation procedure.
15. The Basic Court in Ferizaj, deciding upon the imposition of the measure of detention on remand, assessed that there is a concrete danger that if the Applicant is free he may flee, obstruct the progress of the criminal proceedings, and influence the witnesses and accomplices. The Court also concluded that if the Applicant would be at liberty, there is a danger of repeating the criminal offence.
16. On 4 April 2014, the Basic Court in Ferizaj, deciding upon the request of the Prosecution Office, decided to extend to the Applicant the detention on remand for more 3 (three) months.
17. The Applicant filed appeal with the Court of Appeal against the Decision of the Basic Court in Ferizaj. In his appeal, the Applicant alleged among the other violation of the criminal proceedings and of his right to liberty and security guaranteed by the Constitution, and he also alleged that the requirements for extension of his detention on remand did not exist anymore.
18. On 11 April 2014, the Court of Appeal of Kosovo (Decision Pn1. no. 700/2014), rejected the appeal of the Applicant as ungrounded.
19. The Court of Appeal noted that the first instance court acted correctly when it extended the detention on remand to the Applicant, because the Applicant through his lawyer *“until now interfered in the flow of the current criminal case, and, based on the telephone wiretapping, he has allegedly been able to influence other suspects, and if the defendant finds himself at liberty he will not hesitate to obstruct the flow of the criminal proceedings, by continuing to exercise his influence on the possible witnesses of this case [...]”*.

20. Finally, the Court concluded by stating that the more lenient measures would be insufficient to ensure the presence of the Applicant in the proceedings and successful conduct of the criminal proceedings.
21. Against Decision (PPR. No. 2/13, GJPP. No. 180/12), of 4 April 2014, of the Basic Court in Ferizaj and Decision of the Court of Appeal (Pn1. No. 700/2014, of 11 April 2014), the Applicant filed a request for protection of legality with the Supreme Court.
22. In his request for protection of legality, the Applicant alleges essential violation of criminal procedure and erroneous and incomplete determination of factual situation. The Applicant claims again that there is no legal basis for the extension of his detention on remand and that the challenged decisions do not mention any specific circumstance or do not provide concrete evidence to prove the risk of flight, influence on witnesses and the risk of repeating the offense.
23. On 16 June 2014, the Supreme Court of Kosovo (Judgment Pml. no. 115/2014) rejected as ungrounded the request for protection of legality, filed by the Applicant.
24. Regarding the Applicant's allegation of violation of criminal procedure, the Supreme Court notes that the Applicant's allegations are ungrounded, because the challenged decisions are clear, comprehensible and based on law.
25. As to the Applicant's allegations of erroneous and incomplete determination of factual situation, the Court finds that *"[...] it is expected to be examined and clarified in the next stages of the criminal proceedings and not in this phase since the defendant by these decisions was neither found guilty nor adjudicated, but the measure of detention on remand is imposed on him only based on determination of the grounded suspicion"*.
26. Finally, regarding the challenged decisions on extension of detention on remand, the Supreme Court found that the first instance and second instance courts gave sufficient reasons to extend the detention on remand in accordance with applicable law and *"[...] considering the gravity of this criminal offence, the way this criminal offence was committed, his personal characteristics, and the fact that now the criminal proceedings is initiated against him for a serious criminal offence, there is a risk that if the defendant finds himself at liberty, in order to avoid the criminal liability, he may hide, may influence other witnesses who have not been heard yet, as well as other co-defendants involved in this criminal matter and, hence, the normal conduct of the criminal proceedings would be obstructed"*.
27. For a purpose of a full presentation of facts, the Court notes that on 17 June 2014, the Basic Prosecutor's Office of EULEX in Ferizaj filed an indictment against the Applicant on suspicion of having committed the criminal offense of organized crime and in co-perpetration, committed the criminal offense of facilitating prostitution.

Applicant's allegations

28. The Applicant alleges that during the arrest and imposition of the measure of detention on remand was violated Article 29 of the Constitution [Right to Liberty and Security] and Article 5 (Right to liberty and security) of the European Convention on Human Rights and Freedoms.
29. The Applicant further claims that the decisions of the regular courts are unlawful because, according to him, the requirements for imposition and extension of detention on remand did not exist.
30. The Applicant requests the Court as it follows:
 - I. *To declare the Referral admissible;*
 - II. *To hold that there has been violation of Article 29 (Right to Liberty and Security) of the Constitution of the Republic of Kosovo and Article 5 of ECHR;*
 - III. *To annul Judgment and Decisions of regular courts mentioned above;*
 - IV. *To release the defendant Agron Alaj from detention on remand;*
 - V. *To uphold Decision of the Basic Court in Ferizaj PPR. no. 2/13 (GJPP. no. 180/12), of 23.05.2013 on termination of detention on remand on bail”.*

Admissibility of the Referral

31. The Court shall examine whether the Applicant has fulfilled admissibility requirements laid down in the Constitution and further specified in the Law and Rule of Procedure.
32. The Court refers to Article 48 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.”
33. In addition, the Court recalls Rules 36 (1) (d) and 36 (2) (b) and (d) of the Rules of Procedure, which states:
 - (1) *“The Court may consider a referral if:*

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.
 - (2) *The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

[...]

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

[...]

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

34. As mentioned above, the Applicant alleges that during the arrest and imposition of detention on remand was violated his right to liberty and security guaranteed by Article 29 of the Constitution and Article 5 of the ECHR. The Applicant further alleges that all decisions of the regular courts are unlawful because, according to him, there were no requirements for the imposition and extension of detention on remand.
35. The Court refers to Article 29 of the Constitution, which among the other states that a person shall be deprived of liberty 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”*..
36. In this case, the Court states that when regular courts decide on the extension of detention on remand must show *“that there are relevant and sufficient grounds for extension of detention on remand”* (See, *inter alia*, *Piruzyan case against Armenia*, ECHR, No. 33376/07 , Judgment of 26 June 2012, para. 91).
37. In the present case, as regards the proceedings before the regular courts, the Court refers to decisions rendered by the Basic Court in Ferizaj, including the recent decision of the Basic Court, of 4 April 2014 on extension of the detention on remand. In its decision on extension of the detention on remand, the Basic Court found that there are legal grounds for extension of the detention on remand because there is a danger of flight, that the Applicant may influence the witnesses and there is a risk of repetition of the criminal offence. This reasoning is upheld by the Court of Appeal and finally by the Supreme Court.
38. The Court further notes that the Supreme Court of Kosovo in its Judgment (Pml. no. 115/2014, of 16 June 2014), rejected the request for protection of legality as ungrounded, by holding that the first instance court provided sufficient reasons on decisive facts regarding the legal basis for the extension of detention on remand, and correctly acted when it extended the detention on remand to the Applicant
39. Although the Applicant alleges that his rights were violated by erroneous determination of facts and erroneous application of the law by regular courts, he did not show how these decisions have violated his constitutional rights to liberty and security. Moreover, the Court notes that the regular courts responded to the allegations filed by the Applicant in his appeal, namely in his request for protection of legality.
40. Furthermore, having considered the Applicant’s allegations regarding erroneous application of the procedural and substantive law by regular courts, the Court reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See case *Garcia Ruiz vs. Spain*, ECHR, Judgment of 21 January 1999; see also case No. KI70/11, Applicants *Faik Hima*,

Magbule Hima and Bestar Hima, Resolution on Inadmissibility of 16 December 2011).

41. As mentioned above, the Court notes that the reasoning given in the Judgment of the Supreme Court of Kosovo and in the Judgments of the Court of Appeal and of the Basic Court in Ferizaj, are complete and clear, therefore, the Court found that proceedings before the regular courts were not unfair or arbitrary (See case *Shub v. Lithuania*, no. 17064/06, ECHR Decision of 30 June 2009).
42. In fact, with regard to the Applicant's request for his release of detention on remand, this Court cannot consider it to fall within its competence to provide the Applicant this protection (See case KI20/13, Applicant *Rifat Osmani*, Resolution on Inadmissibility).
43. For the foregoing reasons, the Court concludes that the facts presented by the Applicant do not in any way justify the allegation of a violation of the right to fair and impartial trial and that the Applicant did not sufficiently substantiate his claim

FOR THESE REASONS

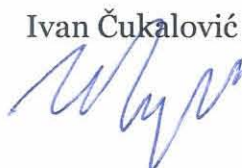
The Constitutional Court, in accordance with Article 48 and Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure on 10 November 2015, unanimously

DECIDES

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

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Arta Rama-Hajrizi

