

SUPREME COURT OF KOSOVO
Pkl.-Kzz. 18/2013
Prishtinë/Priština
24 April 2013

IN THE NAME OF THE PEOPLE

THE SUPREME COURT OF KOSOVO, in a panel composed of
EULEX Judge Martti Harsia as Presiding Judge,
Supreme Court Judge Marije Ademi and
Supreme Court Judge Salih Toplica as members of the panel,
in the criminal case against the defendants:

1. **G.X.H.**, I, I

2. **V.J.**, I,

Presiding in detention since 1 July 2012,

Both suspected of having committed the criminal following offences:

- a) **Commission of Terrorism** pursuant to Article 110 paragraph 1 in conjunction with Article 109 paragraph 1 item 10 of the Criminal Code of Kosovo (CCK),
- b) **Participation in a Terrorist Group** pursuant to Article 113 paragraph 3 of the CCK and
- c) **Unauthorized Ownership, Control, Possession or Use of Weapons** pursuant to Article 328 of the CCK,

3. **Q.R.**, I, I
Kosovo Albanian, born on 15
and

4. **M.A.**, I, I
P

Both suspected of having committed the criminal following offences:

- a) **Organization, Support and Participation in a Terrorist Group** pursuant to Article 113 paragraph 3 of the CCK and
- b) **Unauthorized Ownership, Control, Possession or Use of Weapons** pursuant to Article 328 of the CCK,

Deciding upon the Request for Protection of Legality filed on the 7 February 2013 by the Office of the State Prosecutor of the Republic of Kosovo (OSPK) against the final Ruling of the Court of Appeals Pn.-Kr. 1/2013, dated 7 January 2013 and the final Ruling of the Court of Appeals Pn.-Kr. 167/2013, dated 1 February 2013,

Issues the following

JUDGMENT

The Request for Protection of Legality filed on the 7 February 2013 by the Office of the State Prosecutor of the Republic of Kosovo against the Ruling of the Court of Appeals Pn.-Kr. 1/2013, dated 7 January 2013 and the Ruling of the Court of Appeals Pn.-Kr. 167/2013, dated 1 February 2013, is WELL-FOUNDED.

The Supreme Court of Kosovo ESTABLISHES THAT THE CHALLENGED DECISIONS CONTAIN VIOLATIONS OF LAW in regard to the calculation of the period of extension of detention on remand and of house detention. THE PERIOD OF EXTENSION FOR A MEASURE IS TO BE CALCULATED FROM THE EXPIRY DATE OF THE PREVIOUSLY ORDERED PERIOD.

REASONING

I. Relevant Procedural History

On 1 July 2012 the four defendants were arrested for being suspected of their involvement in the attacks on the 17 Mai 2012 and 28 June 2012 at the police station in Bujanovac in Serbia and for their suspected activities as members of the so-called "Freedom Movement".

On 2 July 2012 the pre-trial judge of the District Court of Gjilan/Gnjilane ordered detention on remand against the defendants **G. XH.** and **V. J.** for the period of one month.

Upon an appeal from the EULEX prosecutor, the three-judge panel of the District Court of Gjilan/Gnjilane placed the other two defendants **M. A.** and **Q. J.** in house detention for one month, until 4 August 2012.

The respective measures against the aforementioned defendants were repeatedly extended.

By Ruling PP. 63/12 of the pre-trial judge of the District Court of Gjilan/Gnjilane, dated 27 December 2012, detention on remand against ~~...~~ G. XH. ...¹ and Y. J. ... was extended from 30 December 2012 until 30 January 2013.

By Ruling PP. 63/12 of the three-judge panel of the District Court of Gjilan/Gnjilane, dated 27 December 2012, house detention against M.A. ... and Q. R. ... was extended from 30 December 2012 until 30 January 2013.

On 7 January 2013, upon appeals filed by the defense counsels of three of the defendants, the panel of the Court of Appeals by Ruling Pn.-Kr. 7/2013 modified *ex officio* the aforementioned two Rulings of the District Court of Gjilan/Gnjilane in regard to the date from which and until when the extensions of the measures are calculated. In regard to both Rulings the Court of Appeals calculated the period of extension from the day of the decision, hence from 27 December 2012 until 27 January 2013.

By Ruling PPr. 63/12 of the pre-trial judge of the Basic Court of Gjilan/Gnjilane, dated 23 January 2013, detention on remand against G. XH. ... and Y. J. ... and house detention against M.A. ... and Q. R. ... was extended from 23 January 2013 until 23 February 2013, apparently based on the calculation method asserted by the previous ruling of the Court of Appeals.

Upon appeal, the Court of Appeals with Ruling Pn.-Kr. 167/13, dated 1 February 2013 affirmed the aforementioned Ruling of the Basic Court of Gjilan/Gnjilane.

On 7 February 2013 the State Prosecutor filed a Request for Protection of Legality against Ruling of the Court of Appeals Pn.-Kr. 7/13¹, dated 7 January 2013 and the Ruling of the Basic Court of Gjilan/Gnjilane PP. 63/12, dated 23 January 2013 and final by virtue of the Ruling Pn.-Kr. 167/13 of the Court of Appeals, dated 1 February 2013.

Pursuant to Article 435 paragraph 2 of the CPC, the OSPK's Request was served on the opposing parties. The case file contained no replies.

II. Supreme Court Findings

1. Admissibility of the Request for Protection of Legality

The Request for Protection of Legality is admissible.

Pursuant to Article 433 paragraphs 1 and 2 of the CPC, it was filed by an authorized party and within the legal deadline. The requester has a legitimate interest in determining the correct method of calculation for extension of detention on remand and house detention.

¹ Apparently by mistake the Request refers to 'PN/KR 1/13' while mentioning the correct date of 7 January 2013.

Both contested decisions are final in the sense of Article 432 paragraph 1 of the CPC. There are no legal restrictions against challenging two related decisions in one legal remedy.

2. Procedures followed by the Supreme Court

The Supreme Court panel has decided in a session as described by Article 435 paragraph 1 of the CPC.

3. On the merits of the Requests for Protection of Legality

The Request for Protection of Legality is well-founded.

The Requester had challenged the mentioned Rulings on the grounds of substantial violations of the provisions of criminal procedure pursuant to Article 384 paragraph 1 subparagraphs 12 in conjunction with article 370 paragraph 6 and Article 384 paragraph 2 subparagraph 1 of the CPC. He had moved the Supreme Court of Kosovo to determine that the contested Rulings did not contain an adequate reasoning, that they contained violations of Article 191 and Article 183 of the CPC relating to the extension of detention on remand and house detention and that the extension period for both measures runs from the expiry date established by the previous ruling and not from the date of the competent court's decision on the extension of the measure.

Following the content of the Request and pursuant to Article 438 paragraph 1.3 of the CPC the Supreme Court of Kosovo had to confine itself to establishing the existence of a violation of the law.

The Court of Appeals mentioned as grounds for its method of calculating the extension of measures beginning from the day of the court's decisions that Articles 285 paragraphs 1, 3 and 4 as well as Article 278 paragraph 7 of the Kosovo Code of Criminal Procedure (KCCP) would stipulate such a principle. The contested Rulings in addition refer to the Article 3 paragraph 2 of the CPC, according to the Court of Appeals requiring to apply of several possible interpretations of a legal provision the one most favorable to the defendant.

The contested Rulings both lack a consistent reasoning for the calculation of the extension of detention on remand and house detention.

The Supreme Court of Kosovo determines that the Court of Appeals wrongly applied the provision of Article 3 paragraph 2 to the current facts in question. The mentioned provision clearly only refers to 'facts relevant' and 'provisions of the criminal law' while it is generally accepted that it is not applicable to provisions of the criminal procedure.

The principles of '*in dubio pro reo*' and the presumption of innocence do only apply to the material criminal law, as reflected in the wording of the legal provision.

The provisions of Articles 285 paragraphs 1, 3 and 4 (similar to Article 191 of the CPC) as well as Article 278 paragraph 7 of the KCCP (similar to Article 183 paragraph 7 of the CPC) do not stipulate that the period of extension of a measure be calculated starting only from the date of the respective decision and not from the date of expiry of period ordered by the previous ruling.

On the contrary, it would be illogic, if a ruling on extension of previously ordered detention on remand or house detention would have the effect of invalidating the remaining period of the measure ordered by the previous ruling. The period determined by the previous ruling remains in force also in the event that a decision on extension of the period is made before the actual expiry of the previous period. This is in fact the standard procedure, as stipulated by Article 191 paragraph 2 of the CPC (formerly Article 285 paragraph 2 of the KCCP), which requires that the procedure for extending a measure is initiated well in advance of its expiry date. This is justified by the need to give all parties the chance to be heard in time and the necessity to prepare a reasoned decision on extension before the expiry of the previously ordered time period.

This interpretation is also supported by Article 190 paragraph 1 of the CPC (correspondent to Article 284 paragraph 1 of the KCCP), which calculates the period of detention from the date of arrest, not from the date of the ruling.

Any other method of calculation of the period of extension would also lead to a shortening of the total limits for detention on remand each time a court extends the measure in contradiction to Article 190 paragraph 2 of the CPC.

The court follows the OSPK's argument that the existence of grounds for detention on remand or house detention has been assessed by the last ruling imposing or extending the measure for the full period of time. Therefore, if the court requested to extend the measure determines that these grounds continue to exist, it does not need to verify this for the remaining validity period of the measure once more. It has to extend the measure beginning from the expiry date of the previously ordered period of time for the determined period time.

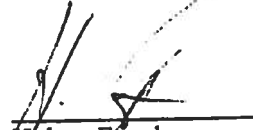
For the aforementioned reasons, the Supreme Court of Kosovo decides on the Request for Protection of Legality as in the enacting clause, based on Article 438 paragraph 1.3 of the CPC.

Presiding Judge

Martti Harsia

Martti Harsia
EULEX Judge

Recording Clerk



Holger Engelmann
EULEX Legal Officer

SUPREME COURT OF KOSOVO
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24 April 2013

SUPREME COURT OF KOSOVO
Pkl.-Kzz. 18/2013
Prishtinë/Priština
23 May 2013

EULEX Judge Dr. Horst Proetel as Presiding Judge,
in the criminal case against the defendants:

1. **G.X.H.** [REDACTED]
2. **V.J.** [REDACTED] March 1985 in the village of B. shovica, [REDACTED] of Albania, nationality, last place of residence: [REDACTED] Prishtinë/Priština, in detention since 4 July 2012.

Both suspected of having committed the criminal following offences:

- a) **Commission of Terrorism** pursuant to Article 110 paragraph 1 in conjunction with Article 109 paragraph 1 item 10 of the Criminal Code of Kosovo (CCK),
- b) **Participation in a Terrorist Group** pursuant to Article 113 paragraph 3 of the CCK and
- c) **Unauthorized Ownership, Control, Possession or Use of Weapons** pursuant to Article 328 of the CCK,

3. **Q.R.** [REDACTED] born on [REDACTED] March 19[REDACTED] n, k
4. **M.A.** [REDACTED] (Mujar) father's name Bedrudin, born on 21 August 19[REDACTED] Kosovo/Albanian, residing in the Veteran quarter of Prishtinë/Priština, in house detention since 4 July 2012.

Both suspected of having committed the criminal following offences:

- a) **Organization, Support and Participation in a Terrorist Group** pursuant to Article 113 paragraph 3 of the CCK and
- b) **Unauthorized Ownership, Control, Possession or Use of Weapons** pursuant to Article 328 of the CCK,

Acting *ex officio* pursuant to Article 371 paragraph 1 of the Criminal Procedure Code (CPC) issues the following

RULING

The Judgment of the Supreme Court of Kosovo Pkl.-Kzz. 18/2013, dated 24 April 2013, is corrected as follows:

The first paragraph of page two (2) of the English version of the Judgment (Albanian version: the last paragraph beginning on page one (1) and ending on page two (2)), beginning with "Upon appeal..." and ending with "...11 years and 4 months imprisonment" (Albanian version: beginning with "Pas ankesës..." and ending with "...11 viteve dhe 4 muajve burgim") is deleted.

REASONING

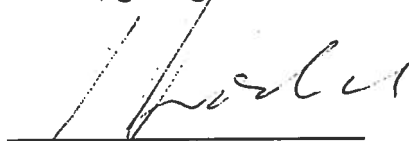
I. Relevant Procedural History

The concerned Judgment was issued on 24 April 2013 and served on the parties on or after the 21 May 2013.

The current Ruling *ex officio* corrects an obvious and inconsequential writing error in the Judgment pursuant to Article 371 paragraph 1 of the CPC.

The present Ruling together with a corrected version of the Judgment shall be served on the parties to the proceedings pursuant to Article 371 paragraph 3 of the CPC.

Presiding Judge



Dr. Horst Proetel
EULEX Judge

Recording Clerk



Holger Engelmann
EULEX Legal Officer

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