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

Prishtina, 21 October 2019
Ref. no.:AGJ 1455/19

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JUDGMENT

in

Case No. KI10/18

Applicant

Fahri Deqani

Constitutional review of Judgment Pml. No. 357/2017 of the Supreme Court of Kosovo of 22 December 2017

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Fahri Deqani (hereinafter: the Applicant), represented by Ekrem Shabani, a lawyer in Ferizaj.

Challenged decision

2. The Applicant challenges Judgment Pml. No. 357/2017 of the Supreme Court of Kosovo, of 22 December 2017 which rejected as ungrounded the Applicant's request for protection of legality against Decision PN1. No. 2156/2017 of the Court of Appeal of 6 December 2017, and Decision PKR. No. 155/15 of the Basic Court in Ferizaj, Department for Serious Crimes (hereinafter: the Basic Court in Ferizaj), of 24 November 2017.

3. The challenged decision was served on the Applicant on 28 August 2017.

Subject matter

4. The subject matter is the constitutional review of the challenged judgment which allegedly violates the Applicant's right as 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).

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

6. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Constitutional Court

7. On 17 January 2018, the Applicant submitted his Referral to the Court.

8. On 19 January 2018, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Selvete Gërxhaliu-Krasniqi.

9. On 23 January 2018, the Court notified the legal representative of the Applicant about the registration of the Referral and requested him to submit the power of attorney for representation before the Constitutional Court, and additional documents and information pertaining to the Referral. A copy of the Referral was sent to the Supreme Court of Kosovo (hereinafter: the Supreme Court).

10. On 6 February 2018, the Applicant submitted only the power of attorney for representation.

11. On 8 February 2018, Kosovo Rehabilitation Center for Torture Victims (hereinafter: the KRCT) submitted a letter *"in capacity of the third party regarding Referral KI10/18 submitted to the Constitutional Court concerning the criminal case against Fahri Deqani."*

12. On 1 March 2018, the Court requested the legal representative of the Applicant to submit the regular courts' decisions regarding the extension of detention on remand and information pertaining to the stage of the criminal proceedings against the Applicant.

13. On 9 March 2018, the legal representative of the Applicant submitted the requested documents to the Court.

14. On 16 June 2018, the term of office of the Judges: Snezhana Botusharova and Almiro Rodrigues ended. On 26 June 2018, the term of office of the Judges: Altay Suroy and Ivan Čukalović ended.

15. On 9 August 2018, the President of the Republic of Kosovo appointed the new Judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Nexhmi Rexhepi and Remzije Istrefi- Peci.

16. On 22 August 2018, the President appointed Judge Nexhmi Rexhepi as Judge Rapporteur.

17. On 1 October 2018, the President appointed a new Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Selvete Gërxhaliu - Krasniqi and Safet Hoxha.

18. On 19 October 2018, the Court requested the Applicant to inform it about the latest developments regarding the proceedings of extension of the detention on remand and the criminal proceedings against him. The Applicant's representative did not submit the information requested by the Court.

19. On 22 July 2019, the Court requested the Basic Court in Ferizaj to submit other decisions regarding the case.

20. On 7 August 2019, the Basic Court in Ferizaj submitted to the Court: Judgment PKR No. 155/15 of the Basic Court in Ferizaj of 6 April 2018, Judgment PAKR No. 324/2018 of the Court of Appeals of Kosovo, of 7 August 2018, as well as Judgment PML. No. 19/2019 of the Supreme Court of Kosovo, of 19 February 2019.

21. On 8 October 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

22. On the same date, the Court, by a majority vote, found that Judgment Pml. No. 357/2017 of the Supreme Court of Kosovo of 22 December 2017 is not in compliance with Article 29 [Right to Liberty and Security], paragraph 1, item (2) of the Constitution, in conjunction with Article 5 (Right to liberty and Security), paragraph 3 of the ECHR.

Summary of facts

Initial criminal proceedings

23. On 31 July 2010, the implementation of the measure of detention on remand against the Applicant commenced.

24. On 16 February 2011, the District Public Prosecutor in Peja filed Indictment PP. No. 283/2010 against the Applicant, because of the reasonable suspicion that he had committed the criminal offences of "*inciting the commission of criminal offence of aggravated murder*" under Article 147 [Aggravated Murder], paragraph 1, sub-paragraph 4, in conjunction with Article 24 [Incitement] of the Provisional Criminal Code of Kosovo (hereinafter: PCCK) and "attempted murder" under Article 146 [Murder] in conjunction with Articles 20 [Attempt] and 23 [Co-perpetration] of the PCCK.

25. On 3 September 2012, by Judgment P. No. 137/2011 of the District Court in Peja (hereinafter, the District Court), the Applicant was found guilty of committing the criminal offences of "incitement to commit a criminal offense of aggravated murder" and "attempted murder" and was sentenced to fifteen (15) years imprisonment.

26. On an unspecified date, against the aforementioned Judgment of the District Court, the Applicant filed an appeal on the grounds of essential violations of criminal procedure provisions, erroneous and incomplete determination of factual situation, violation of criminal law and decision on punishment.

27. On 26 November 2013, by Decision PAKR. No. 100/2013, the Court of Appeals approved the Applicant's appeal, annulled the Judgment of the District and remanded the criminal case to Basic Court in Peja, Department for Serious Crimes (hereinafter: Basic Court in Peja) for retrial. In addition, the Court of Appeals decided to extend the Applicant's detention on remand.

28. In its decision, the Court of Appeals found that the Judgment of the first instance court was rendered in violation of criminal law and criminal procedure. First, the Court of Appeals found that the enacting clause of the Judgment of the District Court was unclear, incomprehensible and contradictory with the content of the Judgment. Second, the Court of Appeals noted that it is not clear on the basis of which indictment the District Court adjudicated in the criminal case. Third, the Court of Appeals stated that the District Court did not clarify what facts or evidence support its judgment. In this regard, the Court of Appeals noted that the District Court had only described the statements of witnesses and evidence admitted during the main trial, without assessing their accuracy. Consequently, in relation to this finding,

the Court concluded that the Judgment of the District Court contains essential violation of the provisions of criminal procedure, namely Article 403, paragraph 12, of the Provisional Criminal Procedure Code of Kosovo (hereinafter: PCPCK). Fourth, the Court of Appeals found that the District Court did not correctly and completely determine the factual situation. Finally, the Court of Appeals concluded that the first instance court should eliminate all remarks given by the Court of Appeals, assessing and examining all the evidence accurately and rendering fair and lawful decision.

29. Based on the submissions submitted by the Applicant on 9 March 2018, the Basic Court in Peja held eighteen (18) sessions, however, until the abovementioned date, namely 9 March 2018, it did not render decision regarding the Applicant.

Procedure pertaining to the extension of Applicant's detention on remand

30. The Court recalls that on 26 November 2013, the Court of Appeals by Judgment PAKR. no. 100/2013 of 26 November 2013, decided to extend the detention on remand to the Applicant. Accordingly, since 26 November 2013 to this date, the Applicant's detention on remand has been extended every two months by the Basic Court in Ferizaj.

31. In his Referral, the Applicant only submitted the court's decisions with respect to the extension of his detention on remand rendered in 2017 and 2018, namely the decisions of the Basic Court in Ferizaj, PKR. No. 155/15 of 30 March 2017; of 29 May 2017; of 27 July 2017; of 26 September 2017; of 24 November 2017; and of 23 January 2018.

32. In each of the decisions of the Basic Court in Ferizaj, submitted to the Court, the reasoning of the Basic Court was as follows:

> *"According to the assessment of the presiding judge against the defendant Fahri Deçani, there are still legal reasons for extending the detention on remand as provided for in Article 187 par. 1, sub. 1.1 and 1.2 point 1.2.3 of the CPCK, since there is a reasonable suspicion that he has committed the criminal offenses for which he is charged by the Indictment, and which is a suspicion resulting from the submissions attached to the indictment which are an integral of the case file.*
>
> *The Presiding Judge considers that there are still reasons for extending the detention on remand against the accused pursuant to Article 187 par. 1 sub. 1.1 and 1.2, point 1.2.3 of the CPCK, taking into account the gravity of criminal offenses, the manner and circumstances under which the criminal offenses are suspected to be committed, and given the fact that the relations between the family of the accused's Fahri Decani and of the deceased [B.K.] have been deteriorated, hence there is a real danger that if the defendant at liberty he could repeat such criminal offenses or similar ones.*

The Presiding Judge took also into account other measures as provided by Article 173 paragraph 1 of the CPCK, but according to the court's assessment it would not be sufficient for the successful implementation of criminal proceedings and for preventing repetition of criminal offenses by the defendant."

33. The Applicant filed an appeal against the aforementioned decisions of the Basic Court in Ferizaj with the Court of Appeals.

34. In his appeals against the Basic Court decision filed in 2018, the Applicant states that the Basic Court "*has not provided any legal basis for which this measure could be extended*" and that the reasoning of the Basic Court that he could repeat the criminal offenses is ungrounded. Furthermore, the Applicant alleged that after eight (8) years of detention on remand "*any reason for the detention on remand has ceased [...]*". Finally, the Applicant specifies that the extension of his detention on remand is a violation of all fundamental rights provided "*by domestic law as well as by international conventions*", because *"[...] the detention on remand of about 8 years constitutes a fundamental violation of the principle of fair trial and at reasonable time and supersedes the principle of presumption of innocence [...]*".

35. The Court of Appeals rejected the Applicant's appeals as ungrounded. In four (4) Decisions of the Court of Appeals [PN1. No. 2156/2017, of 5 April 2017; of 2 August 2017; of 5 October 2017 and of 6 December 2017] with regard to the Applicant's allegations, the court's reasoning was as follows:

"[...] since the reasonable suspicion exists that the accused person committed the above mentioned criminal offenses, there are legal grounds for extending the detention against him because the legal reasons under Article 187, paragraph 1, sub paragraph 1.1 and 1.2, item 1, 2 and 3 of the CPCK, still exist, by taking into consideration the serious gravity of the criminal offense, the manner of commission of the criminal offense, the circumstances and environment where the criminal offense was committed, and especially the fact that the relationship between the family of the defendant Fahri Deçani and the family of the late [B.K.] ihas been deteriorated, it makes us believe that by releasing the defendant, it could come to the repetition of the criminal offense of the same nature or any other criminal offense; [...]."

36. Therefore, the Court of Appeals concluded that the Basic Court in Ferizaj acted correctly when it extended the Applicant's detention on remand.

37. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court against Decision PN1. No. 2156/2017, of the Court of Appeals, alleging violation of criminal procedure and of criminal law. In addition, the Applicant requested the Supreme Court to annul the decisions of the Basic Court in Ferizaj and the Court of Appeals, terminate the measure of detention on remand and impose another alternative measure, namely the house arrest.

38. On 22 December 2017, by Judgment PML. No. 357/2017, the Supreme Court rejected the Applicant's request for protection of legality as ungrounded.

39. In its Judgment, the Supreme Court assessed that:

> *"According to the assessment of this Court, the above mentioned allegations are ungrounded because in this criminal - legal matter, by the case files, mainly by the criminal charge, minutes of questioning of witnesses and other collected evidence based on which the indictment was filed, it results that it exists the grounded suspicion that the defendant is the perpetrator of the criminal offence, which fulfills the legal conditions of Article 187, paragraph 1, sub paragraph 1.1, of the CPCK for extending the detention, while it will be assessed in the further criminal proceedings whether these facts will be substantiated.*
>
> *Further on, this Court assesses that there is legal ground for extending the detention on remand pursuant to Article 187, paragraph 1, sub paragraph 1.2, item 1, 2 and 3, of the CPCK, by taking into consideration the serious gravity of the criminal offense, the manner of commission of the criminal offense, the circumstances and environment where the criminal offense was committed, and especially the fact that the relationship between the family of the defendant Fahri Deçani and the family of the deceased [B.K.],has been deteriorated, it makes us believe that by freeing the defendant, it could come to the repetition of the criminal offense".*

40. Finally, the Supreme Court concluded that in the present case there is no essential violation of the criminal procedure provisions "*because both the first and the second instance courts have made the proper assessment and reasoning, and on the basis of such assessment they have rendered the judgments giving sufficient reasons, which this court accepts as correct".*

41. Based on the decisions available to the Court, the Basic Court in Ferizaj extended the Applicants' detention on remand until 23 March 2018.

Criminal proceedings against the Applicant after his case was remanded for retrial

42. Based on the submissions submitted by the Applicant on 9 March 2018, the Basic Court in Peja from the moment the proceedings was remanded for retrial to the abovementioned date, namely 9 March 2018, had held eighteen (18) sessions.

43. In the meantime, on the basis of the submissions submitted by the Basic Court in Ferizaj, as requested by the Court, the Applicant by Judgment of the Basic Court in Ferizaj [PKR No. 155/15], of 6 April 2018, was found guilty of committing the criminal offense of aggravated murder under Article 147, item 4 in conjunction with Article 24 of the CCK, and in co-perpetration for the criminal offense of attempted murder under Article 146, in conjunction with Articles 20 and 23 of the CCK, and sentenced him to imprisonment.

44. The Applicant filed appeal against the aforementioned Judgment of the Basic Court in Ferizaj.

45. On 7 August 2018, the Court of Appeals, by Judgment [PAKR. No. 324/2018] rejected the Applicant's appeal and upheld the Judgment of the Basic Court. Against the Judgment of the Court of Appeals, the Applicant filed a request for protection of legality with the Supreme Court.

46. On 19 February 2019, the Supreme Court, by Judgment [PML. No. 19/2019] rejected as ungrounded the request for protection of legality against the aforementioned Judgment of the Court of Appeals filed by the Applicant.

Applicant's allegations

47. In his Referral, the Applicant explicitly challenges the regular court's decisions pertaining to the extension of the Applicant's detention on remand, namely Decision of the Basic Court in Ferizaj, PKR. No. 155/15 of 24 November 2017, Decision of the Court of Appeals PN1. No. 2156/2017 of 6 December 2017 and the Judgment of the Supreme Court PML. No. 357/2017of 22 December 2017.

48. In this regard, the Applicant alleges that the challenged decisions violated his right as guaranteed by Article 29 [Right to Liberty and Security], paragraph 4 and Article 31 [Right to Fair and Impartial Trial] of the Constitution.

49. With regard to Article 31, paragraph 2 of the Constitution, the Applicant alleges that *"[...] by the above mentioned decisions, for more than 7 years the detention measure was extended by allegations that there is grounded suspicions and in fact his basic constitutional right was not respected, since it is not known when this matter will be completed"*.

50. The Applicant further alleges that: *"[t]he stay of the defendant under the measure of detention is a violation of all fundamental rights determined by national acts and also international covenants, and also the stay under the measure of detention for more than 7 years represents a basic violation of the principle of fair trial and it suppresses the principle of presumption of innocence, by taking into consideration that the defendant is serving a sentence and not a security measure as defined by the Law"*.

51. Finally, the Applicant requests the Court to: *"[...] ascertain that in the case of the accused Fahri Deqani there has been a serious violation of his fundamental constitutional rights, namely of Article 29 and 31 of the Constitution of the Republic of Kosovo, in order to declare invalid the decisions of regular courts regarding the imposition of detention measure and to release [the Applicant] from [detention]"*.

Relevant legal provisions

Constitution of the Republic of Kosovo

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;
[...]

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.

[...]
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".

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.

European Convention on Human Rights

Article 5 (Right to liberty and security) of the ECHR:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;
[...]
(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
[...]

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
[...]

Article 6 (Right to a fair trial)

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or

the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Code No. 04/L-123 of the Criminal Procedure of the Republic of Kosovo (published in the Official Gazette on 28 December 2012)

Article 5
Right to Fair and Impartial Trial within a Reasonable Time

1. Any person charged with a criminal offence shall be entitled to fair criminal proceedings conducted within a reasonable time.
2. The court shall be bound to carry out proceedings without delay and to prevent any abuse of the rights of the participants in proceedings.
3. Any deprivation of liberty and in particular detention on remand in criminal proceedings shall be reduced to the shortest time possible.
4. Anyone who is deprived of liberty by arrest shall be promptly informed, in a language he or she understands, of the reasons for the deprivation of liberty. Everyone who is deprived of liberty without a court order shall be brought before a judge of the Basic Court in the jurisdiction of arrest within forty-eight (48) hours. That judge shall decide on his or her detention in accordance with Chapter X of the present code.

Article 187
Findings Required For Detention on Remand

1. The court may order detention on remand against a person only after it explicitly finds that:
1.1. there is a grounded suspicion that such person has committed a criminal offence;
1.2. one of the following conditions is met:
1.2.1. he or she is in hiding, his or her identity cannot be established or other circumstances indicate that there is a danger of flight;

1.2.2. there are grounds to believe that he or she will destroy, hide, change
or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices;
or
1.2.3. the seriousness of the criminal offence, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit;
and
1.3. the lesser measures to ensure the presence of defendant listed in Article 173 of the present Code would be insufficient to ensure the presence of such person, to prevent re-offending and to ensure the successful conduct of the criminal proceedings.

[...]

Article 193
Detention on Remand After Indictment is Filed

1. After the indictment has been filed and until the conclusion of the main trial, detention on remand may only be ordered, extended or terminated by a ruling of the single trial judge or presiding trial judge or the trial panel when it is in session. The single trial judge or presiding trial judge shall first hear the opinion of the state prosecutor, if proceedings have been initiated at his or her request, and the opinion of the defendant or the defense counsel. The parties may appeal against the ruling. Article 189 paragraphs 3 and 4 of the present Code shall apply mutatis mutandis.

2. Upon the expiry of two (2) months from the last ruling on detention on remand, the single trial judge or presiding trial judge, even in the absence of a motion by the parties, shall examine whether reasons for detention on remand still exist and render a ruling by which detention on remand is extended or terminated. The parties may appeal against the ruling. Article 189 paragraphs 3 and 4 of the present Code shall apply mutatis mutandis.

Article 367
Detention on Remand after Announcement of Judgment

1. In rendering a judgment by which the accused is punished by imprisonment, the single trial judge or trial panel may:
1.1. order extend detention on remand if conditions set forth in Article 187 paragraph 1 of the present Code are met, or
1.2. terminate detention on remand if the accused is in detention on remand and the grounds on which it was ordered have ceased to exist.
2. If a single trial judge or trial panel imposes a sentence with imprisonment of five (5) ormore years, and imposes detention on remand,

for the accused if he or she is not indetention, or extends it when the accused is already in detention.

Admissibility of the Referral

52. The Court first examines whether the admissibility requirements established by the Constitution, and as further specified by the Law and foreseen by the Rules of Procedure have been fulfilled.

53. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

> *"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."*

54. The Court further examines whether the Applicant has fulfilled the admissibility requirements as provided by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

> Article 47
> [Individual Requests]
>
> *"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
>
> Article 48
> [Accuracy of the Referral]
>
> *„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."*
>
> Article 49
> [Deadlines]
>
> *„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... ."*

55. Regarding the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely Judgment PML. No. 357/2017 of the Supreme Court, of 22 December

2017, after exhaustion of all legal remedies. The Applicant has also clarified the right and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines of Article 49 of the Law.

56. In addition, the Court should examine whether the Applicant has met the admissibility requirements specified in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (1) (d) of the Rules of Procedure sets out the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral is not manifestly ill-founded. Specifically, Rule 39 (1) (d) states that:

> *(1) The Court may consider a referral as admissible if:*
>
> *[...]*
>
> *(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.*

57. In this regard, having examined the Applicant's allegations, the Court considers that the Referral raises serious issues of fact and law which are of such complexity that their determination must depend on the review of the merits.

58. The Court finally considers that this Referral is admissible within the meaning of Rule 39 (1) (d) of the Rules of Procedure, and that it is not inadmissible on any other grounds as set out in the Rules of Procedure (See, the ECtHR *cases A and B v, Norway,* [GC], applications nos. 24130/11 and 29758/11, Judgment of 15 November 2016, paragraph 55, *Alimuçaj v. Albania*, application no. 20134/05, Judgment of 9 July 2012, paragraph 144, and see cases of the Court, case No. KI132/15, *Visoki Decani Monastery,* Judgment of the Constitutional Court of the Republic of Kosovo of 20 May 2016 and case KI97/16, Applicant *IKK Classic*, Judgment of 9 January 2018, paragraph 38).

Merits of the Referral

59. The Applicant alleges that the extension of his detention violates his rights guaranteed under Article 29 and Article 31 of the Constitution.

I. With regard to the Applicant's allegation on violation of Article 29 of the Constitution

60. Concerning his allegation of a violation of Article 29 of the Constitution, the Applicant states that "*further stay in detention on remand of the defendant is a violation of all the fundamental rights set forth in both domestic acts and international convention [...].*"

61. The Court initially notes that the rights and standards to be guaranteed in the case of deprivation of liberty have been widely interpreted by the European Court of Human Rights (hereinafter: the ECtHR) through its case law, in

accordance with which the Court based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

62. Therefore, with regard to the allegations of a violation of Article 29 of the Constitution in conjunction with Article 5 of the ECHR, the Court refers to the principles and standards set forth in the ECtHR case law concerning the determination and length of detention on remand.

1. Criteria established for detention on remand

63. In this regard, the Court recalls that, in order to comply with the Constitution and the ECHR, the arrest or deprivation of liberty must be based on one of the grounds for the deprivation of liberty laid down in Article 29 of the Constitution in conjunction with Article 5 of the Convention.

64. The Court recalls Article 29, paragraph 1, items 1 and 2 of the Constitution, which provide that:

> *"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".*
>
> *[...]".*

65. The Court notes that under Article 29 paragraph 1, item 2 of the Constitution and Article 5.1 (c) of the Convention, the deprivation of liberty may be conducted in the case of a grounded suspicion of committing the criminal offence, and such a thing is considered necessary to prevent the commission of another offense or removal after its commission.

66. Therefore, the Court notes that in order to comply with the Constitution and the ECHR, the detention on remand must be based on one of the grounds for deprivation of liberty set forth in Article 29 of the Constitution in conjunction with Article 5, paragraph 1 (c) of the Convention.

67. The ECtHR, in its case law, has identified three basic criteria to be examined to assess whether deprivation of liberty is lawful and non-arbitrary (see ECHR case, *Merabishvili v. Georgia*, [GC] application No. 72508/13, Judgment of 28 November 2017, paragraph 183).

68. First, there must exist a "reasonable suspicion" that the person deprived of liberty has committed the criminal offense (see ECHR case, *Merabishvili v.*

Georgia, [GC] application No. 72508/13, Judgment of 28 November 2017, paragraph 184). Secondly, the purpose of deprivation of liberty "is that it should in principle be in the function of the conduct of criminal proceedings" (see, case of the Court KI63/17, Applicant *Lutfi Dervishi*, Resolution on Inadmissibility of 16 November 2017, paragraph 57, see also the case of the ECHR, *Ostendorf v. Germany*, No. 15598/08, Judgment of 7 March 2013, paragraph 68), and moreover, it must be proportionate in the sense that it should be necessary "to ensure the appearance of the person affected by the relevant competent authorities" (see, case of the Court KI63/17, Applicant *Lutfi Dervishi*, Resolution on Inadmissibility of 16 November 2017, paragraph 57, see also the abovementioned EDtHR case *Merabishvili v. Georgia*, paragraph 185). Third, the deprivation of liberty or the detention on remand must have been done following the procedure prescribed by law (see the abovementioned ECtHR case *Merabishvili v. Georgia*, paragraph 186).

1.1. Application of the criteria regarding the detention on remand in the Applicant's case

69. In the light of the foregoing, the Court notes that the imposition of the detention on remand in question is based on Article 29.1.2 of the Constitution in conjunction with Article 5.1 (c) of the ECHR.

2. General principles regarding detention on remand pending trial

70. Initially, the Court notes that the basic legal criteria regarding detention on remand pending punishment will refer to the principles and standards set forth in ECtHR case law, within the meaning of Article 29 of the Constitution and Article 5 of the ECHR. agency. Specifically, in the context of the Applicant's case, the Court will focus on the principles and standards of the ECtHR within the meaning of Article 29, paragraph 1, item 2, of the Constitution and Article 5, paragraph 3, of the ECHR, dealing with detention on remand pending trial.

71. The Court notes that in determining the length of detention pending trial under Article 29, paragraph 1, item 2 of the Constitution, in conjunction with Article 5, paragraph 3 of the ECHR, the period of detention on remand begins on the date the accused is taken in detention, and ends on the day he is released or the court of first instance decided regarding the indictment (see ECHR cases, *Štvrtecký v. Slovakia*, No. 55844/12, Judgment of 5 June 2018, paragraph 55; *Solmaz v. Turkey*, application No. 27561/02, Judgment of 16 January 2017, paragraphs 23 and 24).

72. The Court, referring to Article 29, paragraph 1, item 2 of the Constitution and Article 5, paragraph 3 of the ECHR, states that the grounded suspicion that a person deprived of his liberty has committed a criminal offense is regarded as an essential element in determining the detention on remand, and/or the extension of detention pending trial.

73. In its case law, the ECtHR has highlighted that the reasonableness of a period spent in detention on remand cannot be assessed in abstract terms, but must be assessed on the basis of the facts of each individual case and the specific

characteristics of the case. The extension of detention on remand may be justified in a particular case only if there is evidence of a genuine public interest claim which, despite the presumption of innocence, is of greater weight than the norm of respect for individual liberty set out in Article 5 of the ECHR (see, ECtHR case, *Buzadji v. Moldova*, no. 23755/07, Judgment of 5 July 2016, paragraph 90; see also *Labita v. Italy*, [GC], No. 26772/95, paragraph 152, and case *Kudła v. Poland* [GC], application no. 30210/96, paragraph 110).

74. According to the practice and assessment of the ECtHR there is no fixed time-frame applicable to each case (see ECtHR case *McKay v. the United Kingdom*, [GC] application no. 543/03, Judgment of October 3, 2006, paragraphs 41-45).

75. The ECtHR highlights that the domestic courts must review and establish whether in addition to the grounded suspicion, there other grounds which justify the deprivation of liberty pending trial (See ECtHR Cases *Letellier versus France*, Application No. 12369/86, Judgment of 26 June 1991, paragraph 35; and case *Yağcı and Sargın v. Turkey*, Application nos. 16419/90 and 16426/90, Judgment of 8 June 1995, paragraph 50).

76. Thus, the domestic courts must examine and address all the circumstances arguing for or against the existence the detention measure (namely the existence of public interest in that sense), with due regard to the principle of the presumption of innocence. On the basis of the reasoning given by the domestic courts, the ECtHR assesses whether there has been a violation of Article 5, paragraph 3, of the ECHR. (see *Peša v. Croatia*, ECHR Judgment of 8 April 2010, paragraph 91; and *Perica Oreb v. Croatia*, no. 20824/09, paragraph 107).

77. Consequently, the ECtHR case law has developed four basic reasons as relevant for continuing a persons' pre-trial detention, namely: i) the risk of flight; ii) interference with the court of justice; iii) prevention of crime; iv) the need to preserve public order (See ECtHR Cases *Tiron v. Romania*, Application No. 17689/03, Judgment of 7 April 2009, paragraph 37; *Smirnova versus Russia*, Application nos. 46133/99 and 48183/99, Judgment of 24 July 2003, paragraph 59; *Piruzyan versus Armenia*, Application No. 33376/07, Judgment of 26 September 2012, paragraph 94).

78. However, the ECtHR has continuously asserted in its case law that the existence of reasonable suspicion that the person in detention is a perpetrator of the criminal offence is essential (*conditio sine qua non*) for extension of the detention, but not sufficient after a certain lapse of time (See ECtHR cases *Stögmüller versus Austria*, Application No. 1602/62, Judgment of 10 November 1969; and case *Clooth versus Belgium*, Application No. 12718/87, Judgment of 12 December 1991, paragraph 36).

79. However, according to ECtHR, these fundamental reasons, on which the detention measure may be imposed, should be considered and placed in the spirit of the obligation of the public authorities concerned to consider other alternative measures to ensure the presence of the defendant in the successful conclusion of the respective criminal proceedings (See, the ECtHR case *Idalov*

v. Russia, Application No. 5826/03, Judgment of 22 May 2012, paragraph 40).

80. In this regard, and in accordance with the principles developed by the ECtHR, the reasoning of the courts' decision to extend detention pending trial should always be evident, namely a detailed and well-founded reasoning on the facts and circumstances of the case. In this context, the ECHR has consistently emphasized that "*it is only by giving a reasoned decision that there can be public scrutiny of the administration of justice*" (See ECtHR cases: *Suominen v. Finland*, application no. 37801/97, Judgment of 1 July 2003, paragraph 37, *Tase v. Romania*, application no. 29761/02, Judgment of 10 June 2008, paragraph 41).

81. In the light of the foregoing, the ECtHR also found that "*quasi-automatic prolongation of detention contravenes the guarantees set forth*" in Article 5 paragraph 3 of the ECHR (see, *mutatis mutandis, Tase v. Romania*, cited above, paragraph 40). Therefore, the ECtHR held that even if the aforementioned reasons existed at the time of the pre-trial detention, the nature of those reasons or circumstances may change over time (see ECtHR case cited above, *Merabishvili v. Georgia*, paragraph 234).

2.1 Application of the ECtHR criteria with regard to the extension of detention pending trial in the Applicant's case

82. In the following, based on the foregoing explanation of the main principles of the ECtHR case law, the Court will examine whether the Applicant has proved and sufficiently substantiated the allegations of a violation of the procedural guarantees set out in the Constitution and the ECHR in relation to the extension of his detention.

83. Initially, the Court reiterates that the Applicant's detention on remand is based on Article 29, paragraph 1, item (2) of the Constitution and Article 5, paragraph 3 of the ECHR, namely the detention pending trial.

84. The Court recalls that the Applicant alleges that "*the further detention on remand of the defendant is a violation of all the fundamental rights set forth in domestic law as well as in international conventions [...]*". The Applicant further alleged that after eight (8) years of detention on remand "*any reason for which such detention was imposed has ceased.*"

85. Therefore, with regard to the Applicant's allegation that decisions concerning the extension of his detention on remand were rendered in violation of Article 29 of the Constitution, the Court will first refer to the period of the Applicant's detention on remand of the judgment, within the meaning of Article 29, paragraph 1, item 2 of the Constitution, in conjunction with Article 5, paragraph 3 of the ECHR and the criteria set forth in the case law of the ECHR.

(a) Applicant's detention on remand pending trial

86. In the present case, the Court notes that the Applicant, following his arrest has put on detention on remand on 31 July 2010. His detention on remand pending trial lasted until 3 September 2012 when the District Court rendered the Decision [Judgment P. No. 137/2011, of 3 September 2012], by which the Applicant was found guilty and sentenced to imprisonment.

87. The Court recalls that against the aforementioned Decision of the District Court, the Applicant filed an appeal. The Court of Appeals by Decision PAKR. No. 100/2013, on 26 November 2013, approved the Applicant's appeal, annulled the Judgment of the District Court and remanded the criminal case to Basic Court.

88. In this regard, the Court notes that during the period between 3 September 2012 and 26 November 2013, namely after the Judgment of the District Court until rendering the decision of the Court of Appeals to remand the criminal case for reconsideration to the Basic Court, the detention on remand the Applicant does not fall within pre-trial detention within the meaning of Article 29, paragraph 1, item 2 of the Constitution and Article 5, paragraph 3 of the ECHR.

89. Therefore, the Court considers that during the period between 3 September 2012 and 26 November 2013, the Applicant's detention on remand was a detention on remand within the meaning of Article 29, paragraph 1, item 1, of the Constitution and Article 367 [Detention on Remand after Announcement of Judgment], paragraph 2 of the CPCK.

90. The Court recalls that the Court of Appeals by Decision PAKR. No. 100/2013, of 26 November 2013, through which remanded the criminal case to Basic Court for reconsideration, also decided to extend the Applicant's detention on remand.

91. Based on the above, the Court notes that the second period of Applicant's detention pending trial, within the meaning of Article 29, paragraph 1, item 2 of the Constitution, in conjunction with Article 5, paragraph 3 of the ECHR, started on 26 November 2013 and continued until the date of the Judgment of the Basic Court in Ferizaj [PKR No. 155/15], of 6 April 2018 was rendered, by which the Applicant was found guilty and sentenced to effective imprisonment.

92. Therefore, since 26 November 2013 until 6 April 2018 [date of issuance of the Judgment of the Basic Court in Ferizaj [PKR No. 155/15], the Applicant's detention pending trial of his case was extended every two months by the Basic Court in Ferizaj.

(b) Assessment regarding the justification for extending detention pending trial

93. In the present case, Court initially recalls that the CPCK, namely Article 187 thereof, establishes the procedure and legal criteria for imposition of the detention measure, including: 1) the existence "the grounded suspicion"; 2) fulfillment of the conditions for extension of detention on remand that based

on the circumstances of the commission of the criminal offense there is a risk that the Applicant may repeat the criminal offense; as well as 2) the lesser measures to ensure the presence of the defendant are insufficient to ensure the presence of such a person, to prevent the repetition of the criminal offense and ensure the successful conduct of the criminal proceedings (see also the case of the Court KI63/17, Applicant *Lutfi Dervishi*, Resolution on Inadmissibility of 16 November 2017, paragraph 68).

94. The Court recalls that the ECtHR case law has established four basic reasons as relevant for continuing a persons' pre-trial detention, namely: i) the risk of flight; ii) interference with the court of justice; iii) prevention of crime; iv) the need to preserve public order (See ECtHR abovementioned cases, *Tiron v. Romania*, paragraph 37; *Smirnova v. Russia*, paragraph 59; and case *Piruzyan v. Armenia*, paragraph 94).

95. However, according to the ECtHR, these detention grounds should be examined and considered together with the possibility of considering other measures provided for by the provisions of the Criminal Procedure Code.

96. In the Applicant's case, the Court recalls that the Basic Court in Ferizaj referring to Article 187 of the CPCK held that in addition to the grounded suspicion of having committed the criminal offense, it also found that there was a legal basis for the extension of the detention on remand. for the following reasons: 1) taking into account the seriousness of the criminal offense; 2) the manner in which the criminal offense was committed and the circumstances and environment in which the criminal offense was committed; 3) the fact that the relationship between the Applicant's family and the victim's family has been deteriorated ; and 4) there is a risk that the release of the Applicant may lead to the repetition of a criminal offense or similar offenses.

97. This reasoning of the Basic Court was upheld by the Court of Appeals, as well as by the Supreme Court through the challenged Judgment.

98. Court recalls the challenged Judgment of the Supreme Court, which provides the following reasoning:

> *"According to the assessment of this Court, the above mentioned allegations are ungrounded because in this criminal - legal matter, by the case files, mainly by the criminal charge, minutes of questioning of witnesses and other collected evidence based on which the indictment was filed, it results that it exists the grounded suspicion that the defendant is the perpetrator of the criminal offence, which fulfills the legal conditions of Article 187, paragraph 1, sub paragraph 1.1, of the CPCK for extending the detention, while it will be assessed in the further criminal proceedings whether these facts will be substantiated.*
>
> *Further on, this Court assesses that there is legal ground for extending the detention on remand pursuant to Article 187, paragraph 1, sub paragraph 1.2, item 1, 2 and 3, of the CPCK, by taking into consideration the serious gravity of the criminal offense, the manner of commission of the criminal*

offense, the circumstances and environment where the criminal offense was committed, and especially the fact that the relationship between the family of the defendant Fahri Deçani and the family of the deceased [B.K.],has been deteriorated, it makes us believe that by freeing the defendant, it could come to the repetition of the criminal offense".

99. In this regard, the Court notes that in relation to the extension of the detention on remand the Supreme Court, in addition to upholding the reasoning and finding of the first and second instance courts, used exactly the same reasoning as that given in the Decision above of the Basic Court PKR. No. 155/15, of 24 November 2017.

100. In this respect, with regard to the regular courts' reasoning on the issue of detention on remand, the Court finds that the severity of the charge of the criminal offense committed and the likelihood to repeat the commission of the criminal offense may be important factors in the extension of the detention, but in itself may not be a reason for the prolongation of detention. According to the ECtHR case law, the possibility to repeat the criminal offense should be based on concrete facts and also take into account the principle of presumption of innocence (see case *Perica Oreb v. Croatia*, ECtHR Judgment of 13 October 2013, paragraph 113).

101. The Court also notes that the argument put forward in the decisions of the three regular courts "*in particular the fact that relations between the family of the defendant Fahri Deçani and the family of the deceased [B.K,] are still deteriorated, with the release of the defendant at liberty may lead to the repetition of the criminal offense*", cannot be infinitely the basis for the extension of detention on remand. Furthermore, it should be noted that as established in the ECtHR case law, "*one of the common positive obligations of the states, where the ECHR is applied, is that the responsible state authorities have a duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person backed up by law-enforcement machinery, and also to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual*" (see *Osman v. Kingdom United Kingdom*, ECHR Judgment of 28 October 1998, paragraph 115).

102. The Court concludes that mainly during 2017 the extension of detention on remand to the Applicant by the Basic Court ceased to be based on relevant and sufficient reasoning. Specifically, the Court finds that the Basic Court in its last five Decisions (of 30 March 2017; of 29 May 2017; of 27 July 2017; of 26 September 2017; of 24 November 2017) consistently provided identical reasoning.

103. In this regard, the Court notes that the ECtHR found a violation of Article 5 (3) of the ECHR in a large number of cases in which the domestic courts had used generalized wording ("stereotypical wording") to extend the detention on remand, without having regard and without convincingly substantiating the need to extend the detention on the basis of the specific facts and circumstances of the case (see, *Orban v. Croatia*, ECHR Judgment of 19

December 2013, paragraph 59; *Sulaoja v. Estonia*, No. 55939/00, 15 February 2005, paragraph 64; *Tsarenko v. Russia*, No. 5235/09, 3 March 2011, paragraph 70).

104. Therefore, the Court considers that the reasoning of the Basic Court in these Decisions, upheld by the Court of Appeals and the Supreme Court through the challenged Judgment, is general and insufficiently justified reasoning, clearly lacking a reasoned and convincing analysis and assessment of the facts and the concrete circumstances of the case.

105. Moreover, the regular courts failed to provide a concrete and sufficient reasoning as to why the extension of detention pending trial against the Applicant was necessary and why the alternative measures were not applicable in the Applicant's case.

106. Therefore, a proper reasoning and elaboration of all the concrete circumstances, including the detailed reasoning why other alternative measures could not be applied in the Applicant's case would be clear evidence of individualized assessment in accordance with the specifics of the case, as well as grounded justifications for the need to decide, as in the case of the challenged decisions of the regular courts, regarding the extension of detention on remand pending trial against the Applicant.

107. Therefore, even if the reasons for extension of detention continue to be present, the Court reiterates that these reasons always require a continuous and individualized examination in accordance with the specifics of the particular case, as the nature of these reasons or circumstances, which initially justified the imposition and/or extension of detention may change over time.

108. In this regard, the Court recalls the case law of the ECHR which held that *"quasi-automatic prolongation of detention contravenes the guarantees set forth"* in Article 5 paragraph 3 of the ECHR (see, *mutatis mutandis,* the ECtHR case cited above *Tase v. Romania*, paragraph 40), finds that the lack of concrete and detailed reasoning, and the extension of detention pending trial by regular courts, is not in accordance with the principles and the standards established by the ECtHR.

109. Accordingly, the Court considers that the extension of detention on remand pending trial of the Applicant, confirmed by the challenged Judgment Pml. No. 357/2017 of the Supreme Court of 22 December 2017 constitutes a violation of Article 29, paragraph 1, pitemoint (2) of the Constitution, in conjunction with Article 5, paragraph 3 of the ECHR.

II. With regard to the Applicant's allegation on Article 31 of the Constitution

110. Regarding the Applicant's allegation that regular courts have violated the rights guaranteed by Article 31 of the Constitution because *"[...] by the above mentioned decisions, for more than 7 years the detention measure was extended by allegations that there is grounded suspicions and in fact his basic*

constitutional right was not respected, since it is not known when this matter will be completed."

111. The Court notes that the Applicant expressly alleges a violation of Article 31 of the Constitution by extending his detention on remand every two months by the Basic Court in Ferizaj. Therefore, the Applicant did not raise any allegations of a violation of Article 31 of the Constitution because the Basic Court in Peja had not yet decided on his case in the proceedings.

112. In this regard, the Court notes that the ECtHR case law explained that the review of claims "within a reasonable time" brought by a person remanded in detention that just concern the stages of the proceedings to which Article 5 paragraph 3 apply, more specifically, from arrest to conviction by the trial courts, fall only under the scope of Article 6 (1) of the ECHR (See ECtHR Case *Abdoella v. Netherlands*, Application No. 12728/87, Judgment of 25 November 1992, paragraph 24).

113. Therefore, the Court notes that the Applicant's allegations regarding the length of the detention pending his conviction do not fall within the scope of Article 31 of the Constitution.

Conclusion

114. The Court, in relation to the Applicant's allegation of a violation of Article 29 [Right to Liberty and Security] of the Constitution, in conjunction with Article 5 (Right to liberty and security) of the ECHR, considers that the reasoning of the Basic Court on extension of detention on remand, confirmed by the Court of Appeals and the Supreme Court through the challenged Judgment, does not justify its decision to extend the detention on remand to the Applicant. Therefore, the regular courts failed to provide concrete and sufficient reasoning as to why the alternative measures were not applicable in the Applicant's case.

115. The Court finds that the challenged Judgment of the Supreme Court Pml. No. 357/2017, of 22 December 2017, which rejected the Applicant's request for protection of legality against Decision PN1. No. 2156/2017 of the Court of Appeals, of 6 December 2017 and the Decision PKR. No. 155/15 of the Basic Court in Ferizaj of 24 November 2017 is not in compliance with Article 29, paragraph 1, item (2) of the Constitution, in conjunction with Article 5, paragraph 3, of the ECHR.

116. The Court is aware of the fact that the Applicant was found guilty and sentenced to effective imprisonment through the Judgment of the Basic Court in Ferizaj [PKR. No. 155/15 of 6 April 2018], within the criminal proceedings against him. In this regard, the Court recalls that this procedure was not subject to review by the Court, and that only the assessment of the challenged Judgment of the Supreme Court regarding the extension of the detention pending trial of the Applicant is subject to review.

117. It is, therefore, understandable that this judgment cannot have any effect as to the status of the Applicant. However, the Court considers that it is very

important that through this Judgment of the Constitutional Court will be set a new standard in the case law in the Republic of Kosovo and, consequently, the regular courts will in future have to comply with the principles and standards elaborated in this Judgment, which have been interpreted in accordance with the ECtHR case law.

118. In this regard, the Court, through this Judgment, clearly and directly conveys the request and instruction that should serve to the regular courts in order to comply with the constitutional requirements of Article 29 of the Constitution, as well as with the requirements of Article 5 of the ECHR, as widely interpreted by the ECHR in its case law, their reasoning for extension of detention pending trial must contain detailed reasoning and an individualized assessment according to the circumstances and facts of the case, explaining and proving why the detention pending trial is necessary and why other alternative measures are not appropriate for the smooth and successful conduct of the criminal proceedings.

119. The Court further clarifies that it has no legal authority to determine any form or manner of compensation in cases where it finds a violation of the relevant constitutional provisions, in the specific case of Article 29 of the Constitution (see also the case of the Constitutional Court in case KI108/18, Applicant *Blerta Morina*, Resolution on Inadmissibility of 1 October 2019, paragraph 196). The Court also recalls that in the ECtHR case law, based on the specific circumstances of the case, the ECtHR considers that the finding of a violation itself constitutes "*just satisfaction*" even for the non-pecuniary damage that an Applicant may have suffered. (See in this respect the operative part of the ECHR case, *Roman Zaharov v. Russia*, Judgment of 4 December 2015, see also case of the Constitutional Court KI108/18, Applicant *Blerta Morina*, paragraph 197).

120. However, the foregoing reasons do not imply that the individuals have no right to seek redress from the public authorities in the event of finding of a violation of their rights and freedoms under the laws applicable in the Republic of Kosovo (see Constitutional Court case KI108/18, Applicant *Blerta Morina*, Resolution on Inadmissibility of 1 October 2019, paragraph 197).

FOR THESE REASONS

The Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rule 59 (1) of the Rules of Procedure, in the session held on 8 October 2019:

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD by majority that Judgment Pml. No. 357/2017 of the Supreme Court of Kosovo of 22 December 2017 is not in compliance with Article 29 [Right to Liberty and Security], paragraph 1, item (2) of the Constitution of the Republic of Kosovo, in conjunction with Article 5 (Right to liberty and security), paragraph 3 of the European Convention on Human Rights;

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. This Decision is effective immediately.

Judge Rapporteur | **President of the Constitutional Court**

Nexhmi Rexhepi | Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.