

SUPREME COURT

Case number: **Pml.Kzz 246/2014**
(PPRKR Nr. 47/2013 Basic Court of Pristina)

Date: **15 December 2014**

The Supreme Court of Kosovo, in a Panel composed of EULEX Judge Elka Filcheva-Ermenkova (Presiding and Reporting), and EULEX Judge Esma Erterzi and Kosovo Supreme Court Judge Emine Mustafa as Panel members, and EULEX Legal Officer Kerry Kirsten Moyes as the Recording Officer, in the criminal case number PPRKR Nr. 47/2013 before the Basic Court of Pristina:

AK1, in detention on remand since 28 October 2013,

AN, in detention on remand since 28 October 2013;

et al

suspected of the following criminal offences:

Organised Crime in violation of Article 283, paragraph 2 of the Criminal Code of the Republic of Kosovo (CCRK), in conjunction with the criminal offence of **Extortion**, in violation of Article 340, paragraph 2 of the CCRK;

Unauthorised Ownership, Control or Possession of Weapons, in violation of Article 374, paragraph 1 of the CCRK;

AN is also suspected of the criminal offence of **Unauthorised Purchase, Possession, Distribution and Sale of Narcotic Drugs, Psychotropic Substances or Analogues**, in violation of Article 273, paragraph 1 of the CCRK;

acting upon the joint Request for Protection of Legality filed on 4 December 2014 by defence counsels Destan Rukiqi and Ymer Osaj on behalf of the defendants **AK1** and **AN** against the Ruling of the Pre-trial Judge of the Basic Court of Pristina PPRKR. Nr. 47/2013 dated 12 November 2014 extending detention on remand to expire on 24 December 2014;

having considered the Response to the Request by the State Prosecutor KMLP.III. no. 55/14 filed on 9 December 2014;

having deliberated and voted on 15 December 2014;

pursuant to Articles 418 and Articles 432-441 of the Criminal Procedure Code (CPC)

renders the following

JUDGMENT

- 1. The joint Request for Protection of Legality filed by defence counsels Destan Rukiqi and Ymer Osaj on behalf of the defendants AK1 and AN against the Ruling of the Pre-trial Judge of the Basic Court of Pristina PPRKR. Nr. 47/2013 dated 12 November 2014 extending detention on remand to expire on 24 December 2014 is rejected as unfounded.**
- 2. The Ruling of the Pre-trial Judge is affirmed.**

REASONING

1. Procedural background

1.1. On 6 March 2013 the Special Prosecutor issued a Ruling on Initiation of Investigation against the defendants (and **AK2**). The defendants were all arrested on 28 October 2013, and on the same day the Special Prosecutor filed an application for detention on remand against all three defendants. The investigation was further expanded to include new defendants.

1.2. The measure of detention on remand was extended several times for all defendants. On 24 October 2014 the Basic Court of Pristina granted the application by SPRK and issued a Ruling further extending detention on remand for all defendants for two (2) months, to expire on 24 December 2014. The defendants appealed.

1.3. On 6 November 2014 the Court of Appeals issued a Ruling sending the case back to the Pre-trial Judge for reconsideration. The Pre-trial Judge reconsidered the case and issued a Ruling dated 12 November 2014 extending detention on remand against all defendants until 24 December 2014. The defendants appealed again.

1.4. On 21 November 2014 the Court of Appeals rejected the appeals filed on behalf of **AK1** and **AN** as ungrounded (and dismissed the appeal filed on behalf of **AK2** as belated), and affirmed the decision of the Pre-trial Judge.

1.5. On 4 December 2014 defence counsels Destan Rukiqi and Ymer Osaj on behalf of **AK1** and **AN** filed a joint Request for Protection of Legality. On 9 December 2014 the State Prosecutor filed a response.

2. Submissions by the Parties

2.1. Defence counsels submit that the Pre-trial Judge has failed to issue satisfactory and clear reasons to prove that the conditions are met to extend detention on remand for more than one year, in accordance with Article 190 (4) of the CPC. Extending detention on remand may be imposed only upon a convincing and grounded cause to believe that public danger or a threat of violence exists upon the pretrial release of a defendant. This has not been justified, and every possibility of general public danger or threat of violence is excluded. The public has shown no interest in this case at all. The Prosecution has almost never proved they have taken the necessary steps to make the investigation go faster under Article 191 (1) read with Article 185 (2) of the CPC. Months have passed without any investigative action, and the delays are evident, which violates Article 5 and 6 of the European Convention on Human Rights. The SPRK and the Pre-trial Judge have not respected the remarks and suggestions made by the Court of Appeals, and worse is that the Court of Appeals reversed its own stand in its decisions. Defence counsels propose that the impugned Ruling is reversed, and that the defendants **AK1** and **AN** are released to defend themselves at liberty, or that the measure of detention on remand is replaced with a more lenient measure under Article 173 (1) of the CPC.

2.2. The State Prosecutor submits that both the Basic Court and the Court of Appeals have correctly assessed that there are legal grounds for the measure of detention on remand as per Article 187 (1) of the CPC. **AK1** has a permanent residence permit in Austria and, taking into account the gravity of the criminal offences and the eventual punishment for the criminal offences, the extension of detention on remand is reasonable. The defendants may influence witnesses and other co-accused due to the fact that investigations are expanded and Special Investigation Opportunity is applied, and these circumstances indicate that, if released, the defendants may try to change, hide or destroy evidence. The Court of Appeals correctly took into account the gravity of the criminal offences, the circumstances and the environment in which the criminal offences were committed, the personal characteristics of the defendants and the manner of the commission of the criminal offences. He proposes that the request is rejected.

3. Findings of the Panel

3.1. The joint Request for Protection of Legality filed by the defence counsels Destan Rukiqi and Ymer Osaj on behalf of the defendants **AK1** and **AN**, and the Response filed by the State Prosecutor are timely filed and admissible.

3.2. The Panel of the Supreme Court notes that the Indictment has not yet been filed, and that the defendants have been subject to the measure of detention on remand of since 28 October 2013. However, the Panel disagrees with the defence counsels that the Pre-trial Judge failed to give clear reasons for her decision. The Ruling details the position of the parties, and the specific risks of danger of flight, interference with evidence and obstruction of criminal proceedings, and the repeating of the criminal offences. The Ruling also refers to the reasoning given in previous Rulings, and notes that there have been no changes to the circumstances since the last time that detention on remand was extended.

3.3. The Pre-trial Judge has specifically addressed the requirements of Article 190 paragraphs 3 and 4 in her Ruling. The Panel finds that this part of the reasoning is not abstract, vague or stated in general terms. Specific and concrete examples are given of the ‘threat of violence’ as required by Article 190 (4). Further, the examples detailed in the Ruling include the specific and identifiable persons to whom the threat of violence exists. The Pre-trial Judge also gave full consideration to the alternative measures that are available, and again gave reasons why any lesser measure than detention on remand would not be sufficient to meet the risks.

3.4. The Supreme Court finds that the Pre-trial Judge properly assessed and established the risks of flight, interference with evidence and obstruction of criminal proceedings and the repetition of the criminal offending, in addition to the requirements of Article 190 paragraphs 3 and 4 which apply in this case.

Done in English, an authorized language.

Presiding Judge

Elka Filcheva-Ermenkova

EULEX Judge

Recording Officer

Kerry Kirsten Moyes

EULEX Legal Officer

Panel members

Esma Erterzi

EULEX Judge

Emine Mustafa

Supreme Court Judge