



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

Prishtina, on 6 February 2020  
Ref. no.:RK 1510/20

*This translation is unofficial and serves for informational purposes only*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI54/19**

Applicant

**Pashke Krasniqi**

**Constitutional Review of the Judgment of the Court of Appeal,  
PAKR. no. 329/18, of 23 August 2018**

### **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 Pashke Krasniqi (hereinafter: the Applicant) from the village of Meqë, Municipality of Gjakova, who is represented by Teuta Gashi, a lawyer from Prishtina.

## **Challenged decision**

2. The Applicant challenges the Judgment of the Court of Appeal, PAKR. no. 329/18, of 23 August 2018, as well as the notification of the State Prosecutor, KMLP. I. no. 21/19, of 27 November 2018.
3. Judgment of the Court of Appeal, PAKR. no. 329/18 of 23 August 2018 was served on the Applicant on 28 August 2018.

## **Subject matter**

4. Subject matter is the constitutional review of the challenged decision which has allegedly violated Applicant's rights and freedoms guaranteed by Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a Fair Trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR).

## **Legal basis**

5. The Referral is based on Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution, Article 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 Constitutional Court**

6. On 3 April 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 10 April 2019, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
8. On 19 April 2019, the Court notified the Applicant about the registration of the Referral and a copy of the Referral was sent to the Court of Appeal.
9. On 11 November 2019, the Court requested the Basic Court in Gjakova to submit a copy of the delivery receipt of the Judgment of the Court of Appeal, PAKR. no. 329/18, of 23 August 2018 served on the Applicant. On the same date, the Court sent a copy to the Office of the Chief State Prosecutor.
10. On 20 November 2019, the Basic Court in Gjakova submitted to the Court a delivery receipt of the Judgment of the Court of Appeal, PAKR. no. 329/18, served on the Applicant, dated 28 of August 2018.

11. On 15 January 2020, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

12. On 23 August 2016, in the shooting that took place in the centre of Gjakova, the Applicant's son and two other persons were killed by a firearm.
13. On 31 January 2018, in connection with the above-mentioned incident, the Basic Prosecution in Gjakova filed Indictment PP/I. no. 138/2016 against the suspects, on the grounded suspicion that they had committed the criminal offense of murder in co-perpetration and the criminal offense of unauthorized ownership, control or possession of weapons.
14. On 30 April 2018, the Basic Court in Gjakova, by Judgment PKR. no. 6/2018, found Q.Sh. and V.G. guilty of committing the criminal offense of murder in co-perpetration and the criminal offense of unauthorized ownership, control or possession of weapons and consequently imposed on Q.Sh. a unique sentence of imprisonment of 12 years and 6 months, while it imposed on V.G. a unique sentence of imprisonment of 11 years and 6 months.
15. On 13 June 2018, the Applicant filed an appeal with the Court of Appeal against the Judgment of the Basic Court in Gjakova for *“substantial violations of the provisions of criminal procedure, for erroneous and incomplete determination of the factual situation, for violation of the Criminal Code and the decision regarding the criminal sanctions”*.
16. On 23 August 2018, the Court of Appeal, by Judgment PAKR. no. 329/2018, rejected as unfounded the Applicant's appeal and upheld the Judgment of the Basic Court.
17. On 5 November 2018, the Applicant submitted to the Office of the Chief State Prosecutor the proposal to initiate a request for protection of legality against the Judgment (PKR. no. 6/2018) of the Basic Court in Gjakova and the Judgment (PAKR no. 329/2018) of the Court of Appeal.
18. On 3 December 2018, the Office of the Chief State Prosecutor served on the Applicant the notification (KMLP. I. no. 21/19) of 27.11.2018 in which it finds that it has not found a legal basis for the initiation of the Request for Protection of Legality.

### **Applicant's allegations**

19. The Applicant alleges that the challenged decisions have violated her rights guaranteed by Articles 24 and 31 of the Constitution, as well as by Article 6 of the ECHR.
20. The Applicant in her Referral considers that, *“The decision of the Office of the Chief State Prosecutor of 27.11.2018, as a final decision with regard to the last effective remedy that the Applicant had at her disposal, was received by the*

*representative of the injured party - the Applicant, lawyer T. G., on 03.12.2018, which means that the deadline, as a term of four months, for submitting an individual request to the Constitutional Court would be 03.04.2019”.*

21. The Applicant in her Referral alleges that her right to a fair and impartial trial has been violated as the regular courts had not adequately reasoned why the criminal offense was qualified as “murder” and not as “aggravated murder”.
22. The Applicant further alleges that the right to a fair and impartial trial was violated as the regular courts had not adequately justified the relationship between aggravating and mitigating circumstances in determining the sentence imposed.
23. The Applicant also alleges that the principle of equality before the court was violated because she “*had requested that the court not give credence to the report of forensic psychiatry experts, who stated that both of the accused at the time of the commission of the criminal offense were in a state of substantially diminished responsibility, thus requiring new psychiatric expertise. However, the Court strangely at the same hearing did not rule on such a request, completely ignoring the request for the appointment of new experts*”.
24. Finally, the Applicant requests the Court to approve the Referral and conclude, “*that the abovementioned articles have been violated by the public authorities respectively by the Basic Court in Gjakova, the Court of Appeal in Prishtina and the Office of the Chief State Prosecutor, to conclude that the Office of the Chief State Prosecutor has violated the constitutional rights when rejecting the initiation - proposal to file a request for the protection of legality*”.

### **Admissibility of Referral**

25. The Court first examines whether the Applicant has met the admissibility requirements laid down in the Constitution, provided by Law, and further specified in the Rules of Procedure.
26. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provide:

*„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.”*

27. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as set out in the Law. In this regard, the Court first

refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

*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.”*

28. As to the fulfilment of the abovementioned criteria, the Court finds that the Applicant is an authorized party; that she has exhausted all available remedies and has specified the act of public authority which she is challenging before the Court.
29. In addition, the Court refers to Article 49 of the Law, which provides:

*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... .”*

30. In addition, the Court refers to Rule 39 (1) (c) of the Rules of Procedure, which provide:

*“(1) The Court may consider a referral as admissible if:*

*[...]*

*(c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant, and,  
[...].”*

31. In order to be able to verify whether the Referral has been filed within the statutory deadline, the Court takes into account the *“last decision”* with which the Applicant's Referral was decided, the date on which the Applicant received

the said decision and the date of the submission of the Referral to the Constitutional Court. This finding has also been upheld in the Court's case-law in cases: KI154/14, Applicants: Bujar Nrecaj and Haxhi Nrecaj, Resolution on Inadmissibility of 30 June 2016, paragraph 35; and KI201/13, Applicant: Sofa Gjonbalaj, Resolution on Inadmissibility of 2 April 2014, paragraph 32.

32. As to the "*last decision*", the Court considers that the Judgment of the Court of Appeal, PAKR. no. 329/18, of 23 August 2018, is the final decision in regard to the Applicant's Referral.
33. Accordingly, the Court notes that the said Judgment was rendered on 23 August 2018, while the Applicant received this Judgment on 28 August 2018. In this sense, as a *dies a quo* of the statutory time limit of 4 (four) months, is taken the date of receipt of the Judgment by the Applicant, respectively 28 August 2018. The deadline starts to run from the moment when the decision becomes final as a result of the exhaustion of adequate and effective remedies to ensure the correction of the subject-matter of the appeal (See, *mutatis mutandis*, *Norkin v. Russia*, App. 21056/11, ECtHR, Decision of 5 February 2013 and see also *Maya Alvarez v. Spain*, App. no. 44677/98, ECtHR, Decision of 23 November 1999).
34. As to the Applicant's allegation that the "*The decision of the Office of the Chief State Prosecutor of 27.11.2018, as a final decision with regard to the last effective remedy that the Applicant had at her disposal, was received by the representative of the injured party - the Applicant, lawyer T. G., on 03.12.2018, which means that the deadline, as a term of four months, for submitting an individual request to the Constitutional Court would be 03.04.2019*", the Court notes that it is a fact that the Applicant has received the last notification from the Office of the Chief State Prosecutor on the said date, but according to this notification the Chief State Prosecutor did not initiate a request for protection of legality in the Applicant's case, reasoning that: "*it has not found a legal basis for the initiation of the Request for Protection of Legality*".
35. Therefore, the request for protection of legality filed with the State Prosecutor is a remedy that is not directly available to the Applicant but depends on the "*mediator*", while in the present case the "*mediator*" is the State Prosecutor, and as such, it is not examined by the Court (See, *Tanase v. Moldova*, [VV], paragraph 122).
36. As such, the notification of the Chief State Prosecutor is not considered to be a "*final decision*" in the Applicant's case, because a "*final decision*" under Article 49 of the Law would otherwise be the last decision by which the Applicant's appeal was rejected, which in this case is the Judgment of the Court of Appeal (See, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, App. no. 46477/99, ECtHR, Decision of 14 March 2002).
37. From the above reasons, the Court notes that the "*final decision*" in the Applicant's case is the Judgment of the Court of Appeal and the deadline runs from the date of receipt of this Judgment (See, *mutatis mutandis*, *Bayram and Yildirim v. Turkey*, App. no. 38587/97, ECtHR, Decision of 29 January 2002).



Consequently, it is noted that the Applicant received this Judgment on 28 August 2018, while she filed the Referral with the Constitutional Court on 3 April 2019.

38. Based on the above, it results that the Referral was not filed within the legal deadline specified in Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure.
39. From the above reasons, the Court concludes that the Applicant's Referral does not meet the procedural criteria for admissibility because it is out of time.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113. 7 of the Constitution, and Article 49 of the Law, and Rule 39 (1) (c) of the Rules of Procedure, at its session held on 15 January 2020, unanimously

### **DECIDES**

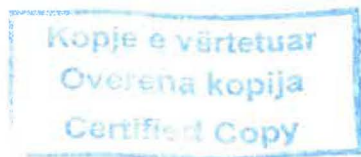
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20, paragraph 4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Radomir Laban

Arta Rama-Hajrizi



*This translation is unofficial and serves for informational purposes only*