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

Prishtina, on 15 June 2020
Ref. no.:RK1576/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI56/19

Applicant

Xhevat Thaqi

Constitutional review of Judgment PML. No. 70/2019 of the Supreme Court, of 4 March 2019

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 Applicant is Mr. Xhevat Thaqi, residing in Gjakova (hereinafter: the Applicant), represented by lawyer Ylli Bokshi from Gjakova.

Challenged decision

2. The Applicant challenges Judgment [PML. No. 70/2019] of 4 March 2019 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court), which was served on him on 21 March 2019.

Subject matter

3. The subject matter is the request for constitutional review of the challenged Judgment, which allegedly violates the Applicant's rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 31 [Right to Fair and Impartial Trial] and 53 [Interpretation of Human Rights Provisions] 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: the ECHR).

Legal basis

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] 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

5. On 5 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 Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.

7. On 30 April 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 14 August 2019, the Court notified the Basic Court in Peja-Branch in Deçan (hereinafter: the Basic Court) of the registration of the Referral and requested that they submit a copy of the case file.

9. On 27 August 2019, the Basic Court submitted the copy of the case file to the Court.

10. On 29 April 2020, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

11. On 30 November 2018, the Basic Court in Peja - Branch in Deçan (hereinafter: the Basic Court), by the Decision [PPN. No. 78/2018] imposed on the Applicant the measure of detention on remand for a period of 1 (one) month, starting from the date of rendering the decision in question.

12. On 20 December 2018, the Basic Prosecution in Peja filed Indictment [PP/II. No. 2580/2018] against the Applicant, due to suspicion that he committed the criminal offense (Aggravated theft), provided by Article 327 paragraph 2 sub-paragraph 2.1 of the Criminal Code of the Republic of Kosovo (hereinafter: the CCRK).

13. On 27 December 2018, the Basic Court, by Judgment [P. No. 223/2018], extended the measure of detention on remand to the Applicant for another two months. As a reason for extension of detention on remand, among other things, it was emphasized that: *(i) there is a reasonable suspicion that the Applicant has committed the criminal offense which he is charged with; (ii) the gravity of the offense is serious and that the Applicant may influence the course of the criminal proceedings taking into account his past.* More specifically, the Basic Court reasoned its decision for extension of detention on remand against the Applicant, stating the following:: "*[...] based on Article 187 paragraph 1 sub paragraph 1.2 item 1.2.1* of the Criminal Procedure Code of the Republic of Kosovo (hereinafter: the CPCRK), *has concluded that the defendant due to the gravity of the criminal offense for which a severe punishment of fine and imprisonment is provided from 3 years to 7 years and other suspicions derived from the police database, there is a risk that the latter can to influence the obstruction of the course of criminal proceedings or even the repetition of such offenses*".

14. According to the case file, it turns out that the abovementioned decision of the Basic Court was served on the Applicant personally in prison, on 28 December 2018. Further, according to the case file, the abovementioned Decision of the Basic Court, on the same date was submitted by mail service on the representative of the Applicant.

15. On 14 January 2019, against the abovementioned decision of the Basic Court [P. No. 223/2018], the Applicant's lawyer filed an appeal with the Court of Appeals. Prior to the latter, he alleged that his constitutional rights and those provided by the CPCK and other laws of the Republic of Kosovo have been violated, with the proposal that "*the challenged decision* [of the Basic Court] *is annulled and the measure of detention on remand is immediately terminated to the defendant*".

16. On 21 January 2019, the Court of Appeals, by Decision [PN.1. DP. No. 48/2019], rejected as ungrounded the appeal filed by the Applicant's lawyer on the following grounds:

> "*As it appears from the case file, the decision P. No. 223/2018* [of the Basic Court] *of 27.12.2018 by which the measure of detention on remand was*

extended to the defendant [the Applicant] [for another two months], *was served on the defendant on 28.12.2018, which is confirmed by the acknowledgment of receipt for personal delivery with the signature of the defendant placed on it, while the defense counsel of the defendant filed a complaint against the decision, which complaint, was received in the Basic Court in Peja - Branch in Deçan on 14.01.2019, which is confirmed by the acknowledgment of receipt of the Court.*

According to the provisions of Article 189 paragraph 3 of the CPCK, the appeal against the decision on the imposition or extension of detention on remand is submitted within 24 hours from the day of service of the decision, which provision also applies to decisions when other alternative measures are imposed. Whereas according to the provision of Article 478 paragraph 4 of the CPCK, when the defendant has a defense counsel, the letter is sent to the defense counsel and the defendant in accordance with the provisions of Article 477 of this Code. In such a case, the deadline for exercising the legal remedy or response to the complaint runs from the day of service of the letter on the defendant, in the present case the deadline for filing the complaint has started from the day [28 December 2018] *when the defendant Xhevat Thaqi* [the Applicant] *was served with the decision on the extension of the detention measure".*

17. Against the abovementioned decision of the Court of Appeals, the Applicant filed a request for protection of legality with the Supreme Court, alleging essential violation of the provisions of criminal law and a violation of criminal procedure, with the proposal that the Supreme Court modifies the decisions of the first and second instance courts, and terminates the measure of detention or replace it with a milder measure.

18. On 4 March 2019, the Supreme Court, by Judgment [Pml. No. 70/ 2019], rejected the Applicant's request for protection of legality as ungrounded and upheld the decision of the Court of Appeals and the Basic Court - thus upholding the measure of extension of detention on remand for two (2) months.

Applicant's allegations

19. The Applicant alleges that the Supreme Court, when rejected his request for protection of legality as ungrounded, has violated his right to fair and impartial trial guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR. He also alleges violations of Articles 22 and 53 of the Constitution.

20. The Applicant states that his lawyer filed the complaint within 24 hours as the Decision [P. No. 223/2018] of the Basic Court of 27 December 2018 was served on him on 8 January 2019; meanwhile, he submitted the complaint by mail service on 9 January 2019.

21. According to the Applicant, the Court of Appeals, by dismissing the appeal as out of time, did not enter his allegations filed in the appeal. Such an approach

of the Court of Appeals, according to the allegations, is a *"discriminatory, unconstitutional and illegal"* position. He further alleges that the Court of Appeals should have taken into account that he as a detainee, he had limited communication opportunities and inability to move freely, and that *"the application of the provision under Article 478 paragraph 4 of the CPCK, in which as the date of running of legal deadlines is considered the date of service of the decision on the defendant, cannot be applied and is discriminatory"*. Further, it is stated in the Referral submitted before this Court that: *"The defendant is not a professional in the field, namely a lawyer and is usually an uneducated and lay person in legal matters, also taking into account the short deadline for filing an appeal against the decision on extension of detention of remand, the filing of an appeal by the defendant who is in the detention on remand is almost impossible in 99% of cases."*

22. In this respect, he also alleges a violation of Articles 22 and 53 of the Constitution, as, according to him, when the law is in collision with the Constitution, that provision is not applicable *"and for this issue is Article 31 of the Constitution and Article 6 of the ECHR, which in Kosovo is directly applied, within the meaning of Article 22 of the Constitution"*.

23. In this respect, the Applicant alleges that the time limit for filing a legal remedy in cases where the freedom of movement of the defendant is limited, the date of service of the Decision on the defendant's counsel must be taken *"otherwise, we will have a violation of the principle of access to justice and a violation of the principle of equality of the parties to the proceedings, namely a violation of the provisions of the Constitution"*.

24. With regard to the decision by the Supreme Court, the Applicant states that it also did not enter at all in the assessment of the violation of his right *"to appeal and access to justice"* and consequently it did not *"assess at all the superior relations between the European Convention on Human Rights and the applicable laws in Kosovo, in case of contradictions between them"*.

25. Finally, the Applicant requests the Court to annul all decisions of the regular courts and declare them unconstitutional.

Proceedings before the Constitutional Court

26. The Court first assesses whether the Applicant has met the admissibility criteria established in the Constitution and further specified in the Law and the Rules of Procedure.

27. In this regard, the Court first recalls that the Applicant alleges that his rights guaranteed by Articles 22, 31 and 53 of the Constitution in conjunction with Article 6 of the ECHR have been violated. In essence, the Applicant files two allegations of violation of his rights guaranteed by the Constitution and the ECHR which will be dealt with separately in the following part of this Decision.

28. However, before responding to the Applicant's allegations, the Court recalls the circumstances of the present case. As explained in the section of facts, the

Applicant was in detention on remand since 30 November 2018 due to suspicion of committing the criminal offense of aggravated theft. On 20 December 2018, the Basic Prosecution in Peja filed an indictment against the Applicant, which was confirmed by the Basic Court. The latter, by the Decision [P. No. 223/2018] of 27 December 2018, confirmed and extended the detention of the Applicant for another two months, calculating the date from 30 December 2018, when the duration of the detention on remand expired. Against this Decision, the Applicant's lawyer filed a complaint with the Court of Appeals which rejected it as out of time - as the time limit, according to the aforementioned legal provisions, was calculated to have started from the moment the decision was served on the defendant, namely the Applicant. The latter, in this regard, through his lawyer, submitted a request for protection of legality, which was also rejected by the Supreme Court as ungrounded, and at the same time confirmed the decision-making of the lower courts.

29. The Court notes that the first category of the Applicant's allegations relates to Article 31 of the Constitution in terms of the Applicant's allegations of denial of access to justice and non-reasoning of the court decisions. The second category of allegations of the Applicant relates to allegations of violation of Articles 22 and 53 of the Constitution because, according to the Applicant, paragraph 4 of Article 478 of the CPCK is an unconstitutional provision and is not in compliance with the Constitution and the ECHR. Consequently, the regular courts should not have applied that provision in his case, but it should have applied the Constitution and the ECHR directly. In detail, all Applicant's allegations are reflected in paragraphs 17-23 of this Decision.

30. In this respect, the Court initially 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".*

31. The Court further refers to Articles 48 [Accuracy of the Referral] and Article 49 [Deadlines] of the Law, which stipulate:

> 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...

32. Regarding the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely the Judgment [Pml. No. 70/2019] of 4 March 2019 of the Supreme Court and submitted his Referral within the prescribed legal deadline.

(i) Allegations related to Article 31 of the Constitution in conjunction with Article 6 of the ECHR, for access to justice and non-reasoning of the court decisions

33. In addition to the abovementioned criteria, the Court must also examine whether the Applicant has met the other admissibility criteria.

34. With regard to the exhaustion of legal remedies for this part of the Referral, the Court finds that in accordance with Article 47 of the Law, the Applicant has exhausted all legal remedies, both in procedural and substantive aspect, regarding his allegations for Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

35. However, the Court must also examine whether this part of the Referral fulfills the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral is 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 the Applicant's allegation according to which he has been denied the right of access to justice and the right to obtain reasoned court decisions, rights that are guaranteed by Article 31 of the Constitution.

37. The Applicant alleges that his right to fair and impartial trial has been violated, as his lawyer's appeal was unfairly rejected and that the Supreme Court and the Court of Appeals did not consider at all his allegations filed in the appeal, namely in the request for protection of legality, and did not take into account the fact that he was in detention on remand and the possibilities for filing a complaint were limited. These courts, according to him, have not reasoned the issue of denying his access to justice.

38. Regarding this allegation, the Court considers that the Applicant has built his case on the basis of legality, namely on the erroneous interpretation of paragraph 4 of Article 478 of the CPCK by the Court of Appeals and the Supreme Court. As regards the reasoning of the court decisions, the Court

considers that the regular courts have fulfilled their obligation to provide sufficient legal reasoning.

39. In this regard, the Court first recalls that the allegations pertaining to the scope of legality do not fall under the jurisdiction of this Court, and therefore, in principle, cannot be considered by the Court. (See, case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 35). The only way these allegations could be examined and accepted as grounded is when an Applicant manages to prove, by convincing arguments that, in his particular case, there has been a violation of the Constitution or the ECHR, for example, arguing that in this case the regular courts have applied the provisions of the CPCK in a clearly arbitrary manner.

40. Based on the case file, the Court notes that the reasoning provided in the Decision of the Court of Appeals is clear. It states that the deadline for filing the appeal runs from the day of service of the Decision on the defendant, namely the Applicant and that the Decision of the Basic Court was served on him on 28 December 2018, which, according to the Court of Appeals *"is confirmed by acknowledgment of receipt for personal delivery with the signature of the defendant placed on it"*, while the defense counsel filed his complaint on 14 January 2019, which means out of the 24-hour deadline, as established in Article 189 paragraph 3 of the CPCK. The Applicant did not file a complaint within 24 hours.

41. The Court also recalls that the Supreme Court rejected the Applicant's request, interpreting the provisions of the CPCK as it had deemed to be the fairest way for the circumstances of the present case, and have given sufficient reasons for its decision. More specifically, regarding the legal interpretation of the provisions of the CPCK, the Supreme Court in its judgment emphasized as follows:

> *"According to the provision of Article 189 par.3 of the CPCK, each party may file an appeal within twenty-four (24) hours from the time of service of the decision, which provision also applies to the decisions imposing detention, while according to the provision of Article 478 par. 4 of the CPCK, if the defendant has a defense counsel, the documents are sent to the defense counsel and the defendant in accordance with the provisions of Article 477 of this Code. In such a case, the deadline for filing the legal remedy or responding to the complaint shall run from the day of service of the document on the defendant.*
>
> *The Law - Criminal Procedure Code in this provision does not differentiate whether the defendant is in detention on remand or in liberty, for which it was not possible that in this case the time limit for filing an appeal is calculated differently, as it is claimed in the request in an ungrounded manner".*

42. In this regard, the Court recalls that even according to the case law of the European Court of Human Rights (hereinafter: the ECHR), the time limit for filing an appeal starts to run from the date on which the Applicants and/or his

lawyer was served with the decision (See, ECtHR case: *Koç et Tosun v. Turkey*, application no. 23852/04, Decision of 13 November 2008, paragraph 6).

43. The Court also considers that the Applicant did not prove before the regular courts, nor before this Court, how his detention prevented him to exercise legal remedies within the prescribed legal deadlines. If the Applicant had in fact concrete/specific inability to file a complaint as a result of the specific circumstances in which the detention took place, then he would have to present such arguments before the regular courts or other responsible bodies for respecting his rights during the time he has been in detention on remand. By the Constitution, the right to appeal against a decision that decides on any of his rights or freedoms is guaranteed to each individual and in any circumstance in which that person is, including persons in detention. In the circumstances of the present case, the Court was not provided with any evidence or proof that the Applicant's right of "access to justice" was denied in any way by the regular courts or any other public authority in the Republic of Kosovo.

44. Therefore, in the circumstances of the present case, the Court considers that the Applicant did not substantiate that the proceedings before the Supreme Court or other regular courts were unfair or arbitrary, or that his fundamental rights and freedoms protected by the Constitution or the ECHR were violated, as a result of erroneous interpretation of CPCK. The Court reiterates that the interpretation of law is a duty of the regular courts (See, case KI63/16, Applicant *Astrit Pira*, Resolution on Inadmissibility of 8 August 2016, paragraph 44; and also see case KI150/15; 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 15 November 2016, paragraph 62).

45. In this regard, the Court notes that it is not its task to deal with errors of fact or law allegedly committed by the regular courts (legality), unless and insofar as they may have violated the fundamental rights and freedoms protected by the Constitution (constitutionality). It may not itself assess the 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. In fact, it is the role of the regular courts to interpret and apply the pertinent 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 case: KI70/11, Applicant: *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011, paragraph 28).

46. The Constitutional Court can only consider whether the evidence was presented in a correct manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial.

47. As to the reasoning of the court decisions by the regular courts, the Court of Appeals and the Supreme Court, the Court considers that both courts have

fulfilled their constitutional obligation to provide sufficient legal reasoning regarding the Applicant's requests and allegations. Consequently, the Court considers that the Applicant has exercised his right to obtain reasoned court decisions in accordance with Article 31 of the Constitution in conjunction with Article 6 of the ECHR (See in this regard, the cases of the Constitutional Court dealing with the reasoning of court decisions: *KI72/12, Veton Berisha and Ilfete Haziri, Judgment of 17 December 2012; KI22 16, Naser Husaj, Judgment of 9 June 2017; KI143/16, Muharrem Blaku and others, Resolution on Inadmissibility of 13 June 2018; and KI97/16, Applicant "IKK Classic", Judgment of 9 January 2018*).

48. The Court also recalls that the Applicant alleged that the calculation of the deadline from the date of service of the decision on the defendant is "*discriminatory*" and that such an approach of the Court of Appeals, according to the Applicant, is "*discriminatory, unconstitutional and unlawful*" position. Regarding this allegation, the Court notes that the Applicant, in addition to stating that such an approach of the courts is discriminatory, did not provide any additional clarification as to how he claims that his right has been violated and that he was treated in an unequal way in relation to other individuals in the same or similar circumstances.

49. Therefore, the Court finds that this part of the Referral must be declared as manifestly ill-founded on constitutional basis in accordance with Rule 39 (2) of the Rules of Procedure.

(ii) Allegations regarding the unconstitutionality of paragraph 4 of Article 478 of the CPCK

50. The Court recalls the Applicant's allegation according to which paragraph 4 of Article 478 [Documents to be Personally Served] of the CPCK is discriminatory and unconstitutional.

51. The Applicant considers that this paragraph, in the part where it is provided that: "*If the defendant has a defence counsel, a document under paragraph 2 of the present Article shall be served on the defence counsel and the defendant in accordance with the provisions of Article 477 of the present Code. In such case, the prescribed period of time for pursuing a legal remedy or answering an appeal shall commence on the date when the document is served on the defendant. If the decision or appeal cannot be served on the defendant because he or she has failed to report his or her address, it shall be displayed on the bulletin board of the court and, at the end of eight (8) days from the date of display, it shall be assumed that valid service has been effected*" – is discriminatory and unconstitutional, because it should not be considered that the time limit for appeal runs from the moment a decision is served on the defendant who is in detention.

52. In this respect, the Court refers to paragraph 2 of Article 47 of the Law which specifically provides that: "*The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law*". The Court also refers to item (b) of paragraph (1) of Rule 39 of the Rules of

Procedure which provides that: *"(1) The Court may consider a referral as admissible if: [...] (b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted."*

53. In this regard, the Court notes that the Applicant states that Articles 22 and 53 of the Constitution have been violated, as the Supreme Court has not taken into account the supremacy of the ECHR in relation to applicable laws in the Republic of Kosovo and the fact that when a law of conflict with the Constitution and the ECHR - that provision of the law should not be applied.

54. Regarding this allegation, the Court emphasizes that it agrees with the accurate finding of the Applicant that a law is not above the Constitution and the ECHR and that these two instruments have priority and supremacy over any law. Such a principle for the ECHR is provided for in Article 22 of the Constitution which specifically states: *"Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions".*

55. However, the Court notes that the Applicant should have raised his allegations of unconstitutionality of paragraph 4 of Article 478 of the CPCK before the regular courts or, based on Article 113.8 of the Constitution, to submit a request for incidental control of the constitutionality of that legal provision with the Constitution and/or the ECHR. The Applicant had the opportunity to present his arguments for the alleged collision of this legal provision with the Constitution and the ECHR before the Supreme Court. He did not do so and his allegations of possible collision and unconstitutionality of paragraph 4 of Article 478 of the CPCK - he is raising before the Constitutional Court for the first time.

56. The Court emphasizes that the regular courts have a duty to examine the Applicants' requests for unconstitutionality of the law and to decide whether or not they need to be approved. If the regular courts also have doubts about the constitutionality of a legal provision and consider that they cannot implement it themselves - then the case should be forwarded to the Constitutional Court, in accordance with Article 113.8 of the Constitution. If the regular courts consider that the Applicant's arguments are ungrounded and that there are no doubts about the constitutionality of the law in question - it can continue to be implemented. However, in the present case, the Applicant did not at all give the Supreme Court the opportunity to declare on the allegation of unconstitutionality of the legal provision in question, as he is filing this allegation for the first time before this Court.

57. Therefore, in light of the above, the Court finds that this Applicant's allegation and consequently this part of the Referral must be rejected for substantial non-exhaustion of all legal remedies, based on Article 47.2 of the Law and Rule 39 (1) (b) of the Rules of Procedure.

Conclusions

58. Regarding the allegations of violation of the rights of "access to justice" and the "reasoning of the court decisions" guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, the Court found that this part of the Referral, in accordance with Rule 39 (2) of the Rules of Procedure, is to be declared inadmissible as manifestly ill-founded on constitutional basis.

59. With regard to the allegation of unconstitutionality of paragraph 4 of Article 478 of the CPCK, the Court found that this part of the Referral, in accordance with Article 47.2 of the Law and Rule 39 (1) (b) of the Rules of Procedure, is to be declared inadmissible due to substantial non-exhaustion of legal remedies provided by law.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, Articles 20 and 47.2 of the Law and Rules 39 (2) and 39 (1) (b) of the Rules of Procedure, on 29 April 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 20.4 of the Law; and

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Nexhmi Rexhepi Arta Rama-Hajrizi

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