



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

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Prishtina, 8 August 2016  
Ref. no.: RK 972/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case KI63/16**

Applicant

**Astrit Pira**

**Constitutional review of  
Decision PN-II-.no. 8/2015 of the Supreme Court of Kosovo,  
of 26 November 2015**

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

composed of

Arta Rama-Hajrizi, President  
Ivan Cukalovic, Deputy-President  
Robert Carolan, Judge  
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 is submitted by Astrit Pira from Prishtina (hereinafter, the Applicant) represented by Mahmut Halimi, a lawyer practicing in Mitrovica.

## **Challenged decisions**

2. The Applicant challenges Decision PN-II-8/2015 of the Supreme Court of Kosovo (hereinafter, the Supreme Court) of 26 November 2015, which was served on the Applicant on 15 December 2015.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated Articles 29 [Right to Liberty and Security], 30 [Right of the Accused] and 31 [Right to Fair and Impartial Trial] of the Constitution.
4. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely *“to suspend the proceeding in the criminal case No. PKR 23/15, with the Basic Court in Prishtina”*.

## **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 No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and Rule 29 of the Rules of Procedure of the Court.

## **Proceedings before the Constitutional Court**

6. On 13 April 2016, the Applicant filed a Referral with the Court.
7. On 15 April 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of Judges Altay Suroy (presiding), Snezhana Botusharova and Gresa Caka-Nimani.
8. On 6 May 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 14 June 2016, 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**

10. On 21 October 2010, the Special Prosecutor (hereinafter, the SP) started investigating some criminal offenses.
11. On 9 June 2011, the SP decided to expand the investigation and to include the Applicant in the investigation for the criminal offenses of unauthorized supply, transport, production, exchange or sale of weapons; organized crime; fraud; abusing official position or authority; and misuse of authorizations in economy.
12. The duration of investigations was extended several times until 7 June 2013. On 19 July 2013, the SP suspended the investigations.

13. On 19 January 2014, the SP decided the resumption of the investigations and filed an Indictment against the Applicant (PPS 108/2010).
14. The defense council objected the filing of the indictment, alleging that the Indictment was submitted after the legal deadline specified in Article 159 of the CPC.
15. On 28 May 2015, the Basic Court (Decision No PKR. 23/15; PPS: 108/10) decided to accept the objections of the defense counsel and rejected the indictment as belated.
16. The SP filed an appeal with the Court of Appeal, alleging that *“there is no legal deadline to file the Indictment and that the Prosecutor may file the Indictment at any time- with the only restriction of the deadline of the statutory limitation”*.
17. On 19 August 2015, the Court of Appeal (Decision PN 340/15) reject as ungrounded the appeal of the SP.
18. The Court of Appeal considered that *“the Basic Court has analyzed in details the factual state and the legal procedure. The Trial Panel is fully convinced with the conclusions and the reasoning of the Basic Court. Due to these reasons, the Trial Panel fully agrees with this reasoning and fully ascertains the conclusion”*.
19. The Court of Appeal concluded that *“based on Article 159, paragraph 1 of CPC, the investigation shall be completed within two (2) years with the immediate filing of Indictment or the investigation in question shall automatically be suspended. Based on Article 68 of CPC, the termination of investigations implies the termination of proceeding as a whole, since one proceeding stage is not followed by the other. In the case in question, the investigation deadline had expired before the Prosecution filed the Indictment. As a result, the Prosecutor has filed the Indictment after the termination of the criminal proceeding, which is unlawful”*.
20. On 22 September 2015, the SP filed an appeal with the Supreme Court, claiming what follows.

*“The challenged Decision violates the right guaranteed to the party by the Constitution of the Republic of Kosovo and also the substantial right guaranteed to the party by the CPC, and also the right guaranteed to the party by another Law of Kosovo, more concretely, Article 109, paragraph 1 of the Constitution of the Republic of Kosovo, Article 4, paragraph 2 and Article 7, paragraph 1, sub paragraphs 1.7 and 1.8 of the Law on State Prosecutor, and Article 49 of the CPC (Article 415, paragraph 1, sub paragraphs 1.1, 1.2 and 1.3 of the CPC), and the procedural law with the purpose of guaranteeing the right under Article 415, paragraph 1, subparagraphs 1.1, 1.2 and 1.3 of the CPC (Article 415, paragraph 1, sub paragraph 1.4 of the CPC). More concretely, the challenged Decision does not contain the reasoning on decisive matter, according to Article 404, paragraph 1 of the CPC (Article 384, Paragraph 1, sub paragraph 1.12 of*

*the CPC), the Court of Appeals erroneously applied the provisions of Article 68, Article 158, paragraph 3, and Article 253, paragraph 1 of the CPC, they did not manage to consider Article 4, paragraph 1 and Article 240 paragraph 1 of the CPC, and the challenged Decision is substantially contrary to the provisions and criminal proceedings (Article 384, paragraph 2, sub paragraph 1 of the CPC)”.*

21. On 26 November 2015, the Supreme Court (Decision PN.II.8/2015) approved the appeal of the SP and modified the decision of the Court of Appeal.
22. The Supreme Court reasoned as it follows.

*“It is clear and unfortunately the time limit for filing the Indictment is not determined specifically in CPC. No provision of the CPC shows exactly any circumstance in which the Indictment is considered as “out of date”, or for rejecting the appeal on this basis. The Panel, initially considered Article 68 of the CPC which determines in details the four different stages of the criminal procedure: the investigation stage, the indictment and plea stage, the main trial stage and the legal remedy stage. By this clear difference of the stages of the criminal procedures in CPC, the Panel finds that the purpose of the legislative is clear and the filing of the appeal enters in the second state of the criminal procedure (the indictment and plea stage) and not in the first stage (the investigation stage). This point of view was strengthened by Article 159 of the CPC. This Article is very clear regarding the time limits of the investigative stage, and it does not include any provision which determines that the Indictment shall be filed within the allowed time limit. Then, the Panel considered Article 240 of the CPC, by which determines the actions which are in disposal of the Prosecutor after the investigation is finished. Paragraph 1 determines the procedure before the Court based on the Indictment filed by the State Prosecutor, and paragraph 2, determines that the State Prosecutor issued a Decision for the termination of the investigation. Both situations, expressively refer to the end of the investigation, and the Panel thinks that the meaning of the Article is that the filling of the Indictment is not part of the investigation stage, and therefore it is not a subject of the time limits determined by Article 159 of the CPC. Also it is logical that the State Prosecutor will not be able to decide of what actions he should undertake – to file an Indictment or to issue a Decision. Also, it is clear that the Indictments are long and detailed documents, which take a lot of time to be prepared correctly and completely. The Panel by majority of votes ascertains that there is not any time limit for filing the Indictment, “Out of date Indictment” is not determined by CPC. The State Prosecutor is limited only to the prescription of this present criminal case. However, the State Prosecutor is clearly instructed to file the Indictment as soon as the investigation stage ends, since that the danger of violating the right to fair trial within the reasonable time limit becomes greater by time passing. Further on, this Court on the occasion of deciding on the merits of the criminal charge; on the occasion of deciding on the punishment will always consider the time limit of the criminal procedure”.*

## **Applicant's allegations**

23. The Applicant claims a *"violation of the individual rights of the applicant, guaranteed by Articles 29, 30 and 31 of the Constitution of the Republic of Kosovo, Article 6 of the European Convention"*.
24. The Applicant alleges that the Supreme Court deprived the Applicant from the right to fair and impartial trial, because *"the Criminal Procedure Code has stipulated preclusive deadlines, with the effect of losing the right of filing an indictment if the Prosecutor does not file an indictment within a period of (2) years, counting from the day of the Decision on initiation of the investigations"*.
25. The Applicant also alleges that *"the challenged Decision does not contain the reasoning on decisive matter, according to Article 404, paragraph 1 of the CPC (Article 384, Paragraph 1, sub paragraph 1.12 of the CPC)"*.
26. The Applicant further alleges that the Supreme Court decided *"in violation of the rule of law and the principle of legal security, because if the stances and the decision-making standards of the Supreme Court are not taken into account, as in the present case, then the parties cannot know how to rely on the Constitution, law and case law"*.

## **Assessment of admissibility**

27. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
28. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:
  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.*
29. 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.*
30. The Court further takes into account Rule 36 [Admissibility Criteria] (1) (d) and (2) (b) and (d) of the Rules of Procedure which foresees:

- (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, or*

*(...)*

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

31. The Court recalls that the Applicant claims that the challenged decision allegedly violated his rights to liberty and security, his rights of Accused and his right to fair and impartial trial, each of them guaranteed by the Constitution.
32. The Court is mindful of the invoked constitutional provisions of Articles 29, 30 and 31 of the Constitution, as it follows.
33. Article 29 [Right to Liberty and Security]

*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:*

*(1) pursuant to a sentence of imprisonment for committing a criminal act;*

*(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;*

*(3) for the purpose of educational supervision of a minor or for the purpose of bringing the minor before a competent institution in accordance with a lawful order;*

*(4) for the purpose of medical supervision of a person who because of disease represents a danger to society;*

*(5) for illegal entry into the Republic of Kosovo or pursuant to a lawful order of expulsion or extradition.*

*2. Everyone who is deprived of liberty shall be promptly informed, in a language he/she understands, of the reasons of deprivation. The written notice on the reasons of deprivation shall be provided as soon as possible. Everyone who is deprived of liberty without a court order shall be brought within forty-eight (48) hours before a judge who decides on her/his detention or release not later than forty-eight (48) hours from the moment the detained person is brought before the court. Everyone who is arrested shall be entitled to trial within a reasonable time and to release pending trial, unless the judge concludes that the person is a danger to the community or presents a substantial risk of fleeing before trial.*

*3. Everyone who is deprived of liberty shall be promptly informed of his/her right not to make any statements, right to defense counsel of her/his choosing, and the right to promptly communicate with a person of his/her choosing.*

*4. Everyone who is deprived of liberty by arrest or detention enjoys the right to use legal remedies to challenge the lawfulness of the arrest or*

*detention. The case shall be speedily decided by a court and release shall be ordered if the arrest or detention is determined to be unlawful.*

*5. Everyone who has been detained or arrested in contradiction with the provisions of this article has a right to compensation in a manner provided by law.*

*6. An individual who is sentenced has the right to challenge the conditions of detention in a manner provided by law.*

34. Article 30 [Rights of the Accused]

*Everyone charged with a criminal offense shall enjoy the following minimum rights:*

*(1) to be promptly informed, in a language that she/he understands, of the nature and cause of the accusation against him/her;*

*(2) to be promptly informed of her/his rights according to law;*

*(3) to have adequate time, facilities and remedies for the preparation of his/her defense;*

*(4) to have free assistance of an interpreter if she/he cannot understand or speak the language used in court;*

*(5) to have assistance of legal counsel of his/her choosing, to freely communicate with counsel and if she/he does not have sufficient means, to be provided free counsel;*

*(6) to not be forced to testify against oneself or admit one's guilt.*

35. Article 31 [Right to Fair and Impartial Trial]

*1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

*2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*

*3. Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.*

*4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.*

*5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.*

*6. Free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice.*

*7. Judicial proceedings involving minors shall be regulated by law respecting special rules and procedures for juveniles.*

36. The Court recalls that the main argument of the Applicant is whether filing the indictment two years after the starting of investigations is or not in conformity

with the criminal law. The Applicant considers the challenged decision violates “Article 109, paragraph 1 of the Constitution of the Republic of Kosovo, Article 4, paragraph 2 and Article 7, paragraph 1, sub paragraphs 1.7 and 1.8 of the Law on State Prosecutor, and Article 49 of the CPC (Article 415, paragraph 1, sub paragraphs 1.1, 1.2 and 1.3 of the CPC), and the procedural law with the purpose of guaranteeing the right under Article 415, paragraph 1, subparagraphs 1.1, 1.2 and 1.3 of the CPC (Article 415, paragraph 1, sub paragraph 1.4 of the CPC)”.

37. In fact, the Applicant complains that the Supreme Court erroneously interpreted the law with regard to a time-limit to file an indictment and considers that the Supreme Court should have construed the relevant legal provisions in a different way.
38. The Court notes that the Supreme Court took into due account the Judgments of the Basic Court and of the Court of Appeal. Then, the Supreme Court started analyzing the question from the observation that “no provision of the CPC shows exactly any circumstance in which the Indictment is considered as “out of date”, or for rejecting the appeal on this basis”. The Supreme Court, after discussing the interpretation of Articles 68, 159 and 240 of the Criminal Procedure Code, considered that “the filling of the Indictment (...) is not a subject of the time limits determined by Article 159 of the CPC”. Finally, the Supreme Court concluded that “there is not any time limit for filing the Indictment, “Out of date Indictment” is not determined by CPC”.
39. The Court considers that the Applicant bases his claim on erroneous interpretation of Articles 68, 159 and 240 of the Criminal Procedure Code made by the Supreme Court in relation to the SP having filed the indictment two years after the starting of investigations. That procedural argument pertains to the domain of legality and as such does not fall under the jurisdiction of the Constitutional Court and thus it cannot be reviewed by the Court. On the other hand, the Court underlines that “failure to abide by the time-limit prescribed by domestic law does not in itself contravene Article 6.1 of the Convention”. (See ECtHR, Mitkus v. Latvia, Application no. 7259/03, Judgment 2 October 2012, para 88)
40. In this respect, the Court emphasizes that it is not its task to deal with errors of law allegedly committed by a regular court (legality) unless and in so far as such errors may have infringed rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the law which have led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of “fourth instance”, which would be to disregard the limits imposed on its jurisdiction. In fact, it is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law. (See *García Ruiz v. Spain*, [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I; Case No. KI72/14, Applicant *Besa Qirezi*, Judgment of 4 February 2015, para.65).
41. The Court considers that the Applicant has neither presented facts which justify his allegation of a violation of his constitutional right to liberty and security, his



rights of Accused and his right to fair and impartial trial, nor he has proved the alleged violation of his invoked constitutional rights.

42. In fact, the Court notes that the Applicant does not refer to any relevant and pertinent facts or situations in relation to be *deprived of liberty*, which would fall under Article 29 of the Constitution, in conjunction with Article 5 of the ECHR; in relation to a criminal charge, which could justify the enjoyment of the *minimum rights*, as established by Article 30 of the Constitution, in conjunction with Article 6 of the ECHR; and in relation to a *public hearing*, as established by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.
43. The Court considers that the observation is in conformity with the ECtHR jurisprudence, which held that the overall purpose of Article 5 of the ECHR is to ensure that no one should be dispossessed of his liberty in an arbitrary fashion (*Assanidze v. Georgia*, Application no. 71503/01, Judgment 8 April 2004). The ECtHR jurisprudence also held that Article 6 of the ECHR begins to apply when a criminal investigation has reached the point where the applicant has been charged with a criminal offense (*Zaprianov v. Bulgaria*, Application no. 41171/98, Judgment 30 September 2004). In addition, the ECtHR jurisprudence specifically considered that the guarantee provided by Article 6 of the ECHR requires that a hearing takes place and by implication that there is an oral hearing.
44. Moreover, the Court considers that the Applicant has not succeeded to show and prove that the proceedings before the Supreme Court were unfair or tainted by arbitrariness or that his rights and freedoms protected by the Constitution have been infringed by the alleged erroneous interpretation of Articles 68, 159 and 240 of the Criminal Procedure Code. The Court emphasizes that interpretation of Articles 68, 159 and 240 of the Criminal Procedure Code is a matter of legality. No constitutional matter has been substantiated and proved by the Applicant.
45. The Court reiterates that, as a general rule, the interpretation of law is a matter solely for the regular instances whose findings and conclusions in this regard are binding on the Constitutional Court. However, where a decision of a regular court is clearly arbitrary, the Court can and must call it into question. (See *Sisojeva and Others v. Latvia*, [GC], application no. 60654/00, Judgment of 15 January 2007, para. 89).
46. In addition, the Court notes that the Applicant disagrees with the outcome of his case; however, the disagreement cannot of itself raise an arguable claim of a breach of Articles 29 [Right to Liberty and Security], 30 [Right of the Accused] and 31 [Right to Fair and Impartial Trial] of the Constitution. (See, for example, Constitutional Court Case No. KI125/11, *Shaban Gojnovci*, Resolution on Inadmissibility of 28 May 2012, paragraph 28).
47. Therefore, the Court finds that the Applicant's Referral does not meet the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.

48. Consequently, the Referral is manifestly ill-founded on constitutional basis and, pursuant to Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, is inadmissible.

### **Request for Interim Measure**

49. The Court recalls that the Applicant also requests the Court to render a decision on the imposition of an interim measure namely *"to suspend the proceeding in the criminal case No. PKR 23/15, with the Basic Court in Prishtina"*.
50. The Court has just concluded that the Applicant's Referral is manifestly ill-founded on a constitutional basis and is inadmissible.
51. Therefore, in accordance with Article 27 (1) of the Law and Rule 55 (4) of the Rules of Procedure, the request for interim measure is rejected as ungrounded.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113 (7) of the Constitution, Article 27 (1) and 48 of the Law of the Law and Rule 55 (4) and 56 (2) of the Rules of Procedure, on 14 June 2016, unanimously:

### **DECIDES**

- I. TO DECLARE the Referral as Inadmissible;
- II. TO REJECT the request for Interim Measure;
- 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**

Almiro Rodrigues



**President of the Constitutional Court**

Arta Rama-Hajrizi