



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
Adresa: Perandori Justinian, PN. Prishtinë
T: +381 (0)38 220 104; F: +381 (0)38 220 112; www.gjk-ks.org

Prishtina, date: 21 aprill 2010
Ref. No.: MP 16 /10

Decision on the Request for Interim Measures

In

Case No. KI 68/09,

Emrush Kastrati

vs.

Decision of the Supreme Court of Kosovo,
Pkl. No. 120/0, dated 1 September 2009

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Constitutional Court 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

Having deliberated on the request for interim measures of the Applicant, Emrush Kastrati the Court adopts the following **Decision** unanimously and without prejudice to any further decision to be made by the Court on admissibility or on the merits:

Kopje e vërtetuar
Overena kopija
Certified Copy

Introduction

The Applicant

1. The Applicant is Emrush Kastrati, a Judge of the Municipal Court in Malisheva, Hamdi Berisha Street nn, Mirdita Neighbourhood, Malisheva.

The Challenged Decision

2. The Decision challenged by the Applicant is a Decision of the Supreme Court of Kosovo, Pkl. No. 120/08, dated 1 September 2009.

Subject Matter

3. On 3 December 2009 the Applicant, Emrush Kastrati, lodged a referral to the Constitutional Court of the Republic of Kosovo requesting Interim Measures against the implementation of the Decision of the Supreme Court of Kosovo Pkl. No. 120/08, dated 1 September 2009 on the basis that the Supreme Court had undermined the independence of the judiciary in reaching its decision.
4. The Applicant pleaded that the Decision violates Article 107.1 of the Constitution of Kosovo which provides for judicial and prosecutorial immunity. Article 107, in full, states as follows:

Article 107 [Immunity]

1. Judges, including lay-judges, shall be immune from prosecution, civil lawsuit and dismissal for actions taken, decisions made or opinions expressed that are within the scope of their responsibilities as judges.

2. Judges, including lay-judges, shall not enjoy immunity and may be removed from office if they have committed an intentional violation of the law.

3. When a judge is indicted or arrested, notice must be given to the Kosovo Judicial Council without delay.

Legal Basis

5. Article. 116.2 of the Constitution of the Republic of Kosovo, Article 27 of the Law on the Constitutional Court of the Republic Kosovo (the Law) and Article 52.1 of the Rules of Procedure of the Constitutional Court (the Rules).

The Facts

6. The Office of the Municipal Public Prosecutor for Prizren brought an indictment against the Applicant, PP. No. 2085/2008 dated 27 August 2008 for the criminal offence, of issuing an unlawful judicial decision, as provided for in Article 346 of the Criminal Code of Kosovo.

7. The Municipal Court of Deçan as the criminal court of first instance, in a Decision KA. No. 14/2008 also dated 27 August 2008, overturned the charges filed by the Public Prosecutor on the grounds that the prosecution was that there was not sufficient proof to support a grounded suspicion that the Applicant had committed the criminal offence with which he was charged.
8. By a Decision KA. no. 14/2008 dated 7 October 2008, a panel of the Municipal Court of Deçan upheld that finding and rejected the Appeal which had been brought against the original decision of the Municipal Court by the Public Prosecutor.
9. On 01 September.2009 the Supreme Court of Kosovo, in its review of request for protection of legality, filed by the Public Prosecutor against that decision, issued a Judgment PKL. nr. 120/08, finding the request for protection of legality grounded, and finding that the disputed Decision issued in favour of the Applicant was not in accordance with a proper interpretation of Articles 304 to 316 of the Criminal Procedure Code of Kosovo.

Conclusion

10. The Court after having considered the report of the Judge Rapporteur, Iliriana Islami, and having deliberated on the matter on 19 February 2010 concluded that the request for interim measures should be rejected. The Court finds that the Applicant has not submitted sufficient evidence or reasons to justify interfering with the criminal proceedings pending in the Municipal Court. The Applicant has not established that the interim measures are necessary to avoid any risk of irreparable damages nor that those interim measures are in the public interest, as required by Article 27 of the Law on the Constitutional Court.

FOR THESE REASONS

The Constitutional Court, without prejudice to any further decision to be made by the Court on admissibility or on the merits, pursuant to Article 27 of the Law and Section 52.1 of the Rules, unanimously,

DECIDES

- i. To reject the request for an Interim Measure;
- ii. This Decision is to be notified to the parties;
- iii. This Decision shall be published in accordance with Article 20.4 of the Law on the Constitution of Kosovo and is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Prof. Dr. Iliriana Islami

Prof. Dr. Enver Hasani

