

In the Name of the People

The Supreme Court Kosovo, in a panel composed of Supreme Court Judge Emine Mustafa, as a presiding judge, EULEX Judge Willem Brouwer, as a reporting judge and the Supreme Court Judge Valdete Daka as member of the panel, assisted by EULEX Legal Advisor Adnan Isufi, acting in the capacity of a recording clerk, in the criminal case of the Basic Court of Prishtinë/Prishtina, PPRKR 347/13, against the defendant:

(AM)

[REDACTED]
[REDACTED] in detention since 5 November 2013.

indicted of committing of the criminal offences of Preparation of a Terrorist Acts in co-perpetration in violation of Article 144 paragraphs 1 and 2, in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo, Participation in a Terrorist Group, in violation of Article 143 paragraph 2 in conjunction with Article 135 paragraph 4 of the CCK, Unlawful Possession and acquiring of more than four weapons in violation of Article 374 paragraph 2 of the CCK, Inciting National, Racial, Religious, Ethnic Hatred, Discord or Intolerance, in violation of Article 147 paragraph 1 of the CCK,

(AM)

deciding on the Request for Protection of Legality filed by defence counsel [REDACTED] on behalf of the defendant [REDACTED] against the Ruling of the Basic Court of Prishtinë/Prishtina PPRKR nr 347/13 (PPS: 94/2013) dated 25 February 2015 and the Ruling of the Court of Appeals PN1. 350/2015 dated 6 March 2015,

(LP)

After having reviewed the Opinion of the State Prosecution Office submitted on 17 April 2015, pursuant to the Criminal Procedure Code ("CPC"), the court having deliberated on the matter on 12 May 2015, renders the following:

Judgment

(AM)

The Request for Protection of Legality filed by defence counsel [REDACTED] on behalf of the defendant [REDACTED] against the Ruling of the Basic Court of Prishtinë/Prishtina PPRKR nr 347/13 (PPS: 94/2013) dated 25 February 2015 and the Ruling of the Court of Appeals PN1. 350/2015 dated 6 March 2015, is hereby rejected as ungrounded.

(LP)

Reasoning

I. Procedural Background



AM

The defendant [REDACTED] is suspected of having committed the criminal offences of Preparation of a Terrorist Acts in co-perpetration in violation of Article 144 paragraphs 1 and 2, in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo, Participation in a Terrorist Group, in violation of Article 143 paragraph 2 in conjunction with Article 135 paragraph 4 of the CCK, Unlawful Possession and acquiring of more than four weapons in violation of Article 374 paragraph 2 of the CCK, Inciting National, Racial, Religious, Ethnic Hatred, Discord or Intolerance, in violation of Article 147 paragraph 1 of the CCK.

AM

On 5 November 2013, the defendant [REDACTED] has been arrested together with other suspects, and upon application of the prosecutor filed on 7 November 2013, the Pre-trial Judge of the Basic Court of Prishtinë/Prishtina issued a ruling ordering the detention on remand against the defendants, including the defendant subject of the current criminal proceeding. Since then, the detention against [REDACTED] has been subsequently reviewed by the courts several times and continuously extended.

AM

On 23 January 2015, the Prosecutor filed the indictment in this criminal case and the initial hearing was held on 11 February 2015.

On 23 February 2015, the Presiding Judge issued a ruling extending the measure of detention on remand against the defendant [REDACTED] until 23 April 2015.

AM

On 24 February 2015, the above ruling was appealed by the defendants, included the defendant [REDACTED] - AM

AM

On 6 March 2015, the Court of Appeals rejected the appeals as unfounded and affirmed the appealed ruling of the Presiding Judge dated 23 February 2015.

LP

On 30 March 2015, defence counsel [REDACTED] on behalf of the defendant [REDACTED] filed with the Supreme Court of Kosovo a Request for Protection on Legality against the above rulings rendered by the first and second instance courts.

AM

II. Submission of the Parties

The defence counsel bases the Request for Protection of Legality on ground of Substantial violations of the provisions of the criminal procedure. It has been argued in the request that the first instance court has exceeded the scope of its legal authorisation conferred by the provisions of the Criminal Procedure Code. According to defence counsel, a ruling extending detention on remand against a defendant can only be rendered upon written application of the prosecutor which, in actual case, does not exist.

The defence counsel states that the appealed rulings do not contain sufficient, clear and convincing reasons concerning the grounded suspicion. According to the defence counsel, the courts have violated the principle of presumption of innocence since the indictment is not confirmed yet. The defence counsel argues that by extending the detention, the courts have not only prejudged the actual situation but have also infringed the rights of the defendant [REDACTED] innocent until a final judgment is rendered.



The defence counsel also contests other findings of the court regarding the risk of flight, risk of obstruction of the criminal procedure and/ or risk of committing other criminal offences. The defence counsel contends that the lower courts wrongly established that there is a risk of flight based solely on the length of punishment and the seriousness of criminal offences. Regarding risk of obstructing of criminal procedure, defence counsel argues that there are no injured parties or witnesses presented by the prosecution, who would for purposes of the case concerned be possibly influenced by the defendant. Further, the defence counsel submits that the material evidence is already secured and therefore there is no risk that the defendant might have any physical access to the evidence. In addition, the defence counsel argues that there are no arguments provided that would prove that if the defendant would defend himself at liberty, he would commit another criminal offence.

The defence counsel proposes the court to amend the appealed rulings, to release the defendant from detention or to replace the measure of detention on remand with another alternative measure from the CPC.

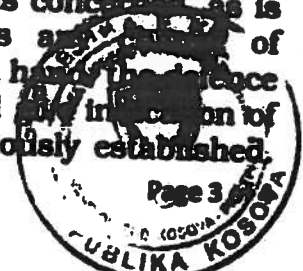
On 17 April 2015, in its reply KMLP II-ZZZK II no.17/15, the Office of the State Prosecutor of Kosovo moves the court to reject the Request for Protection of Legality as ungrounded, and affirm the contested Rulings in their entirety.

III. Admissibility of the request for protection of legality.

- After review of the case file, the Supreme Court of Kosovo finds that the Request for Protection of Legality is admissible; it has been filed by a person authorized thereto and within the legal time frame.
- The Supreme Court of Kosovo finds however that the Request for Protection of Legality is ungrounded.

IV. Findings of the Supreme Court of Kosovo

This Court is satisfied that the previous instance courts have correctly, fully and properly evaluated that there are grounds for extending the detention on remand against the defendant [REDACTED] (AM) Regarding the lack of grounded suspicion and allegation that there is no written application from prosecution, this Court considers the arguments without merit. As evidenced in the case file- which as matter of fact is not disputed even by the defence- the prosecutor has requested the extension of detention against the defendant during the session dated 11 February 2015. It is not contestable that also the defence counsel has been given the opportunity to challenge it. The Court notes that Article 191 of the CPC does not require a written application from prosecutor for purpose of extending the detention as argued by the defence counsel. A written application is only required when detention is first ordered according to Article 188 of the CPC. That is true, because in this situation the court has to establish the grounded suspicion and provide adequate reasoning that other specific requirements as stipulated in the Article 187 of the CPC are met. When extension of detention is concerned, as is the case here, the court only evaluates whether there is any change of circumstances which were previously established. In the case at hand, the defence counsel did not submit any facts and/or evidence which would indicate any substantial change of the circumstances which were previously established.



Contrary to what was argued by the defence, the Court finds that the fact that the indictment is already filed suffices to conclude that grounded suspicion continues to exist. Therefore, this court is satisfied that the previous instances courts have correctly evaluated that there are no change of circumstances.

As far as other specific requirements are concerned, this Court is satisfied that the first instance courts properly evaluated the risk of flight. This Court considers that the risk of flight is pertinent, especially, taking into account the seriousness of the charges. The fact that the indictment has already been filed although not a legal ground is a strong incentive for the defendant to escape.

As to the risks of obstructing the criminal proceedings and recurrence, this panel notes that the risk of obstructing the criminal proceedings and recurrence could not be limited to the possible influence to witness and or the injured party as argued by the defence counsel. Nevertheless, in the case at hand, the panel concurs with the defence counsel that those risks are diminished since the investigation is concluded and the indictment is already filed. The Court however notes that the first instance court ruling has not been based solely on the risk of obstructing of evidence. Therefore, this fact does not have repercussions with regard to the imposed measure.

The Court is satisfied that first instance court took an adequate account of defendant's individual circumstances when extending the detention on remand which is necessary to eliminate the established risks. The Court opines that the change of the imposed measures unto the defendant at this stage of the procedure would clearly and evidently be improper. The measure imposed does not constitute a breach of the principle of proportionality.

V. Conclusion

For this reasons, it is decided as in the enacting clause of this Judgment.

THE SUPREME COURT OF KOSOVO
PML-KZZ-84/2015, dated 12 May 2015

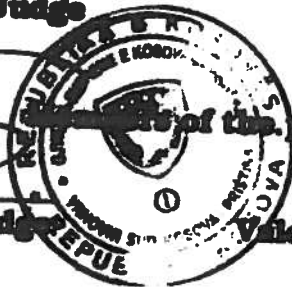
Presiding judge:


Emine Mustafa, Presiding Judge


Recording officer:


Adnan Isuf, Legal Advisor


Willson Krower, EULEX Judge



Members of the panel:


Valdete Daka, Supreme Court Judge