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

Prishtina, on 20 January 2020
Ref. no.:RK 1503/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI55/19

Applicant

Ramadan Osmani

Constitutional review of Judgment PML.no.248/18 of the Supreme Court of 6 November 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 Osmani (hereinafter: the Applicant), residing in Vushtrri, represented by Mahmut Halimi, a lawyer from Mitrovica.

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment PML.no.248 / 18 of the Supreme Court, of 6 November 2018 (hereinafter: the challenged Judgment), in conjunction with Judgment PAKR.no.91/2018 of the Court of Appeals, of 10 April 2018 and the Judgment PKR.no.610/2015 of the Basic Court in Prishtina, of 21 November 2017.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, by which as alleged by the Applicant were violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial], paragraphs 1, 2 and Article 5 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 6 [Right to a fair trial], paragraph 2, of the European Convention on Human Rights (hereinafter: ECHR), and Article 11 of the Universal Declaration of Human Rights (hereinafter: UDHR).

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 the Law on the Constitutional Court of the Republic of Kosovo, No.03/L-121 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 4 April 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

6. On 10 April 2019, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Gresa Caka-Nimani and Safet Hoxha(members).

7. On 17 May 2019, the Court notified the Applicant about the registration of the Referral and sent a copy thereof to the Supreme Court. On the same date, from the Basic Court in Prishtinë was requested to submit the acknowledgment of receipt as a proof confirming the receipt of the challenged Judgment by the Applicant.

8. On 12 June 2019, the Basic Court in Prishtina informed the Court that the challenged Judgment was served on the Applicant on 6 December 2018.

9. On 12 December 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

10. On 31 October 2012, the former District Prosecution, now the Basic Prosecution in Prishtina, filed an indictment against the Applicant and several other accused due to the grounded suspicion of having committed the criminal offence of Aggravated Murder under Article 147 para.4 and 9, in conjunction with Article 23 of the Criminal Code of the Republic of Kosovo (CCRK) and the criminal offense of Attempted Aggravated Murder in co-perpetration under Article 147 paragraphs 4 and 9 in conjunction with Articles 20 and 23 of the CCRK.

11. On 21 November 2017, the Basic Court in Prishtina, Serious Crimes Department, by Judgment PKR.no.610/2015, found the Applicant guilty of committing the criminal offence of Aggravated Murder in co-perpetration, from Article 147 paragraphs 4 and 9 of the CCRK and acquits him of the charge of criminal offence of Attempted Murder in co-perpetration from Article 147, paragraphs 4 and 9, in conjunction with Articles 20 and 23 of the CCRK. The Applicant was thus sentenced to imprisonment in length of 13 years.

12. On 5 February 2018, the Applicant filed an appeal with the Court of Appeals against the Judgment of the Basic Court in Prishtina, of 21 November 2015, due to essential violations of the provisions of the criminal procedure, erroneous and incomplete determination of the factual situation , violation of the criminal law and decision on sentence, by proposing to the Court of Appeals to approve his appeal, amend the challenged Judgment and acquit him of the charge or annul the Judgment and remand the case for retrial or impose a more lenient sentence against him.

13. In addition, the Basic Prosecution in Prishtina and the defence counsel of the injured party appealed the Judgment of the Basic Court in Prishtina, due to essential violations of provisions of the criminal procedure code, erroneous and incomplete determination of the factual situation and violation of the criminal law, requesting that the accused be imposed a longer sentence of imprisonment.

14. On 10 April 2018, the Court of Appeals by Judgment PAKR.no.91/2018, amended the Judgment of 21 November 2015 as to the qualification of the criminal offence, finding that in relation to the actions of the Applicant and both other defendants are present elements of the offence provided for in Article 147, paragraph 9 of the CCRK, in conjunction with Article 23 of the CCRK, whilst it rejected as unfounded the other parts of the judgment, the appeals of the Basic Prosecution, the injured party's defence counsel and the Applicant.

15. On 23 July 2018, the Applicant filed a request for protection of legality with the Supreme Court, alleging violations of criminal law and essential violations of the provisions of criminal procedure, with the proposal that he be acquitted as it has not been proven that he has committed the criminal offence with which he was charged and sentenced, or the challenged judgments be annulled and the case be remanded for retrial.

16. On 6 November 2018, the Supreme Court by Judgment Pml.no.248/2018 rejected as unfounded the request for protection of legality, filed by the Applicant against the First and Second Instance Judgments, finding that the lower instance courts have sufficiently reasoned their conclusions which render the process fair and impartial, in accordance with the standards required by the ECHR.

Applicant's allegations

17. The Applicant alleges that by the Judgment of the Supreme Court Pml.no.248/18 of 6 November 2018: *"the request for protection of legality was rejected as unfounded and we consider that all the judgments cited are unlawful and in contradiction with constitutional provision."*

18. The Applicant initially describes the content of Article 31, paragraphs 1, 2 and 5 of the Constitution, arguing that: *"The source of this guarantee stems from Article 11 of the United Nations Universal Declaration of Human Rights, according to which the burden the proof belongs to the prosecutor, who must gather and present sufficient convincing evidence to convince the panel, which is limited by law to consider solely the proofs and evidence which are legally admissible and are obtained in a legal manner, which establish that the defendant is guilty beyond a reasonable doubt, and that if after the work of the prosecution there remains a reasonable suspicion then the accused must be found not guilty. This guarantee is also reinforced by Article 6.2 of the ECHR, which according to the provision of Article 22 of the Constitution takes precedence over the provisions and laws and other acts of public institutions."*

19. His allegations for violations of the rights and freedoms guaranteed by Article 31, paragraphs 1 and 5 of the Constitution relate to the decisions of the regular courts respectively the Judgment PKR.no.610/2015 of the Basic Court in Prishtina, of 21 November 2017 and the Judgment PAKR.no.91/2018 of the Court of Appeals, of 10 April 2018.

20. With regard to the Judgment PKR.nr.610/2015 of the Basic Court in Prishtina, of 21 November 2017, the Applicant alleges that: *"Contains essential violations of the provisions of criminal procedure, Article 384, para.1, subpara.1.8, and 1.12 of the CPCK, in the judgment of the first instance and which consist in the fact that it relies on inadmissible evidence and was not drawn up in accordance with the provision of Article 370 of the CPCK, in particular para.7 of the said Article (...)."*

21. The Applicant states that the first instance court has used evidence contrary to Article 361, para.1 of the CPCK *"by using as direct evidence the minutes of the pre-trial examination of all witnesses, despite the fact that it has heard them in the main trial".*

22. The Applicant also alleges that it was acted in violation of Article 123, para.2 of the CPCK, *"in relation to the statements of the defendants given in the pre-trial procedure, namely the convicted A.K., in relation to the sentencing of convict Ramadan Osmani. This for the reason that, by the provision of Article*

261 para.1 of the CPCK, for the defendant himself (but NOT also for the co-defendants) statements given in the police or before the prosecutor can be used to challenge the defendant's statement in court or as direct evidence in accordance with Article 262,para.2 of the CPCK. All of these represent a violation contravening the provision of Article 123, para.2 of the CPCK, despite the fact that it is the defendant himself who has given such a statement and not the other defendants, for which the analogy in interpreting any provision is prohibited, the provision of Article 123, para.5 of the CCRK is more than clear: "Statements provided by a defendant in any context, if given voluntarily and without coercion, are admissible during the main trial against that defendant, but not co-defendants..."

23. The Applicant in particular alleges that he has had no opportunity to challenge the witness and at the same time the convict A.K., given that this witness gave his statements at the investigation stage where the Applicant and his defence counsel were not present, while at other stages the witness has decided to remain silent.

24. Furthermore, the Applicant alleges that the use of the statements given in the pre-trial procedure as direct evidence when rendering a judgment, as well as the "comparison of witness statements for what they stated in the pre-trial procedure and what they stated in the main trial and entrusting credibility to those pre-trial statements for the same reason that affects the standard of assessment of evidence and its use in the reasoning of a judgment". In this respect the Applicant refers to the Case Drenica 1 invoking the interpretations provided in paragraph 208 (pg. 78), respectively the Judgment P.no.938/13, of 27 May 2015.

25. The Applicant also alleges that the Judgment PKR.no.610/2015 of the Basic Court in Prishtina, of 21 November 2017 violated the provisions of Article 370 para.7 of the CPCRK, as according to him it states that *"the judgment of the first instance is in contradiction with the enacting clause of the judgment"* as regards the description of the Applicant's actions in the commission of the criminal offence, as well as the evidence given by witnesses about the identification of the Applicant.

26. With respect to the Judgment of the Court of Appeal PAKR.no.91/2018 of 10 April 2018, the Applicant alleges that: "The judgment of the second instance has failed to comply with the provision of Article 394, para.1 of the CPCK, in its entirety, since it failed to consider the appeal claims of the convict Ramadan at all. This failure is expressed in establishing the key element for convict Ramadan whether he has been at the scene when the now deceased was killed".

27. The Applicant alleges that *"in the reasoning of the second instance Judgment pg. 7 (top of page) in violation of the provision of Article 360 para.1 of the CPCK, the principle of objective identity of the first instance verdict and the indictment is violated" because of " the way this part is reasoned, the court of second instance has gone beyond the charge, namely its objective and subjective identity."*

28. The Applicant further argues that *"the court of second instance was obliged to provide explanations to the appeal claims submitted against the judgment of the first-instance on page 35, first paragraph"* (the Applicant refers to the Judgment of the Court of Appeals PAKR.no.91/2018).

29. The Applicant also does not agree with the reasoning provided in the Judgment PKR.nr.610/2015 of the Basic Court in Prishtina, of 21 November 2017, concerning the corroboration of the evidence and establishment of the incriminating actions of the accused including the Applicant himself (the Applicant refers to the reasoning provided by the Court of Appeals PAKR.nr.91/2018, pg.8).With regard to this dissent, the Applicant presents a detailed description of the facts which according to the Applicant *"such a description is necessary exactly because of the consequences that both judgments have caused to the convicted Ramadan, not only because of the presented factual situation, but in particular because of the essential violations of the provisions of criminal procedure and of the criminal law which have grossly violated the alleged constitutional principles in this Referral"*. The abovementioned description presents the Applicant's explanations in relation to the validity of the witnesses' testimonies and to the applicant's identification as a person implicated in the murder and tragic event of 6 August 2011 (see pages 11-22 of the Applicant's Referral).

30. Finally, the Applicant requests that from the Court: *I. Declare as unconstitutional: i) the Judgment PKR.no.610/2015 of the Basic Court in Prishtina, of 21.11.2017, ii) Judgment PAKR.no. 91/18 of the Court of Appeals of Kosovo, of 20.04.2018 and, iii) Judgment Pml.no.248/2018 of the Supreme Court of Kosovo, of 06.11.2018; II. Order that all these judgments be quashed and the case remanded for retrial and adjudication before the first instance court.*

Admissibility of the Referral

31. The Court first examines whether the admissibility requirements established by the Constitution and further specified by the Law and Rules of Procedure, are met.

32. 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".*

33. The Court also refers to Article 47[Individual Requests] , 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

Article 47
[Individual Requests]

"[...]

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..."

34. As to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party; he has exhausted all legal remedies provided by the law; has specified the acts of the public authority which he is challenging in the Court and has also clarified which constitutional rights and freedoms he alleges to have been violated by the challenged decision, in accordance with Article 48 of the Law and has submitted the Referral in timely manner, in accordance with Article 49 of the Law.

35. In addition, the Court examines whether the Applicant has fulfilled the admissibility criteria laid down in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure sets out the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral be not manifestly ill-founded. Specifically, Rule 39 (2) provides that:

"(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."

36. The Court recalls that the Applicant alleges that the challenged Judgment of the Supreme Court in conjunction with Judgment PKR.no.610/2015 of the Basic Court in Prishtina. of 21 November 2017 and Judgment PAKR.no.91 / 2018 of the Court of Appeals, of 10 April 2018, has violated his rights guaranteed by Article 31 paragraphs 1, 2 and 5 of the Constitution, in conjunction with Article 6 paragraph 2 of the ECHR and Article 11 of the UDHR.

37. In this context, the Court recalls that Article 31 [Right to Fair and Impartial Trial] of the Constitution, paragraphs 1, 2 and 5 guarantee:

"1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

2. Everyone is entitles to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

[...]

5. Everyone charged with a criminal offense is presumed innocent until proven guilty according to law".

38. Article 6 [Right to a fair trial], paragraph 2 of the ECHR, guarantees:

[...]

"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

[...]

39. Article 11 of UDHR, guarantees that:

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in public trial at which he has had all the guarantees necessary for his defence."

40. The Court notes that the Applicant alleges violations of his rights guaranteed by Article 31, paragraphs 1, 2 and 5, by Article 6, paragraph 2 of the ECHR and Article 11 of the UDHR, which he relates to the way the regular courts i) administered the evidence (burden of proof), ii) assessed the evidence of the witnesses, and iii) reasoned the decisions regarding the application of substantive and procedural law.

41. The Court initially notes that, according to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, *"human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights."*

i. Applicant's allegations regarding the administration of evidence (burden of proof)

42. As for the administration of evidence and the burden of proof, the Court recalls its practice, stating that, "it is beyond its jurisdiction to assess the quality of the courts' conclusions regarding the assessment of evidence, unless they are manifestly arbitrary. (see, for more details, the Constitutional Court's decisions in cases KI10/15 and KI12/15, Applicants *Shpresim Uka and Bekim Syla*, Resolution on Inadmissibility, of 7 July 2016, as well as joined cases KI161 /15;

KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Inadmissibility of 26 September 2016). The Court reiterates that it is not its competence to intervene, either in the way the regular courts have admitted the evidence as evidence material or in assessing the value of evidence. This is the exclusive role of the regular courts, even when witness statements in public hearing and under oath are in contradiction (see, analogically, the ECtHR case *Doorson v. The Netherlands*, Judgment of 6 March 1996, published in Report no. 1996-II, paragraph 78).

43. The Court also recalls the case law of the ECtHR which has determined that the admission of evidence is governed mainly by the rules of domestic law, and as a rule, it is for the national courts to assess the evidence before them. The duty of the Convention institution is to ensure that the process as a whole, including the way in which evidence is obtained, is regular. These rights require that the accused be provided the necessary and appropriate opportunity to challenge and examine a witness against him, either at the moment when he is making the statements or at a later stage of the proceedings (see *Saïdi v. France*, judgment of 20 September 1993, Series A No. 261 - C, pgs. 56 § 43, and *AM v. Italy*, No. 37019/97, § 25, ECHR 1999 –IX, and see, the case of Constitutional Court KI82/16, Applicant *Đeljalj Kazagić*, Resolution on Inadmissibility of 1 March 2017, paragraphs 53 and 54).

44. Moreover, the Court, by referring to the relevant parts of the challenged Judgment and the Applicant's allegations regarding the administration of evidence, notes that the Supreme Court argued and reasoned: *"The Court of First Instance has managed to convincingly establish through administered evidence that convict Ramadan Osmani has acted in co-perpetration with other convicts BB, AK, Xh. M. (who passed away during the proceedings) as well as with AM (who is at large), as described in the enacting clause of the judgment of the first instance court and on that occasion, has correctly applied the criminal law when finding that in the actions of the convict are manifested the essential elements of the criminal offence of co-perpetration of aggravated murder in co-perpetration from Article 147, para.9 of the CCK."*

45. Further, the Supreme Court, in respect of the Applicant's "intentional" actions reasoned: *"Also as regards the will of the convict, by the reasoning of the first instance court it is undoubtedly established that convict Ramadan Osmani in the present case has acted with direct intent as he was aware of the relationship between the two R and M families and that his intention was entirely fulfilled by the fact that "... the murder was committed out of low motives as it was committed due to the dissolution of the marriage between the now deceased MR and his ex-wife RM, who was the daughter of Xh and sister of AM while the accused was a good friend of AM, so they agreed to cooperate in carrying out the murder of M, for revenge motive which they had accepted as being a joint motive (description of the reasoning of the judgment of first instance court, page 39). In the concrete case, according to the Supreme Court of Kosovo, the principle of presumption of innocence has not been violated and the reasoning of the first instance court with regard to the co-perpetration and intent of the convicted Ramadan Osmani is fully supported by this court as well, since all his actions as described in the*

enacting clause of the judgment have been sufficiently described and elaborated."

46. In this aspect, the Court considers that the Supreme Court, by the challenged Judgment, has responded in a concrete manner to the Applicant's allegations also regarding the administration of the evidence and the way in which they were admitted and assessed by the first and the second instance court. Therefore, in this respect, the Court considers that the challenged Judgment of the Supreme Court is reasoned and does not contain elements of manifest arbitrariness that would render its decision-making incompatible with the standards of a justified and reasonable judicial decision.

ii. Applicant's allegations regarding the witnesses' evidence

47. The Court initially recalls that the admission as evidence of the statements of witnesses who did not participate in the main trial raises an important issue as to whether the statement of a witness is a *"sole"* or *"decisive"* evidence or whether it "bears significant weight" for convicting the accused. In such circumstances, other or supporting evidence gain significant weight. The stronger the other incriminating evidence, the less likely it is that the testimony of the absent witness will be treated as *"sole"* or *"decisive"* evidence.

48. The Court also reiterates that, based on the ECtHR case law, in assessing the weight of evidence given by a witness in absence, and in particular, if this evidence is *"sole or decisive"* for the conviction of the accused, the Court must first take into account the assessment and position of the regular courts. This approach is consistent, inter alia, with *Schatschaschwili v. Germany*. (As for the assessment whether the testimony of the absent witness was a sole or decisive evidence for the conviction of the accused, see paragraphs 141-144 of *Schatschaschwili v. Germany*). On the other hand, in the case *Seton v. The United Kingdom*, the domestic courts as well as the ECtHR had held that the absence of the accused at trial, namely the lack of his testimony at the main trial, constituted neither a *"sole"* nor *"decisive"* evidence, because the other evidence against him were *"overwhelming"*. (As for the assessment whether the testimony of the absent witness was single or decisive for the conviction of the accused, see paragraphs 63-64 of the case *Seton v. United Kingdom* and the references used therein).

49. In this regard, the Court refers to the challenged Judgment of the Supreme Court and notes that the latter reasoned as follows: *"As regards the assessment of the evidence of witnesses MR and Sh.R, in particular for identification of the convict Ramadan Osmani and A.Sh (acquitted of the charge), namely their errors in identification, the first instance court also provided a detailed reasoning in this respect. It is clear that the eyewitnesses at the scene had experienced a horrific scene of their son's murder and that in this context also their lives were in danger and it is also clear that in addition to Xh.M and their son A.M. with whom they had previously had in-law relationships and whom they clearly identified immediately, they also had difficulty for identifying Ramadan Osmani. However, the convict Ramadan Osmani was undoubtedly identified by the other convict A.K. as well as the witnesses M.R. and F.R., since they had previously seen him and talked to him, and they*

identified him by the fact that he had stuttered during the conversation with them, which increases their credibility that the identification was made correctly."

50. In the end, the Supreme Court concluded that: *"Therefore, the reasoning of the judgments of the first and second instance court is fully accepted by the Supreme Court of Kosovo as well, as regards the overall assessment of the convict's defence, the evidence of the witnesses and the material evidence, I find that there has been provided a legitimate and justified reasoning that these stated findings have been present at all stages of the criminal proceedings and that the convict has been provided with a fair, regular and impartial process, based on in the provisions of the CPCK and the standards set by the ECHR."*

51. On the basis of the above reasoning of the Supreme Court it is clear to the Court that the regular courts' conclusions with regard to the Applicant's guilt were based on the evidence of several witnesses. In the present case, the Court considers that we are not talking about a single witness whose testimony would be considered "sole" and "decisive" for the objective trial of the case. Hence, also with respect to these allegations, the Court considers that the challenged Judgment of the Supreme Court is reasoned, in accordance with the right to a fair and impartial trial.

iii. Applicant's allegations regarding the reasoning of the decision in relation to the application of substantive and procedural law.

52. In this regard, the Court notes that the Applicant complains about the way the regular courts reasoned their decisions with regard to the application of the substantive and procedural law. The Court considers that these allegations, as such, fall within the scope of jurisdiction of the regular court, because they draw merely issues of law (legality) rather than constitutional issues. The Court reiterates that it is not its duty to deal with errors of fact and of law allegedly committed by the regular courts when assessing evidence or application of law (legality), unless and insofar as such errors may have violated the rights and freedoms protected by the Constitution (constitutionality). It may not itself assess a law which has led a regular court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of "fourth instance", which would result in exceeding the limits set by its jurisdiction. Moreover it is the duty of the regular courts to interpret and apply the relevant rules of procedural and substantive law (see the ECtHR Case *Perlala v. Greece*, paragraph 25 and *Khan v. The United Kingdom*, paragraph 34, and see also cases: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011; and KI56/ 17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, para.41). The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments.

53. In assessing the proceedings as a whole, the Court considers that the Supreme Court, which ex officio takes care of the legality of the lower court's decisions, has responded to all of the Applicant's allegations, by providing comprehensive and detailed reasons on each allegation raised in the request for protection of

legality. Moreover, the Supreme Court had also taken care of the constitutionality of the lower court's judgments, concluding that they had correctly followed all stages of the criminal proceedings, in order to provide the Applicant with a fair trial and impartial in accordance with the ECHR.

54. The Court further considers that the Applicant has had sufficient opportunity to present before the regular courts all allegations for a violation of his rights. Moreover, the Court considers that his arguments have been heard on a regular basis and have been properly examined by the regular courts and in particular by the Supreme Court. For these reasons, the Court considers that the challenged Judgment of the Supreme Court is justified and reasonable. Furthermore, the Court notes that the proceedings conducted in the regular courts, viewed in their entirety, have not in any way been unfair or arbitrary (see the ECtHR Case *Shub v Lithuania*, no. 17064/06, Judgment of 30 June 2009).

55. Moreover, the Court notes that the Applicant in support of his allegations refers to the Case Drenica 1, namely to the Judgment of the first instance court P.no.938/13, of 27 May 2015, alleging that this court in his case should do the same, as it has done in that case. However, he has only referred to the case at hand, but failed to submit any proof or material evidence in support of this allegation, hence the Court cannot carry out a comparative analysis of the cases to see if there are differences in treatment. Furthermore, the Court recalls that the burden of building, clarifying and supplementing the Referral rests with the Applicants, who have a direct interest in having their claims and allegations effectively addressed by the Court. For these reasons, the Court cannot take into account the Applicant's allegations for having his case treated differently than other identical cases because in this respect the Referral is not supported by any material evidence.

56. On the basis of all the foregoing considerations, the Court notes that the Applicant simply does not agree with the outcome of the proceedings before the regular courts. However, the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot by itself raise an argumentative allegation for a violation of constitutional rights (see, mutatis mutandis, *Mezotur - Tiszazugi Tarsulat v. Hungary*, paragraph 21, ECtHR, Judgment of 26 July 2005; see the Constitutional Court's Resolution on Inadmissibility in Case KI25/11, Applicant *Shaban Gojnovci*, of 28 May 2012, paragraph 28; see also the case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 42).

57. In conclusion, the Court considers that the Applicant has failed to show and prove that the proceedings before the regular courts, namely the Supreme Court, have been unfair or arbitrary, or that his rights and freedoms protected by the Constitution, the ECHR and the UDHR have been violated as a result of erroneous interpretations of substantive and procedural law.

58. Consequently, the Court concludes that the Referral is manifestly ill-founded on constitutional grounds and must be therefore declared inadmissible pursuant to Rule 39(2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rules 39 (2) and 59 (b) of the Rules of Procedure, on 12 December 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**
Remzije Istrefi-Peci	Arta Rama-Hajrizi

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