



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

Pristina, 19 January 2012
Ref. No.: RK187/12

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 62/11

Applicant

Çlirim Grezda

**Constitutional Review of the Decision of the Supreme Court,
Pn. no. 181/2011, dated 31 March 2011.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is Mr. Çlirim Grezda residing in Gjakova.

Challenged decision

2. The Applicant challenges the Decision of the Supreme Court, Pn. no. 181/2011, of 31 March 2011, which was served on the Applicant on 4 April 2011.

Subject matter

3. The Applicant alleges that the decision of the Supreme Court is in violation of Articles 21 [General Principles], 23 [Human Dignity], 29 [Right to Liberty and Security] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution") and Article 6 [Right to a fair trial] of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the "ECHR").
4. He further alleges that Article 1 of Protocol 1 ECHR has been violated "*because due to the impossibility to work I have remained without any personal income.*"
5. The Applicant also requests the Constitutional Court of Republic of Kosovo (hereinafter: the "Court") to impose an interim measure ordering the Police to remove the press release about him from its website.

Legal basis

6. Article 113.7 of the Constitution, Articles 22 and 27 of the Law on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (No. 03/L-121) (hereinafter: the "Law") and Rules 54, 55 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

7. On 5 May 2011, the Applicant submitted the Referral to the Court.
8. On 4 July 2011, the President, by Order No. GJR. 62/11, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President, by Order No. KSH. 62/11, appointed the Review Panel composed of Judges Altay Suroy (Presiding), Enver Hasani and Ivan Čukalovič.
9. On 9 August 2011, the Court communicated the Referral to the Supreme Court and the District Public Prosecutor in Peja.
10. On 25 November 2011, the Review Panel considered the Preliminary Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 16 February 2011, the District Public Prosecutor of Peja (hereinafter: the "Prosecutor") decided to initiate investigation proceedings against the Applicant and his co-defendants, suspected of having committed aggravated theft and robbery under Article 256.1 in conjunction with Article 23 of the Criminal Code of Kosovo (hereinafter: the "CCK") (Decision PP-no. 60/11 and PPM – no. 12/11).
12. On 16 February 2011, the Public Prosecutor filed a request to take the Applicant into custody, since there was a justified suspicion that the Applicant had committed the criminal offence under Article 256 (1) in conjunction with Article 23 of CCK.

13. On 16 February 2011, the District Court of Peja ordered the Applicant to be detained on remand for one month, pursuant to Article 281 (1) of CCK (Decision PPQ. No. 29/11 and PPMQ. No. 10/11). The Applicant filed a complaint against this decision with the Trial Panel of the District Court of Peja.
14. On 9 March 2011, the Applicant requested to be released instantly from detention on remand.
15. On 11 March 2011, the Public Prosecutor filed a request with the Trial Panel of the District Court of Peja to extend the Applicant's detention on remand, since the preliminary investigations had not been concluded and there still existed legal reasons to keep the Applicant in custody.
16. On 14 March 2011, the District Court of Peja rejected as unfounded the Applicant's request of 9 March 2011 and granted the request of the Public Prosecutor, by extending the Applicant's detention on remand for another 2 months, pursuant to Article 281 (1) of CCK (Decision KP. no. 36/11). The Applicant filed a complaint against this decision with the Supreme Court of Kosovo.
17. On 31 March 2011, the Supreme Court rejected as unfounded the complaint of the Applicant reasoning that *"There is a legal ground in the concrete case for extension of detention on remand, and the first instance court has also found and given clear concrete reasons concerning the legal grounds for the extension of the detention on remand"* (Decision Pn. No. 181/2011).
18. On 13 April 2011, the District Court in Peja, upon the request of the Public Prosecutor, terminated the Applicant's detention on remand and ordered his immediate release, since the preliminary investigations were discontinued.

Applicant's allegations

19. The Applicant alleges that:
 - a. there was no grounded suspicion for the commission of the criminal act and consequently there were no legal reasons for the District Court to order his detention on remand;
 - b. the decision on the initiation of the investigation was not delivered to the Applicant immediately and without delay, so that he was not informed of the exact charges against him; and
 - c. his honor, prestige, authority and dignity were violated by the press release issued by the Kosovo Police and publication of that information on the Kosovo Police webpage..

Assessment of the admissibility of the Referral

20. The Applicant alleges that his right guaranteed by Articles 21 [General Principles], 23 [Human Dignity], 29 [Right to Liberty and Security] and 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a Fair Trial] and Article 1 of Protocol 1 of ECHR have been violated in that the Supreme Court, in its decision of 31 March 2011, rejected his appeal for the reason that the first instance court had given clear reasons concerning the legal grounds for the extension of the Applicant's detention on remand.

21. The Court observes that, in order to be able to adjudicate the Applicant's complaints, it is necessary to first examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
22. In this respect, the Court notes that an Applicant cannot complain that the regular courts have committed errors of fact or law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution.
23. In this connection, the Constitutional Court emphasizes that it is not a court of fourth instance, when considering the decisions taken by ordinary courts. It is the role of ordinary courts to interpret and apply the pertinent rules of both procedural and substantive law (see, mutatis mutandis, García Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
24. The Court can only consider whether the evidence has been presented in such a manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, mutatis mutandis, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No. 13071/87 adopted on 10 July 1991).
25. As to the present case, the Court notes that the Decision of the Supreme Court, Pn. no. 181/2011, of 31 March 2011 concluded "*There is a legal ground in the concrete case for extension of detention on remand, and the first instance court has also found and given clear concrete reasons on the legal grounds providing for extension of detention on remand*".
26. In this respect, the Court considers that the Applicant has not shown in which manner the Decision of the Supreme Court was unfair or tainted by arbitrariness (see mutatis mutandis, Shub v. Lithuania, ECHR Decision as to the Admissibility of Application no_17064/06 of 30 June 2009 and Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005) and amounted to an infringement of the constitutional rights invoked by the Applicant.
27. In these circumstances, the Referral is manifestly ill-founded pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: "*The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded.*"
28. Accordingly, the Applicants' Referral must be rejected as inadmissible.

Assessment of the request for Interim Measures

29. As to the Applicant's request for interim measures, the Court refers to Article 27 of the Law and, in particular, Rule 54 (1) of the Rules of Procedure, stipulating that, at any time when a Referral is pending before the Court and the merits of the Referral have not been adjudicated by the Court, a party may request interim measures. However, taking into account that the Referral was found inadmissible, the Applicant is not entitled under Rule 54 (1) of the Rules of Procedure to request interim measures.

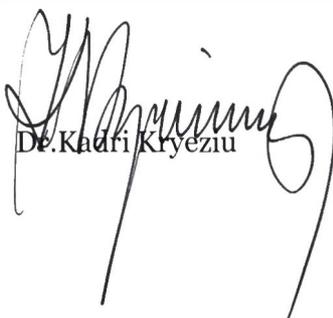
FOR THESE REASONS

The Constitutional Court, pursuant to Rules 36 (1.c), 54 (1) and 56 (2) of the Rules of Procedure, on 25 November 2011, unanimously

DECIDES

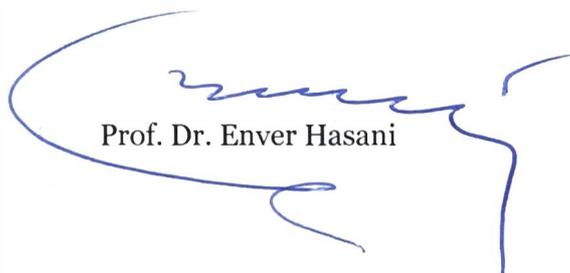
- I. TO REJECT the request for Interim Measures;
- II. TO REJECT the Referral as Inadmissible;
- III. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur



Dr. Kadri Kryeziu

President of the Constitutional Court



Prof. Dr. Enver Hasani