



REPUBLIKA E KOSOVËS  
Republika Kosova-Republic of Kosovo  
Gjykata Kushtetuese / Ustavni sud / Constitutional Court  
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Prishtina, date: 15 December 2009  
Ref.: Nr. MP-04/09

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

**Case No. KI. 27/09**  
**Rafet Hoxha**  
**vs.**  
**Decision No. Pn. Nr. 168/2005 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 Albana Sopi, as minute taker, at the Court's deliberations and voting on the Applicant's request for interim measures, which took place on 25 November 2009, in Case No. KI 27/09, initiated by:

**The Applicant**

1. The Applicant is Rafet Hoxha, represented by Hamdi Podvorica, a practising lawyer in Pristina.

**Subject Matter**

2. The Applicant filled the Referral to the Court on 13 July 2009. In his Referral the Applicant complains that his rights under the Constitution had been violated by

Decision No. Pn.nr. 168/2005 of the Supreme Court of 7 July 2005 (hereinafter referred to as: the Supreme Court Decision).

3. On 13 October 2009, the Applicant supplemented the Referral with a request for interim measures, specifically, requesting the suspension of the procedure for his transfer to Norway, until the Constitutional Court would issue its final Decision.

### **Legal Basis**

4. Art. 116 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution), Art. 27 of Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (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. The Supreme Court Decision confirmed Decision Kp.nr. 120/2005 of the District Court of Prishtina which stipulated that all legal preconditions for the extradition of the Applicant to Norway, laid down in the Agreement of 22 October 2004 concluded between UNMIK and the Government of the Royal Kingdom of Norway, had been fulfilled.

6. The aforementioned Agreement concluded between UNMIK and the Royal Kingdom of Norway, stipulates surrender of the Applicant to the Kingdom of Norway, since the Norwegian authorities have initiated criminal proceedings against the Applicant for the criminal offence of murder as allegedly occurred on 31 March 2003.

7. On 13 July 2009 the Applicant submitted the Referral to the Constitutional Court, requesting the Court to evaluate the constitutionality and legality of the Supreme Court Decision.

8. On 13 October 2009, the Applicant supplemented the Referral with further arguments in his favour, requesting the Court to issue interim measure and suspend his extradition to Norway. In particular the Applicant argued that his previous lawyer who represented him before the Supreme Court made a mistake because he did not submit the evidence that the Applicant is a citizen of Kosovo.

### **The Applicant's complaints**

9. The Applicant complained that his right guaranteed by Article 35 (4) as well as Articles 17, 18 and 22 of the Constitution have been violated. It should be recalled, in particular that Article 35 (4) of the Constitution prescribes that "Citizens of the Republic of Kosovo shall not be extradited from Kosovo against their will except for cases when otherwise required by international law and agreements."

10. According to the Applicant, the alleged violation of his constitutional rights constitutes sufficient ground for the Court to grant the requested interim measure.

## **THE CONSTITUTIONAL COURT**

After having heard the Judge Rapporteur, Ivan Čukalović, and having discussed the Applicant's submissions regarding his request for interim measures, deliberated on 25 November 2009. The Court concluded, without prejudging the final outcome of the Referral, that the request for interim measure was unsubstantiated. The Applicant has not submitted any evidence that his extradition may result in unrecoverable damage for him, and in particular that, upon his extradition to Norway, he would face inhuman or degrading treatment in that country, contrary to Article 3 of the European Convention on Human Rights.

### **FOR THESE REASONS**

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

### **DECIDES**

- I. TO REJECT the request for interim measures;
- II. This Decision shall 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**

Prof. Dr. Ivan Čukalović

**President of the Constitutional Court**

Prof. Dr. Enver Hasani