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

Prishtina, on 2 December 2019
Ref. no.:RK 1470/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI197/18

Applicant

Ramadan Bislimi

Constitutional review of Judgment PML. No. 179/2018 of the Supreme Court, of 23 August 2018

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, 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 Ramadan Bislimi from village Dobërçan, Municipality of Gjilan (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Judgment PML. No. 179/2018, of the Supreme Court, of 23 August 2018, in conjunction with Judgment PA1. No. 104/2017, of the Court of Appeals, of 24 April 2018 and Judgment P. No. 1418/16, of the Basic Court, of 26 July 2017.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as paragraph 1 of Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

4. 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).

Proceedings before the Court

5. On 18 December 2018, the Applicant submitted the Referral to the Court.

6. On 20 December 2018, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel, composed of Judges: Bekim Sejdiu (Presiding), Selvete Gerxhaliu-Krasniqi and Gresa Caka-Nimani.

7. On 16 January 2019, the Court notified the Applicant about the registration of the Referral, and sent a copy of the Referral to the Supreme Court.

8. On 6 November 2019, after considering the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. It follows from the case file that, on 12 July 2011, the Applicant and the „Vdek Group Online Trade" (hereinafter; the Vdek Group), based in the United Arab Emirates, signed a cooperation agreement. The agreement stipulated that the management of the "Vdek Group" would send travelers checks to the Applicant in the amount of $ 500, which he would have to collect with commercial banks in Kosovo, where he would return 90% of the amount of the passenger's money to the sender, or to the "Vdek Group", and 10% of the amount of the traveler's cashed check would be kept for himself on behalf of his monthly salary.

10. On 21 July 2011, the Applicant received the first "American Express Travel Cheque" from the "Vdek Group" and cashed it at the Raiffeisen Bank branch in Gjilan.

11. In 2011, the Applicant cashed a number of passenger checks at "American Express Travel Cheque", at the same Raiffeisen Bank branch, for a total of $ 27,930.

12. On 5 September 2011, on the basis of an order (PN. No. 5339/2011) of the Basic Court, the police searched the Applicant's house on reasonable grounds that material evidence of the commission of the criminal offence "Issuing uncovered or false checks and abuse of bank or credit cards" could be found in the Applicant's house referred to in Article 248, paragraph 3 in conjunction with paragraph 1 of the Criminal Code of Kosovo (hereinafter: the CCK).

13. During a search of the Applicant's house, the police found and confiscated 67 checks totaling $ 33,500 from "American Express Travelers Cheque", which confiscated along with other relevant evidence.

14. On the same date, the Applicant was interrogated by the police as a suspect and after the hearing, he was detained for 48 hours by the order of the Chief Prosecutor at the Detention Center – in Gjilan.

15. On 7 September 2011, the Police of Kosovo, Division against Economic Crime and Corruption, filed with the Municipal Public Prosecutor's Office (hereinafter MPP) a criminal report against the Applicant in Gjilan on suspicion of having committed the criminal offense of *Issuing uncovered or false checks and abuse of bank or credit cards* under Article 248 paragraph 3 in conjunction with paragraph 1 of the CCK.

16. On 20 September 2011, the MPP filed the indictment against the Applicant with the Basic Court in Gjilan on the grounded suspicion that he committed the criminal offence of "Issuing uncovered or false checks and abuse of bank or credit cards" under Article 248 paragraph 3 in conjunction with paragraph 1 of the CCK.

17. On 1 June 2016, the Basic Court rendered Judgment P. No. 846/15, sentencing the Applicant to 150 days of imprisonment, which replaced with a fine of 1500 euro.

18. By the same Judgment, the Basic Court referred the injured Raiffeisen Bank to a civil dispute in order to realize a property legal claim.

19. Against the Judgment of the Basic Court P. No. 846/15, the appeals with the Court of Appeals were filed by the MPP, the injured Raiffeisen Bank as well as the Applicant's representative on the grounds of erroneous determination of factual situation and erroneous application of substantive law.

20. On 14 November 2016, the Court of Appeals rendered Decision PA1. No. 892/16, approving the appeals of the MPP and of the injured Raiffeisen Bank,

annulled Judgment of the Basic Court P. No. 846/15, and remanded the case for retrial.

21. On 26 July 2017, the Basic Court rendered Judgment P. No. 1418/15, finding the Applicant guilty of committing the criminal offence. Accordingly, it sentenced him to 1 (one) year imprisonment, which he will not serve if within 2 (two) years after the Judgment becomes final he does not commit another criminal offence. By the same Judgment, the court ordered the Applicant to return to the injured Raiffeisen Bank the amount of USD 27,440.

22. The reasoning of the Basic Court reads: *„The court carefully considered and assessed the evidence administered such as witness testimony, the defense of the accused, the administered material evidence that are in the case file pursuant to Articles 260 - 262 of the CPCRK, analyzing each individually and together as a whole, where it gave trust to the testimony of witnesses D. H, S. Rr, H. H, M. H, E. K, and in particular the written expertise of the expert Ibrahim Tahiri, who elaborated the latter verbally and then all the other material documents in the case file, which are in favor of the indictment, where the accused partly and undoubtedly admits that he used checks for coverage with an excuse that he too was deceived and not that he was a fraudster, and with all this material evidence undoubtedly establishes the real situation described in the indictment, this convincing, relevant and indisputable evidence, which establishes that the accused Ramadan Bislimi committed the abovementioned criminal offence, intentionally, by bringing to himself unlawful benefit of approximate value as alleged by the injured party's representative... .“*

23. Against the judgment of the Basic Court, the appeals were filed by the State Prosecutor (hereinafter: SP) and the Applicant's defense counsel.

24. The SP, filed an appeal regarding *„the criminal sanctions under Article 383, paragraph 1, subparagraph 1.4 in conjunction with Article 387, paragraph 1 of the CPCRK, with the proposal that the appealed judgment be modified and that the accused be imposed a more severe imprisonment sentence “.*

25. The Applicant's defense counsel filed the appeal *„on the grounds of essential violation of the provisions of the criminal procedure, erroneous and incomplete determination of factual situation, violation of the criminal law and the decision on punishment, with the proposal that the appealed judgment be modified with respect to the decision on punishment and that the accused Ramadan Bislimi within the meaning of Article 364 paragraph 1 item 1. 1 and 1.3 be acquitted of charges...“*

26. On 24 April 2018, the Court of Appeals rendered Judgment PA1. No. 1042/2017, rejecting the appeals of SP and the Applicant's defence counsel as ungrounded. The reasoning of the judgment reads:

> ***“a)*** *The defense counsel's allegations that the judgment contains essential violation of the provisions of the criminal procedure and erroneous and incomplete determination of factual situation are not grounded. The judgment of the first instance court is clear and concrete, the court gave*

the reasons for decisive facts, assessing the accuracy of the contradictory evidence as well as the reasons where it was based in the resolution of this criminal-legal matter, especially in determining the existence of a criminal offense.

b) *As to the factual situation, the appeal is also ungrounded in this respect also because the first instance court has correctly determined factual situation when it rendered the judgment of conviction, since after administration of material and non-material evidence such as witness statements and partly from the defense of the accused, but also from the material evidence such as photocopies of checks, minutes of the search of the defendant's house, forensic expertise of false checks, as well as financial expertise from which it is undoubtedly established that the accused committed the criminal offence of which he was found guilty and convicted.*

c) *With respect to the appealed allegations of the prosecutor and the defence counsel of the Applicant regarding the length of sentence, the court concluded that such allegations are ungrounded, as the prosecution and the defense have not submitted any new reason or new circumstance which the first instance court did not know, but merely emphasized that the sentence imposed was not deserved according to law... ."*

27. The Applicant's defence counsel submitted a request for protection of legality to the Supreme Court against the Judgment of the Court of Appeals, stating that: **i)** that the judgments of the Basic Court and the Court of Appeals were rendered with essential violations of the criminal procedure under Article 384, paragraph 1, subparagraph 1.8 of the CPCK, as the first instance court is based on inadmissible evidence gathered during the court hearing, and also; **ii)**, the judgment of the court is not clear and drafted in accordance with the provision of Article 384, paragraph 1, subparagraph 1.12 of the CPCK.

28. The SP filed a submission requesting the Supreme Court to reject the request for legality of the Applicant's defence counsel as ungrounded.

29. On 23 August 2018, the Supreme Court rendered Judgment Pml. No. 179/2018, rejecting the request for protection of legality of the Applicant's defence counsel as ungrounded. The reasoning of the judgment reads:

Regarding the first allegation in the request for protection of legality *i) "The judgment of the first instance court is not based on inadmissible evidence as stated in the request, since the minutes of the search of the apartment of the convicted person was signed by witness A.SH, and moreover, the convict himself gave his consent to hand over the checks he had in his house.*

With respect to the second allegation in the request for protection of legality, *(ii) the Court concludes that the challenged judgments do not contain essential violations of the criminal procedure provisions, since all the facts have been completely determined and for each fact was presented information, reasoned in each item of the judgment and reasoning regarding established and unspecified facts were given. All material evidence, the seized checks and the expertise report, as well as the statements of witnesses to which the court gave trust, were assessed in a sufficiently detailed manner".*

Applicant's allegations

30. The Applicant alleges that there has been a violation of Article 31 of the Constitution and Article 6 of the ECHR at all stages of the criminal proceedings before the regular courts.

31. More specifically, the Applicant justifies the violation of Article 31 of the Constitution and Article 6 ECHR before the Basic Court by alleging, *„that the police search of the house itself was unlawful, that he was characterized as a perpetrator in the criminal proceedings, and in fact he was the victim, that the judgment of the Basic Court did not contain any response, analysis or elaboration".*

32. Further, the Applicant justifies the violation of Article 31 of the Constitution and Article 6 of the ECHR before the Court of Appeals, *„that the Judgment Court of Appeals does not contain any response regarding the unlawful search of the house, that the judgment does not contain an analysis or elaboration to prove that this allegation was considered, and also the judgment of the Court of Appeals is not reasoned and does not provide answers to key questions that have to do with the fact that he did not know that these are false checks".*

33. Furthermore, the Applicant justifies the violation of Article 31 of the Constitution and Article 6 of the ECHR before the Supreme Court by alleging, *„that according to the request for protection of legality, the Supreme Court did not deal with the issue of unlawful search of the apartment, which was entirely illegal due to the forgery and lack of witnesses, as required by the Law (Article 108.2 of the Criminal Procedure Code) and the compilation of two minutes (one of them) is certainly falsified). Accordingly, the evidence presented by the Police in breach of the law is not procedurally admissible in the Court and accordingly the Court of Appeals could not be based on them".*

34. Accordingly, the Applicant alleges that the right to a reasoned judgment as one of the elements of Article 6 of the ECHR has been violated, and in support of this, the Applicant adds that *„in judgment Hadjianastassiou v. Greece, ECtHR emphasized that the reasoned decisions serve to show the parties that they have been heard by the court".*

35. The Applicant also alleges a violation of Article 6.1 of the ECHR, for the sake of rebutting the burden of proof, and in support of that, he states that *"the principle implies the presumption of innocence, and it requires inter alia, that it is for the prosecution to adduce evidence sufficient to convict the accused (Barbera, Messegue and Jabardo v. Spain, paragraph 77 and Janošević v. Sweden, paragraph 97)."*

36. As a last allegation, the Applicant alleges that he did not have a fair trial because he was punished on the basis of evidence obtained in violation of law.

37. The Applicant requests the Court to annul the challenged judgments and to remand the case to the Basic Court for retrial, or to annul the Judgment of the Supreme Court.

Admissibility of the Referral

38. The Court first examines whether the Applicant has fulfilled the admissibility requirements, established by the Constitution, further specified by the Law and foreseen by the Rules of Procedure.

39. 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".*

40. In addition, the Court also refers to the admissibility requirements as prescribed 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.*
>
> *2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*
>
> 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... ."*

41. In addition, the Court takes into account Rule 39 [Admissibility Criteria], paragraph (2) of the Rules of Procedure, which establishes:

> *"(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim".*

42. As regards the fulfillment of these criteria, the Court finds that the Applicant filed a referral in the capacity of an authorized party, challenging an act of a public authority, namely Judgment PML No. 179/2018 of the Supreme Court of 23 August 2018, after exhaustion of all legal remedies. The Applicant also emphasized the rights he claimed to have been violated, in accordance with the requirements set out in Article 48 of the Law and submitted the referral within the time limit prescribed in Article 49 of the Law.

43. Considering the substance of the Applicant's Referral, the Court notes that in his referral he raised a number of allegations of violations of constitutional rights and freedoms in relation to Article 31 of the Constitution as well the violation of the rights provided for in Article 6 of the ECHR.

44. The Court, having regard to the fact that the proceedings which resulted in the challenged Judgment concerned the determination of the grounds of the criminal charge against the Applicant for committing the criminal offense of *"Issuing uncovered or false checks and abuse of bank or credit cards"*, it follows that the Applicant in the proceedings enjoys guarantees of the right to a fair trial under Article 31 of the Constitution and Article 6 of the ECHR. Taking this into account, the Court in the present case, will examine whether the proceedings was fair in the manner required by the abovementioned provisions.

45. Therefore, having regard to all the Applicant's allegations, it follows that he challenges in essence the fairness of the proceedings as a whole, since he considers that in the proceedings, which resulted in the challenged Judgment, the evidence was assessed in an arbitrary manner, in particular the evidence gathered during the unlawful police search of the apartment, also, that the challenged Judgment did not at all establish his subjective relation towards the committed criminal offence, where he was the victim of fraud and not the perpetrator of the criminal offence, that the regular courts did not reason their judgments in accordance with the ECtHR principle, that the Court of Appeals and the Supreme Courts arbitrarily assessed the evidence, accepting as established the facts for which, in his view, there was a reasonable doubt, placing the burden of proof on him to prove his innocence, and not on the prosecution, which should have proven his guilt as an accused person.

46. The Court recalls, first of all, that in its previous decisions, relying on the case law of the European Court of Human Rights (hereinafter: the ECtHR), it concluded that the question of whether the accused had a fair trial must be considered on the basis of the entire proceeding, and that the general guarantee of a "fair trial" under paragraph 1 of Article 6 of the ECHR has elements which supplement the specific guarantees set out in paragraphs 2 and

3 of Article 6 of the ECHR (see, ECtHR, *Artico v. Italy*, A 37 (1980)). When dealing with the case that falls under one of the specific guarantees laid down in paragraphs 2 and 3 of Article 6, it may be considered either under those guarantees (see, ECtHR, *Luedicke v. FRG*, A 29 (1978), 2 ECHR 149), or in conjunction with paragraph 1 of Article 6 (see, ECtHR, *Benham v. the United Kingdom*, 1996-III, 22 EHRR 293 GC).

47. However, if the referral relates essentially to the allegation that the proceedings as a whole, including the appeal proceedings, was unfair, the allegations are examined within the meaning of paragraph 1 of Article 6 of the ECHR (see the ECtHR, *Edwards v. the United Kingdom*, A 247-B (1992), 15 EHRR 417, paras. 33-34).

48. Bearing in mind that in the present case the Applicant raises questions regarding the guarantees established by Article 6, paragraph 1, and 2 of the European Convention, which, in essence, refer to the allegation that the proceedings as a whole was not fair, and the Constitutional Court, having in mind the abovementioned standards of the ECtHR, will examine his allegations within the meaning of paragraph 1 of Article 6 of the ECHR.

49. In this regard, the Court finds that the Applicant, in his referrals, listed his allegations of violation of Article 31 of the Constitution and Article 6 of the ECHR, into several separate allegations, which he explained in his referral one by one. Accordingly, the Court will examine all these allegations in the report individually.

Applicant's allegations of violation of Article 31 of the Constitution and Article 6 of the ECHR in relation to the search of the apartment and use of evidence

50. With regard to the first allegation of the Applicant that the search of the apartment, which was carried out on 5 September 2011 by the police, is unlawful and that, accordingly, the evidence gathered on that occasion was also unlawful and could not be used against him during the trial, the Court first notes that the search of the Applicant's apartment was conducted by the Police of Kosovo pursuant to the order (PN. No. 5339/2011) of the Basic Court on a grounded suspicion that in the Applicant's apartment, the evidence that he had committed the criminal offence, could be found. Moreover, during the search of the apartment, the police found evidence and, in that case, compiled a record of all the confiscated items which it considered relevant as evidentiary material against the Applicant, which is in accordance with Article 108.7 of the CPC.

> *"Article 108.7 A record shall be made of each search of a person, house or premises. Such record shall be signed by the person who has been searched or whose premises or property have been searched, his or her lawyer if present during the search and persons whose presence is obligatory. When conducting a search, only the objects and documents related to the purpose of that particular search may be confiscated. The objects and documents confiscated shall be entered and accurately described in the record, and the same shall be indicated in the receipt,*

which shall be immediately given to the person whose objects or documents have been confiscated".

51. Moreover, the Court also recalls that the provision of Article 60 paragraph 1 of the CCK also regulates the confiscation of items used or intended to be used in the commission of the criminal offense:

> *„1. Objects used or destined for use in the commission of a criminal offence or objects derived from the commission of a criminal offence may be confiscated if they are property of the perpetrator."*

52. The Court further notes that in the proceedings before the Basic Court, all the evidence and evidentiary material confiscated during the police search were examined, direct witnesses and court experts were heard, and a particular consideration was given to the Applicant's statement during the hearing proceeding before the police where *„he does not deny the fact that he used those checks stating that he did not know that they had been forged ".*

53. With regard to the evidence itself used by the Basic Court in determining the Applicant's criminal liability, the Court recalls that it is beyond its jurisdiction to assess the quality of the conclusions of the courts with regard to the assessment of the evidence, if this assessment does not appear manifestly arbitrary. Likewise, the Constitutional Court will not interfere with the way the regular courts have admitted evidence as evidentiary material. The Constitutional Court will not interfere with the discretion of a judge in a situation where the regular courts trust the evidence of one party to the proceedings. This is the exclusive role of the regular courts, even when the statements of witnesses at public hearing and on oath are contrary to one another (see ECtHR, *Doorson v. the Netherlands*, Judgment of 6 March 1996, published in Reports, No. 1996-II, paragraph 78).

54. The Court also notes that the Applicant's allegations that the Court of Appeals failed to take into account his allegations of evidence confiscated during the police search of his apartment. In that regard, the Court of Appeals found that *„the abovementioned evidence refute the allegations of the defense in respect of the denial of the criminal offence, as the evidence administered and reasoned by the first instance court clearly established that in the actions of the accused there are all the elements of the criminal offense under Article 248, paragraph 3, in conjunction with paragraph 1 of the CCK."*

55. Moreover, in the request for protection of legality, the Supreme Court also addressed the issue raised by the Applicant's defense, which concerned precisely the issue of evidence allegedly collected during the unlawful search. In this regard, the Supreme Court concluded that *„the judgment of the first instance court is not based on inadmissible evidence, as alleged in the request, because the minutes of the search of the apartment of the convict was signed by witness A. Sh., and moreover, the convict himself gave consent to hand over the checks that he had at his house".*

56. In this regard, the Court concludes that the Applicant's allegations that there has been a violation of Article 31 of the Constitution and Article 6 of the ECHR

in relation to the unlawful search of the apartment and confiscation of items, used as evidence against him during the court proceedings, are ungrounded.

Applicant's allegations of violation of Article 31 of the Constitution and Article 6 of the ECHR in relation to unreasoned court judgments

57. The Court notes that the Applicant brings violation of Article 31 of the Constitution and Article 6 of the ECHR regarding unreasoned judgments, with the fact *„that during the proceedings before the regular courts, he emphasized that he was the victim and not the perpetrator of this criminal offence. The regular courts have decided that he is the perpetrator of the criminal offence, but that they have not provided any quality, intellectually acceptable and sound reasoning."*

58. In this regard, the Court first emphasizes that, according to the established case law of the ECtHR and the case law of the Constitutional Court, Article 6, paragraph 1 of the ECHR, obliges the courts to, *inter alia,* reason their judgments. This obligation, cannot, however, be understood as an obligation to state all the details in the judgment and to answer all the questions raised and arguments presented. The extent to which this obligation exists depends on the nature of the decision (see ECtHR Judgment, *Ruiz Torija v. Spain*, of 9 December 1994, Series A, No. 303-A, paragraph 29, see case: no. KI72/12, *Veton Berisha i Ilfete Haziri*, judgment of 17.December 2012, par 61).

59. The ECtHR and the Constitutional Court in numerous decisions noted that, even though domestic courts have a certain margin of appreciation when choosing arguments and admitting evidence in a particular case, at the same time domestic courts are obliged to reason their decisions, by giving clear and comprehensible reasons on which they base their decisions. (see ECtHR judgment, *Suominen v. Finland*, of 1 July 2003, application no. 37801/97, paragraph 36).

60. In bringing the abovementioned paragraphs in connection with the present case, the Court notes that the judgments of the regular courts do not lack reasoning, both with regard to the evidence gathered, the arguments presented and the evidence of the Applicant's defense, as well as with regard to the examination of witnesses and experts regarding the expertise of the seized checks, where their authenticity was determined.

61. The Court also does not find that the challenged judgments lack the reasoning for the decisions taken by the courts regarding the establishment of the Applicant's criminal liability, and therefore, the judgments do not indicate any ambiguity as to the reasons on which those decisions are based.

62. Moreover, regarding this allegation of the Applicant, the Supreme Court concluded that *„the judgment of the second instance court has sufficient reasoning for all appealing allegations and rightly rejected these allegations and, moreover, every item of the appealing allegations is reasoned in a detailed manner, so that the findings of the second instance court are approved in entirety by the Supreme Court of Kosovo".*

63. Therefore, the Court finds that the Applicant's allegations that the courts did not substantiate their judgments are ungrounded, thereby violating Article 31 of the Constitution and Article 6 of the ECHR.

64. As to the other allegations of the Applicant regarding the burden of proof and the allegation that he did not have a fair trial as a whole, the Court reiterates that it will not deal with them separately, as, based on the abovementioned reasoning, it follows that these allegations of the Applicant are ungrounded.

65. Accordingly, on the basis of all the foregoing, the Court considers that the regular courts have complied with their obligation under Article 31 of the Constitution and Article 6 of the ECHR, and for this reason the Applicant's allegations that the challenged decisions violated the right to fair trial in this segment, are ungrounded.

66. The Court finds that nothing in the case presented by the Applicant indicates that the proceedings before the Basic Court, the Court of Appeals and the Supreme Court were unfair or arbitrary in order to satisfy the Constitutional Court that the Applicant has been denied any procedural guarantees, which would lead to a violation of the right to fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

67. The Court reiterates that it is the Applicant's obligation to substantiate his constitutional allegations and to submit *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (see case of the Constitutional Court No. KI19/14 and KI21/14, Applicants: *Tafil Qorri and Mehdi Syla*, Resolution on Inadmissibility of 5 December 2013).

68. Therefore, the Applicant's Referral is manifestly ill-founded on constitutional basis and, is to be declared inadmissible in accordance with Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Article 20 of the Law, and Rule 39 (2) of the Rules of Procedure, in the session held on 6 November 2019, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Decision to the Parties;

III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Safet Hoxha Arta Rama-Hajrizi

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