



Prishtina, date: 15 December 2009  
Ref.: Nr. MP-03/09

**DECISION**  
on the request for interim measures  
in

**Case No. KI. 22/09**  
**Dede Gecaj against Decision PKL-KZZ 76/08 of the Supreme Court**

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

Composed of:

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

With Ms. Albana Sopi, as minute taker, at the Court's deliberations and voting on 25 November 2009 on the Applicant's request for interim measures in Case No. KI 22/09, filed on 22 June 2009 with this Court.

**The Applicant**

1. The Applicant, Mr. Dede Gecaj, is represented by Dr. Kole Krasniqi, a practising lawyer in Peja.

**Subject Matter**

2. The Applicant complains that his rights under the Constitution have been violated by Decision PKL-KZZ 76/08 of the Supreme Court of 6 April 2009, by which the Agreement of 20 August 2007, concluded between UNMIK and the Swiss authorities regarding the Applicant's extradition to Switzerland, was declared valid. He alleged

that his extradition would violate “international law” and “international standards of human rights”.

3. In his submissions of 17 September 2009, the Applicant’s representative requested the Constitutional Court to suspend the procedure on the Applicant’s extradition.

### **Legal Basis**

4. Art. 116 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Art. 27 of the Law No. 03/L-121 on the Constitutional Court of Kosovo of 16 December 2009 (hereinafter referred to as: the Law), and Art 52 (1) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

### **The facts**

5. In January 1999, the Applicant, who was living in Switzerland, apparently killed the teacher of his daughter and fled the country. On 25 February 1999, he was arrested in Gjakova, Kosovo and charged pursuant to the Law on Criminal Proceedings of the Socialist Federal Republic of Yugoslavia of 1977. After he had appeared before the District Court of Peje on 1 March 1999, the Supreme Court of the Republic of Serbia changed the venue of the case from the District Court of Peje to the District Court in Leskovac, which sentenced him to four years imprisonment for murder.

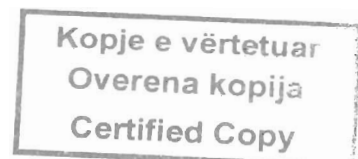
6. Pending his appeal before the Supreme Court of Serbia, the Applicant was released. On 28 March 2002 and 28 March 2003 the Supreme Court confirmed his conviction, but reduced the penalty to three years and 6 months imprisonment. The Applicant has, so far, not served the remainder of his sentence.

7. On 19 May 2003 and again on 6 December 2005, the Swiss authorities issued a warrant for the Applicant’s arrest for the acts committed in Switzerland. On 22 February 2006, an Agreement was concluded between the Swiss authorities and UNMIK regarding the Applicant’s extradition. He was arrested in Kosovo on 4 May 2006 and released the same day.

8. On 17 August 2007 his detention was ordered for different charges and a new Agreement between the Swiss authorities and UNMIK was concluded on 20 August 2007. The court proceeding, which the Applicant initiated to have the Agreement declared invalid, culminated in the Kosovo Supreme Court deciding on 6 April 2009 that the Agreement was valid and that the principle “ne bis in idem”, as invoked by the Applicant, was not applicable.

### **The Applicant’s allegations**

9. The Applicant complained that Decision No. PKL-KZZ 76/08 of the Supreme Court of Kosovo of 6 April 2009 infringed the principle “ne bis in idem”, since the case had already been adjudicated by a final judgment of the Supreme Court of Serbia. Furthermore, he alleged that the above Decision violated Article 517.9 of the Provisional Criminal Code of Kosovo, which requires that the transfer of a person to



a foreign jurisdiction can only be allowed, if there is no real risk that the person concerned will face inhuman or degrading treatment or punishment.

10. In the Applicant's opinion, the Swiss authorities have proven to be acting unlawfully, and in a discriminatory and revengeful manner because of his national background and their hate against foreigners.

11. The Applicant has not invoked any particular Article of the Constitution.

### **THE CONSTITUTIONAL COURT**

After having heard the Judge Rapporteur, Gjylieta Mushkolaj, and discussed the Applicant's submissions regarding his request for interim measures, deliberated on 25 November 2009 and concluded, without prejudging the final outcome of the Referral, that the request should be rejected. The Court found that the Applicant has not submitted any evidence which would justify the suspension of the extradition proceedings pending the final outcome of his Referral. In particular, the Applicant's complaint that his extradition to Switzerland would submit him to inhuman or degrading treatment, contrary to Article 3 of the European Convention on Human Rights, has not been substantiated. The Applicant has, therefore, not shown that he would suffer irreparable damage, if the Court would reject his request for interim measures.

### **FOR THESE REASONS**

The Court, pursuant to Art. 116(2) of the Constitution, Article 27(1) of the Law, and Art. 52(1) of the Rules of Procedure, by majority,

### **DECIDES**

I. TO REJECT the Request for interim measures;

II. This Decision is to be notified to the Parties.

III. This Decision shall be published in accordance with Art. 20(4) of the Law and is effective immediately.

**Judge Rapporteur**

Dr. Gjylieta Mushkolaj

**President of the Constitutional Court**

Prof. Dr. Enver Hasani

