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

Prishtina, 14 March 2019
Ref. No.:RK 1335/19

RESOLUTION ON INADMISSIBILITY

in

Case No. KI70/18

Applicant

Alfred Zylfaj

Constitutional review of Judgment PML. No. 120/17 of the Supreme Court of Kosovo of 13 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-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 Alfred Zylfaj, from Suhareka (hereinafter: the Applicant), who is represented by lawyers Shpresa Berisha-Rexhepi and Ymer Osaj.

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment [PML. No. 120/2017] of the Supreme Court of Kosovo of 13 December 2017.

3. The challenged Judgment of the Supreme Court was served on the Applicant on 25 January 2018.

Subject matter

4. The subject matter is the constitutional review of the challenged decisions, which allegedly violate the principle *refomatio in peius* to the detriment of the Applicant in conjunction with Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo.

Legal basis

5. The Referral is based on Article 113 (1) and (7) [Jurisdiction and Authorized Parties] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on 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 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 10 May 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

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

9. On 16 August 2018, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.

10. On 19 September 2018, the Court, in accordance with paragraph 2 (c) of Rule 33 [Registration of Referrals and Filing Deadlines] of the Rules of Procedure, requested the representative of the Applicant to submit the power of attorney for representation before the Court.

11. On 5 November 2018, the Applicant's representative submitted the power of attorney for representation before the Court.

12. On 20 December 2018, the Court requested the Applicant to submit the evidence (acknowledgment of receipt) indicating the date when the challenged Judgment of the Supreme Court was served on the Applicant.

13. On 20 December 2018, the Court sent a copy of the Referral to the Supreme Court and the Basic Court in Prishtina. The Basic Court was required to submit the evidence (acknowledgment of receipt) indicating the date when the challenged Judgment of the Supreme Court was served on the Applicant.

14. On 24 December 2018, the Basic Court submitted the evidence of the receipt of the challenged Judgment of the Supreme Court.

15. On 6 February 2019, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

16. The origin of this case stems from the criminal charge against the Applicant, and some other individuals, for breaking the house of RG for the purpose of theft and unlawful material benefit, in which case they shot dead RG.

17. On 16 February 2011, the District Public Prosecutor filed the indictment PP. No. 443-4/2000 against the Applicant for the criminal offense of theft in the nature of robbery or robbery provided for in Article 256.2 in co-perpetration, in conjunction with Article 23 of the Criminal Code of Kosovo (hereinafter: the CCK). The Applicant was also accused of unauthorized ownership of weapons under Article 328 (2) of the CCK.

18. On 17 March 2014, the Basic Court in Prishtina (Judgment PKR No. 24/13) found the Applicant guilty of the criminal offense of theft in the nature of robbery or robbery provided by Article 256.2 in co-perpetration, in conjunction with Article 23 of the CCK. The Applicant was also found guilty of the criminal offense of unauthorized ownership of weapons under Article 374.1 of the CCK. The Applicant was imposed an aggregate sentence of imprisonment of 15 (fifteen) years and (6) six months.

19. The Basic Court in Prishtina - after assessing the evidence and the case file-found: (i) that from the testimonies of the injured parties AG and SG and the witness LA (co-perpetrator) the factual situation was correctly and completely determined; (ii) that the accused (the Applicant) had the intent for committing the criminal offense of theft in the nature of robbery or robbery; (iii) that there are elements of the criminal offense of unauthorized ownership of weapons and that the accused used the revolver (7,65 mm caliber) at the time when R.G. was shot to death; (iv) the defense of the accused was completely dismissed as ungrounded because it contradicts all the evidence administered during the main trial; (v) the report of the criminal-technical unit certifies that the fixed traces belong to the palm print of the accused; (vi) the autopsy report by the

forensic expert confirmed that the cause of RG's death is chest wounds from gunfire; and that (vii) given the factual situation and the administered evidence, the Basic Court is convinced that the punishment imposed on the incriminating actions of the accused will achieve the purpose of the punishment as provided by Article 41 of the CCK.

20. The Applicant filed an appeal with the Court of Appeals alleging 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 Court of Appeals approve the appeal and annul the challenged decision, and remand the case for retrial.

21. The Basic Prosecution-SCD in Prishtina proposed to the Court of Appeals to modify the Judgment of the Basic Court, regarding the decision on punishment so that the Applicant be sentenced to a higher punishment of imprisonment.

22. The Appellate Prosecution in Prishtina with the document (PPA/I. No. 453/2014, of 12.09.2014) proposed that the abovementioned appeal of the Basic Prosecutor in Prishtina be approved, because of the decision on criminal sanctions and the Applicant be imposed a higher sentence of imprisonment.

23. On 9 October 2014, the Court of Appeals (Decision PAKR No. 440/2014) approved the Applicant's appeal and, *ex officio,* annulled the aforementioned Judgment of the Basic Court and remanded the criminal case for retrial. Consequently, the appeal of the Basic Prosecutor was declared "non-subject matter". The Court of Appeals, in essence, reasoned: *"The court does not provide sufficient explanations for incriminating actions and criminal legal liability, and since the criminal offense was committed in co-perpetration where four accused participated, starting from the fact that the criminal offenses committed in co-perpetration are complex criminal offenses, the court does not give explanations to the accused in what form of co-perpetration they have acted and at no time is clarified their contribution to the commission of the criminal offense and the court does not give any fact that the accused respond for their actions within the purpose of their will and hence, and criminal legal responsibility should be different for each accused".*

24. On 6 July 2016, the Basic Court in Prishtina (Judgment PKR No. 552/14) found the Applicant guilty: (i) because of the theft in nature of robbery or robbery in co-perpetration under Article 256.2 in conjunction with Article 23 of the CCK and imposed a sentence of imprisonment of 19 (nineteen) years and 6 (six) months; (ii) on the grounds of unauthorized ownership, control or possession of weapons under Article 374.1 of the CCK, a term of imprisonment of one (1) year; and (iii) in accordance with Article 80.1 and 2 of the CCRK, for two criminal offenses, shall be punished by an aggregate imprisonment sentence of twenty (20) years.

25. The Basic Court in the aforementioned 23-page judgment explained that the decision on the imprisonment of the Applicant was based on a number of documents such as the statements of the witnesses co-perpetrators, the statements of the injured parties, the autopsy report of the victim R.G., the

inspection report the report of the expertise, the photo-documentation in the case file, the reading of the confrontation between the co-perpetrators and their confrontation, the official memorandum, the list of evidence, the report of the criminalistic technique etc.

26. The Applicant filed an appeal with the Court of Appeals alleging 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 Court of Appeals approves the appeal and annuls the challenged decision and remands the case for retrial. The Applicant in particular alleged that: *"The evidence have not been assessed in Judgment due to the reasons that the decisive facts have not been presented and the sentence of 20 years was imposed on the accused and also principle "Reformatio in Peius" was violated, and this means that the modification of the court decision and worsening of the position of the accused is prohibited in the cases when the legal remedy is presented to the favor of the accused, due to the reason that the appeals of the BP –SCD in Prishtina were declared by the Court of Appeals as unsubstantial because the Prosecution did not submit any appeal regarding the factual situation".*

27. The Basic Prosecutor in Prishtina also filed an appeal with the Court of Appeals, claiming more severe punishment for the Applicant having in mind the consequences of the criminal offense, the criminal inclinations of the Applicant and of the other accused and their high social risk.

28. On 6 February 2017, the Court of Appeals (Judgment PAKR No. 5/2017) partially approved the Applicant's appeal and modified the Judgment of the Basic Court regarding the qualification of the criminal offense by re-qualifying it in grave cases of theft in the nature of robbery or robbery, under Article 256.2 in conjunction with Article 23 of the CCK. The Applicant was imposed an aggregate sentence of 20 (twenty) years, including the time spent in detention on remand. The appeal of the Basic Prosecutor in Prishtina was rejected as ungrounded.

29. The Court of Appeals approved in general the determination of facts and administration of evidence by the Basic Court, whereas on the allegation of violation of the principle "*reformatio in pieus*", it stated: *"that the appealing allegations of the accused [...] that the prohibition "reformatio in peius" stipulated under Article 395, of the CCK was violated, do not stand due to the reason that the appeal of the BP –SCD in Prishtina is unsubstantial and it does not mean that the sentence cannot be more aggravated because according to the assessment of the Court of Appeals, Decision PAKR. No. 440/2015, of 9 October 2014, was annulled pursuant to the appeals of the defense counsels and pursuant to the official duty, the appeal of the BP –SCD in Prishtina was left without assessment (review); therefore, the appeal existed and this means that the first instance court, since the appeal of the BP –SCD in Prishtina existed, was not limited to the prohibition "Reformatio in Peius" stipulated under Article 395, of the CCK, when it imposed to the accused more severe sentences".*

30. As regards the proportionality between the punishment and the social risk of the criminal offense, the Court of Appeals found: *"the Court of Appeals rejected the appeal filed by the BP-SCD in Prishtina as ungrounded and pursuant to the assessment of the Court of Appeals, the first instance court, in an adequate level, assessed all the circumstances, the mitigating and aggravating ones, when rendering and calculating the sentence, by assessing the general circumstances on calculating the sentence stipulated under Article 73 of the CCRK, by taking into consideration that the criminal offense was conducted due to the greed and had serious consequences, it deprived the deceased from life, and both protecting values, deprivation from life and protection of property enjoy criminal legal defense as greatest values of the criminal legal protection, the sentences imposed on the accused Alfred Zylfaj, Sh.K., M.K., and S.D. is in proportion with the gravity of the committed criminal offenses and the level of criminal legal liability of them and such imposed sentences will serve the individual prevention for preventing the accused for committing such or similar criminal offenses and it will serve the general prevention for preventing the other from committing such or similar criminal offenses and it is expected to reach the purpose of the sentence, as stipulated under Article 41 of the CCRK".*

31. The Applicant filed a request for protection of legality with the Supreme Court alleging essential violation of the provisions of the criminal procedure, a violation of the criminal law and the decision on the punishment, with the proposal that the challenged judgments be annulled and the case be remanded to the first instance court for retrial. The Applicant specifically complained: (i) for delay of the process as from the criminal lawsuit to a decision issued by the Basic Court, four (4) years had passed; (ii) lack of adequate reasoning for the aggravation of punishment of the Applicant; and, (iii) aggravation of the applicant's procedural position due to the violation of the principle *"reformatio in peius"*.

32. On 2 and 13 June 2017, the State Prosecutor (document KMLP. II. No. 82/2017) proposed to the Supreme Court that the request for protection of legality submitted by the Applicant be rejected as ungrounded.

33. On 13 December 2017, the Supreme Court (Judgment PML. No. 120/2017) rejected as ungrounded the request for protection of legality of the Applicant filed against Judgment PKR. No. 552/2014 of the Basic Court in Prishtina of 6 July 2016 and Judgment PAKR. No. 5/2017 of the Court of Appeals of 6 February 2017. The Supreme Court held that there has been no violation of criminal procedural provisions or violation of the criminal law by the lower instance courts; and that they assessed a number of evidence such as witness testimonies, autopsy report, reconstruction of the crime scene, confrontation of the accused, etc.

34. With respect to the criminal liability of the Applicant and other co-perpetrators, the Supreme Court ascertained: *"the incriminating actions of the convicts Alfred Zylfaj and S.K., for each one separately, are met the elements of the criminal offense of unauthorized ownership, control and possession of weapons stipulated under Article 374, paragraph 1, of the CCK. This Court accepts the legal stance of the first instance court and the one of the second*

instance expressed in the challenged judgments regarding the criminal liability of the convicts, their actions contain the substantial elements of the criminal offense of grave cases of theft in the nature of robbery or robbery in co-perpetration stipulated under Article 256, paragraph 2, in conjunction with Article 23 of the CCK".

35. With respect to the criminal liability of the Applicant and other co-perpetrators, the Supreme Court held: *"[..] It is important that each co-perpetrator knows that besides him/her, in the commission of the criminal offense to take other certain persons. In the requests or even in the case file there is no fact or evidence that would put into dilemma the criminal liability of the convicts, a circumstance for excluding the criminal liability would eventually be when we deal with the immeasurable perpetrators or we deal with a factual and legal mislead; however, in the present case none of these conditions have been fulfilled. Due to these reasons, even the allegations of the defense counsels of the convicts that the Criminal Code was violated were rejected in this aspect as ungrounded*".

36. As regards the delay of the process from the day of the criminal lawsuit until the announcement of the decision of the Basic Court, the Supreme Court held: "*The allegations deriving from the request of the defense counsel of the convict Alfred Zylfaj that the court did not provide reasons for the postponement of this trial stand and it is a fact that the trial was postponed; however, this delay did not affect the manner of decision making, and in this aspect the allegation is ungrounded*".

37. As regards the violation of the principle *"reformatio in peius"*, the Supreme Court reasoned: "*The allegations deriving from the requests of the defense counsels of violation of the provision of Article 384, paragraph 1, sub paragraph 1.11 in conjunction with Article 395, of the CCK, do not stand. Decision PAKR No. 440/2015, of 9 October 2014, the Court of Appeals of Kosovo annulled the Judgment of the first instance by approving the appeals of the defense counsels of the accused and pursuant to the official duty, whereas the appeal of BP –SCD in Prishtina remained unexamined and un-assessed since the matter was annulled and remanded for retrial. Therefore, the appeal of the BP –SPD in Prishtina existed and this means that the first instance court, since the appeal (of BP –SCD in Prishtina) existed, the Court was not limited with the prohibition reformation in peius under Article 395 of the CCK, when it modified the decision on sentence and it imposed on the accused more severe sentences and that in this aspect, the legal provision of Article 395, of the CPC was not violated*".

Applicant's allegations

38. The Applicant alleges that the regular courts have violated *reformatio in pieus* principle provided by Article 395 of the CCK.

39. The Applicant alleges that the legal certainty in the exercise of the legal remedy was violated because in the retrial of the case the basic court had no right to pronounce a more severe punishment than the one pronounced with the first

judgment. The Applicant also alleges that the *reformatio in pieus* principle was also violated by the Court of Appeals and the Supreme Court of Kosovo.

40. The Applicant claims: *"The reformatio in peius prohibition composes the most important privilege of the defendant [...] the ground of reformatio in peius prohibition is justice, this means that the guarantee is given to the accused that the appeal made to his favor, cannot act to his detriment [...] In the present case, the appeal made to the favor of the accused worsened his position".*

41. The Applicant alleges: *"in case of Alfred Zylfaj [...] the appeal of the prosecutor was presented as unsubstantial, which means that the matter was not reviewed regarding the criminal sanction; the criminal sanction would become substantial after the elimination of flaws of the Judgment of the first instance whereas the Court issues the second Decision regarding the criminal sanction without even reviewing the first, which means that it was issued a Decision upon a Decision, which is prohibited [...] in this legal situation, the court behaves like the decision on criminal sanction was not issued at all".*

Relevant legal provisions

CRIMINAL PROCEDURE CODE
No. 04/L-123

Article 395
The Restriction Reformatio in Peius

Where only an appeal in favour of the accused has been filed, the judgment may not be modified to the detriment of the accused with respect to the legal classification of the offence and the criminal sanction imposed.

Admissibility of the Referral

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

43. 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".

44. The Court further examines whether the Applicant has met the admissibility requirements as further specified in the Law. In this regard, the Court refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

Article 48
[Accuracy of 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...".*

45. The Court finds that the Applicant is an authorized party, he has exhausted all legal remedies provided by law pursuant to Article 113 (7) of the Constitution and has submitted a Referral in accordance with the deadline provided for in Article 49 of the Law. The Applicant has also clearly clarified the rights and freedoms that allegedly have been violated and the acts of the public authorities that he challenges in accordance with the requirements of Article 48 of the Law.

46. For the foregoing, the Court is also served with Rule 39 (2) [Admissibility Criteria] of the Rules of Procedure, which is in the function of determining whether the Applicant has sufficiently proved and substantiated his claim.

47. Rule 39 (2) of the Rules of Procedure, specifies:

> *"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".*

48. In this regard, the Court observes that the Applicant alleges a violation of the principle *"reformatio in peius"* to his detriment, namely, the exercise of the right to appeal cannot worsen his procedural position. The Court reiterates the Applicant's allegation: *"the principle reformatio in peius prohibition composes the most important privilege of the defendant [...] the ground of reformatio in peius prohibition is justice, this means that the guarantee is given to the accused that the appeal made to his favor, cannot act to his detriment [...] In the present case, the appeal made to the favor of the accused worsened his position".*

49. The Court notes that the principle *"reformatio in peius"* enjoys protection under Article 31 of the Constitution in conjunction with Article 6 of ECHR, because it has to do with the right of an individual to complain.

50. The question whether or not the *"reformatio in peius"* principle has been violated shall be elaborated in the following paragraphs, taking into account: (i) the proceedings conducted in their entirety; (ii) the criteria and limitations of the constitutional procedure in individual cases; and (iii) the jurisprudence of the European Court of Human Rights (hereinafter: ECtHR), having regard to Article 53 [Interpretation of the Human Rights Provisions] of the Constitution.

51. In this regard, the Court notes that in accordance with the case law of the ECtHR, the fairness of a proceeding is assessed looking at the proceeding as a whole (see , *Barbera, Messeque and Jabardo v. Spain*, No. 10590/83, ECtHR Judgment of 6 december 1988, paragraph 68). Consequently, in assessing the Applicant's allegations, the Court will also adhere to this principle. (See also Constitutional Court of the Republic of Kosovo, case KI104/16, Applicant *Miodrag Pavić*, Judgment of 4 August 2017, paragraph 38, and Case KI143/16, Applicant *Muharrem Blaku and Others*, Resolution on Inadmissibility of 13 June 2018, paragraph 31).

52. In this respect, in order to avoid misunderstandings on the part of applicants, it should be borne in mind that the "fairness" required by Article 31 of the Constitution is not "substantive" fairness, but "procedural" fairness. This translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (See *mutatis mutandis* Constitutional Court of the Republic of Kosovo Court case No. KI42/16 Applicant *Valdet Sutaj*, Resolution on Inadmissibility of 7 November 2016, para. 41 and other references therein).

53. In the present case, the Court notes that the Basic Prosecutor requested a more severe punishment for the Applicant in two judicial instances. The Court also notes that the Court of Appeals and the Supreme Court held that the formal requirement of non-violation of the principle *"refomatio in peius"* under Article 395 of the CPC has been met with the submission of appeals by the Basic Prosecutor. In addition, the Court also notes that the Judgment of the Basic Court was annulled with the approval of the Applicant's appeals and *ex officio*, and accordingly, the appeal of BP-SCD Prishtina remained unresolved and un-assessed (see, *mutatis mutandis,* Constitutional Court of the Republic of Kosovo: Case No. KI45/16, *Applicants Muhamet Nikqi and Arbnor Nikqi,* Resolution on Inadmissibility, of 20 February 2017, paragraphs 29-33).

54. The Court notes that in the present case, the most severe punishment against the Applicant was decided in the retrial by the Basic Court, which is a discretionary issue of the regular courts. The Court - in accordance with its subsidiary role in individual cases - considers that the regular courts have reasonably argued why in the present case the principle *"reformatio in peius"* was not violated to the detriment of the Applicant (see paragraphs 28 and 35 above).

55. The Court also notes that the regular courts have applied the proportionality test between the severity of punishment, the social risk of the criminal offense and the effect of the punishment for preventing the commission of similar criminal offenses in the future (see paragraph 29 above).

56. In addition, the Court notes that the Applicants had the benefit of the conduct of the proceedings based on adversarial principle; that he was able to adduce the arguments and evidence he considered relevant to his case at the various stages of those proceedings; he was given the opportunity to challenge effectively the arguments and evidence presented by the responding party; and that all the arguments, viewed objectively, relevant for the resolution of his case were heard and reviewed by the regular courts; that the factual and legal reasons against the challenged decisions were examined in detail; and that, according to the circumstances of the case, the proceedings, viewed in entirety, were fair. (See, *inter alia, mutatis mutandis* Constitutional Court of the Republic of Kosovo case No. KI118/17, Applicant *Sani Kervan and Others*, Resolution on Inadmissibility of 16 February 2018, paragraph 35; see also, *Garcia Ruiz v. Spain*, application no. 30544/96, Judgment of 21 January 1999, para. 29).

57. In this respect, the Court reiterates that it is not its role to deal with errors of facts or law, allegedly committed by the regular courts (legality), unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality). It cannot itself assess the law that lead a regular court to issue one decision instead of another. If it were different, the Court would act as a "fourth instance court", which would result in exceeding the limitations provided for by its jurisdiction. In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law. (See, case *Garcia Ruiz v. Spain*, ECtHR, No. 30544/96, of 21 January 1999, paragraph 28; and see also Constitutional Court of the Republic of Kosovo case KI70/11, Applicants: *Faik Hima, Magbule Hima dhe Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

58. The Court further notes that the Applicant merely does not agree with the outcome of the proceedings before the regular courts. However, the dissatisfaction of the Applicants with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim of violation of the right to fair and impartial trial. (see, *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; see also: the Constitutional Court of the Republic of Kosovo, case KI56/17, Applicant *Lumturije Murtezaj*, Resolution of Inadmissibility of 18 December 2017, paragraph 42).

59. The Court considers that the Applicant has not substantiated the allegations that the relevant proceedings were in any way unfair or arbitrary, and that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the ECHR. (See *mutatis mutandis, Shub v. Lithuania,* No. 17064/06, ECtHR, Decision of 30 June 2009).

60. Therefore, the Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, as established in Article 113.7 of the Constitution, foreseen in Article 48 of the Law and further specified in Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rules 39 (2) and 59 (2) of the Rules of Procedure, on 6 February 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**

Kopje e vërtetuar
Overena kopija
Certified Copy

Bajram Ljatifi Arta Rama-Hajrizi