



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

Prishtina, 22 April 2014  
Ref. No.: RK561/14

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI34/14**

Applicant

**Durrës Shahini**

**Constitutional Review of the Judgment of the Supreme Court, Pml. no. 26/2014, of 31 January 2014 and request for interim measures**

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

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge and  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Applicant is Mr. Durrës Shahini (hereinafter: the Applicant), residing in Fushë-Kosovë represented by Mr. Artan Qerkini, a lawyer from the Law Firm "Sejdiu & Qerkini" in Prishtina.

## **Challenged Decision**

2. The Applicant challenges the Judgment, Pml. no. 26/2014, of the Supreme Court of Kosovo of 31 January 2014, which was served on the Applicant on the same day.

## **Subject Matter**

3. The subject matter of the Referral is the request for constitutional review of the Judgment of the Supreme Court, Pml. no. 26/2014, of 31 January 2014. The Applicant alleges that by this Judgment were violated his rights, guaranteed by Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) as well as Article 5 [Right to Liberty and Security] and Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: ECHR).
4. In addition, the Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose interim measure, namely to suspend the execution of the Judgment of the Supreme Court (Pml. no. 26/2014 of 31 January 2014).

## **Legal basis**

5. The Referral is based on Article 113.7 of the Constitution, Article 22 and 27 of the Law on Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rules 54, 55 and 56 (3) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: Rules of Procedure).

## **Proceedings before the Court**

6. On 21 February 2014, the Applicant submitted the Referral to the Constitutional Court.
7. On 27 February 2014, the President of the Court, by Decision GJR. KI34/14, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court, by Decision KSH. KI34/14, appointed the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
8. On 27 February 2014, the Court notified the Applicant of the registration of the Referral and requested from him to submit to the Court: the first decision on the imposition of detention on remand and all other decisions on thereof. On the same date, the Court also informed the Supreme Court of the submission of the Referral.
9. On 6 March 2014, the Applicant submitted to the Court all requested documents.

10. On 24 March 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral as inadmissible and to reject the request for interim measures.

### **Facts of the Case**

11. On 4 June 2013, the Pre-trial Judge issued an Order (PNKR. 207/2013) whereby it ordered the Police of Kosovo to search houses and accompanying premises, and to arrest the Applicant and other suspects on the suspicion of having committed criminal offences: Participation in or organization of an organized criminal group under Article 283, paragraph 1 of the Criminal Code of Kosovo (hereinafter: CCK); Issuing uncovered or false cheques and misuse of bank or credit cards, as per Article 307, paragraph 1 of the CCK; unauthorized production, possession and attempt, as per Article 13, paragraphs 2 and 3 of the Law no. 03/L-166 on Prevention and Fight of Cyber Crime.
12. On 11 June 2013, the Basic Court in Prishtina by Decision, PPRKR. no. 127/13, decided to impose on the Applicant the measure of house arrest.
13. On 19 June 2013, the Court of Appeal by Decision, PN1. no. 870/13 decided to approve the appeal of the Basic Prosecution (PP. no. 462/2013 of 11 June 2013) and modified the Decision of the Basic Court (PPRKR. no. 127/13 of 11 June 2013) by replacing the measure of house arrest with the measure of detention on remand.
14. The Applicant has been in detention on remand since 19 June 2013.
15. On 9 January 2014, the Pre-trial Judge of the Basic Court in Prishtina by Decision, PPRKR. no. 127/13, decided on the extension of detention on remand for two (2) more months. According to this Decision, the detention on remand of the Applicant is counted from 9 January 2014 to 9 March 2014.
16. In its Decision the Basic Court in Prishtina inter alia, concluded:

“[...]

*... the proposal of the Basic Prosecution in Prishtina [...] for extension of the detention on remand of the defendant [...] is grounded, since there are still: circumstances of imminent risk that if the defendant is freed he may flee, hide, or run aiming to avoid criminal liability, thereby influencing and delaying criminal proceedings, since there is reasonable doubt that the defendant has committed the criminal offences punishable by harsh sentences, which renders more justifiable the extension of the detention on remand. Such circumstances derive from legal provisions as per Article 187, paragraph 1, sub-paragraphs 1.1, and 1.2.1 of the CPCCK [Criminal Procedure Code of Kosovo] for the extending detention on remand”.*

17. On 14 January 2014, the Applicant filed an appeal with the Court of Appeal, requesting to annul the Decision of the Pre-trial Judge (Decision PPRKR. no. 127/13 of 9 January 2014) in order for the Applicant to defend himself in

freedom or that the Court of Appeal renders a more lenient measure, which would ensure the presence of the Applicant in the proceedings.

18. On 17 January 2014, the Court of Appeal in Prishtina by Decision, PN1. no. 89/14, rejected the Applicant's appeal as ungrounded and upheld the Decision of the Pre-trial Judge of the Basic Court (Decision PPRKR. no. 127/of 9 January 2014).
19. The Court of Appeal held that:

*"[...]*

*... the allegations of appeal do not stand ground, since according to the case files, [...] and respectively according to the evidence collected so far, there is grounded suspicion that the defendant has been involved in committing criminal offences with which he has been charged, thereby meeting the essential condition for extending his detention on remand [...].*

*[...]*

*Likewise, according to the findings of this Court, there are legal grounds to extend the detention on remand [...], since the investigation is ongoing, and therefore, if released, there is grounded fear that the defendant may obstruct the normal course of the criminal procedure, thereby influencing other co-perpetrators.*

*[...]*

*The Court also finds that there are legal reasons to extend his detention [...] because of the manner and circumstances in which the criminal offences are suspected to have been committed, and the gravity of the criminal offence [...] are offences that may be punishable cumulatively with a fine of up to 250 thousand Euros, and imprisonment of at least 7 years, both categorized as offences of high social hazard [...].*

*[...]*

*Considering the circumstances mentioned above, this court considers that other measures as provided by Article 173 of the CPCK are insufficient to ensure the presence of the defendant, and to prevent the repetition of such criminal offences, aiming at the successful implementation of the criminal proceedings, and therefore, the complaint of the defence counsel of the defendant is hereby rejected as ungrounded [...]."*

20. On 28 January 2014, the Applicant filed a request for protection of legality with the Supreme Court, by requesting the annulment of the Decision of the Court of Appeal (Decision PN1. nr.89/14 of 17 January 2014).
21. On 31 January 2014, the Supreme Court, by Judgment Pml. no. 26/2014 rejected as ungrounded the request for protection of legality.

22. The Supreme Court, in its Judgment, concluded as follows:

*[...]*

*It must be underlined that the procedural delay by the State Prosecution, as alleged by the defence, cannot be disputed by this extraordinary legal remedy. Since in the concrete case, the criminal matter is still in the stage of investigation, while it is expected that in future stages of the procedure all issues related to the concrete case and the concrete defendant will be clarified. Also in the finding of this Court, there are legal grounds to extend the detention, as correctly found by first and second instance courts, and providing sufficient reasoning for the legal grounds used to extend the detention of the defendant [...]."*

*Due to circumstances mentioned above, the allegations of the defense in relation to the termination of the detention, or the imposition of an alternative measure, [...], are found ungrounded, because they are insufficient for a normal and unobstructed criminal procedure in its current stage".*

23. Based on the case files, at this stage, an Indictment has not yet been issued.

### **Applicant's allegations**

24. The Applicant alleges that Judgment Pml. no .26/2014 of the Supreme Court violated his rights guaranteed by Constitution, namely Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution as well as Article 5 [Right to Liberty and Security] and Article 6 [Right to a fair trial] ECHR.
25. As to the alleged violation of Article 29 of the Constitution and Article 5 ECHR, the Applicant submits that the decision on the extension of the detention on remand was a result of a delay of the proceedings by the Prosecutor, who according to the Applicant, *"... only after 5 months realized that he had no competencies and must transfer the case to the Special Prosecution."* Regarding this issue, the Applicant alleged that *"The Court of Appeal in its Decision did not address at all the allegation of the defense, when it notified in writing of the reasons of the deprivation of liberty beyond the limit provided by law (CPCK)".* The Applicant further stated that: *"...the Supreme Court's failure to provide this written notification to the Applicant on why the delay of the procedure is not attributed to the prosecutor has violated his right to liberty and security guaranteed by Article 29 of the Constitution."*
26. As to the Applicant's alleged violation of Article 31 of the Constitution and Article 6 ECHR, the Applicant holds that the Supreme Court has violated his right, guaranteed by Article 31.2 of the Constitution, since *"the Supreme Court was obliged to disapprove the extension of the detention on remand beyond the 8 month time limit, or at least to reason why this extension is not attributable to the prosecutor."*
27. Apart from the request to annul Judgment Pml no. 26/2014 of the Supreme Court of 31 January 2014, the Applicant requests that the Court imposes an



interim measure to “... suspend implementation of the challenged Judgment of the Supreme Court until the Court rules on this case.”

28. The Applicant concludes by requesting from the Court to:

- *Find the Referral of the Applicant admissible;*
- *Render a Ruling for interim measure considering the serious violations of the constitutional rights during the criminal procedure and the irreparable damage that would cause extending the Applicant’s detention on remand, pursuant to Article 27 of the Law and Rules 54 and 55 of the Rules that suspend the challenged Judgment of the Supreme Court until the Constitutional Court renders its Judgment on this case;*
- *Order the Applicant’s immediate release from detention on remand;*
- *Find the violation of the Applicant’s individual rights guaranteed by Articles 29 and 31 of the Constitution, and Article 5 and 6 ECHR, as a result of the violations by the Supreme Court of a set of Applicant’s rights guaranteed by these instruments and the CPCK; and*
- *Determine any other legal measure that this honorable court finds as legally grounded and reasonable.”*

### **Admissibility of the Referral**

29. In order to be able to adjudicate the Applicant’s Referral, the Court needs to examine beforehand whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, as further specified in the Law and the Rules of Procedure of the Court.

30. In this respect, Article 113, paragraph 7, of the Constitution provides:

*“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.”*

31. In addition, Article 49 of the Law provides that *“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision.”*

32. In the present case, the Court notes that the Judgment of the Supreme Court, PML. No. 26/2014 was rendered on 31 January 2014, and that the Applicant filed his Referral with the Court on 21 February 2014.

33. The Court also takes into account Rule 36 of the Rules of Procedure, which provides that:

- (1) *“The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.”*
- (2) *“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

*(a) the Referral is not prima facie justified”.*

34. In his Referral, the Applicant alleges that the Supreme Court violated its obligations arising from Article 29 [Right to Liberty and Security] and Article 31 [Right to Fair and Impartial Trial] of the Constitution as well as Article 5 [Right to Liberty and Security] and Article 6 [Right to a Fair Trial] ECHR mainly because it approved the extension on detention on remand beyond the 8 months limit.
35. With regard to the Applicant's allegation for violation of Article 29 [The Right to Liberty and Security], the Constitution establishes:

*"29. 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;  
[...]."*
36. In these circumstances, the Court notes that the, Supreme Court reasoned its Judgment as following:

*"[...]*

*Also in the finding of this Court, there are legal grounds to extend the detention, as correctly found by first and second instance courts, and providing sufficient reasoning for the legal grounds used to extend the detention of the defendant [...].*

*Due to circumstances mentioned above, the allegations of the defense in relation to the termination of the detention, or the imposition of an alternative measure, [...], are found ungrounded, because they are insufficient for a normal and unobstructed criminal procedure in its current stage".*
37. In this regard, the Court notes that the Supreme Court and the lower instance courts have reasoned their Decisions to extend the detention on remand.
38. The Court also finds that what the Applicant raises questions of legality and not of constitutionality.
39. In this respect, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the Supreme Court, unless and in so far as it may have infringed rights and freedoms protected by the Constitution (constitutionality).
40. The Constitutional Court cannot substitute the role of the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, Garcia Ruiz vs. Spain, No. 30544/96, ECtHR, Judgment of 21 January 1999; see also Case KI70/11 of

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

41. In this relation, the Court notes that the reasoning given in the Decisions of the lower instances and the Supreme Court to reject the Applicant's request to defend himself in liberty or to substitute the detention on remand with an alternative sanction are clear. Moreover, the Court finds that the proceedings before the regular courts have not been unfair or arbitrary (See, *mutatis mutandis*, Shub vs. Lithuania, no. 17064/06, ECtHR, Decision of 30 June 2009).
42. In fact it is up to the courts to determine whether, given the circumstances of the case, the length of detention has exceeded a reasonable limit. In other words, courts have the discretionary power to decide what is reasonable in specific circumstances (See, *mutatis mutandis*, Wemhoff v. Federal Republic of Germany, 7 E.Ct.H.R. (ser. A) at 23, 1968). In the present case, the reasons of the prosecution and the courts to justify the Applicant's continued detention refer to the seriousness of the crime, the circumstances of its commission, the Applicant's risk of fleeing and of repeating the offence or committing a similar offence. These reasons appear to be essentially attributable to the complexity of the case, which renders this Court unable to determine that the length of proceedings is unjustified (see *mutatis mutandis*, Boddaert v. Belgium, App. No. 12919/87, adopted on 12 October 1992 and see also case KI20/13, Applicant Rifat Osmani, Resolution on Inadmissibility of 12 March 2013).
43. Referring to the alleged violations regarding Article 31 of the Constitution and Article 6 of ECHR, the Applicant further argues that the Supreme Court has violated the aforementioned rights, because: "*the Supreme Court was obliged to disapprove the extension of the detention on remand beyond the 8 month time limit, or at least to reason why this extension is not attributable to the prosecutor.*"
44. In this connection, the Court refers to the meaning of the criminal charge, developed by the ECHR case law by which it established that "*it is the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence or some other act which carries the implication of such an allegation and which likewise substantially affects the situation of the suspect.*" (See Corgliano v. Italy, App. No. 8309/78, ECtHR, Judgment of 10 December 1982, par. 34).
45. The Court further notes that the investigation procedure is still ongoing and that an indictment has not yet been issued. The Court cannot follow the Applicant's argument in relation to Article 6 and therefore the Court considers that, based on the circumstances of the Referral and stage of the proceedings, Article 6 of the ECHR is not applicable as argued by the Applicant.
46. Based on the above-mentioned reasoning and referring to the current stage of the proceedings, the Court considers that the Applicant's Referral is *prima facie* not justified.



47. Thus, the Court concludes that the Referral is inadmissible.

### **Request for Interim Measure**

48. The Applicant also requests from the Court to impose an interim measure to suspend the challenged Judgment of the Supreme Court and order the Applicant's immediate release from the detention on remand.

49. In this regard, the Applicant alleges that this is necessary "*considering the serious violations of the constitutional rights during the criminal procedure and the irreparable damage that the extension of the Applicant's detention on remand would cause.*"

50. In order for the Court to allow an interim measure, in accordance with Rule 55 (4) of the Rules of Procedure, it needs to determine that:

*"(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*

*(...)*

*If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application".*

51. As concluded above, the Referral is inadmissible and, therefore, there is no *prima facie* case for imposing an interim measure. For these reasons, the request for an interim measure is rejected.

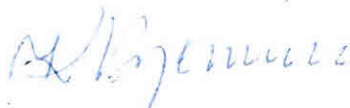
## **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 27 of the Law, and Rules 36 (2) a) and 55 (4) of the Rules of Procedure, on 24 March 2014, unanimously:

### **DECIDES**


- I. TO DECLARE the Referral as Inadmissible;
- II. TO REJECT the Request for Interim Measures;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- V. TO DECLARE this Decision effective immediately

**Judge Rapporteur**

  
Prof. Dr. Kadri Kryeziu



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani