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

Prishtina, on 20 July 2020
Ref. no.: RK 1582/20

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI07/20

Applicant

Arben Shala

Request for constitutional review of Judgment Pml. No. 284/2019 of the Supreme Court of 04 November 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 Referral was submitted by Arben Shala, from the village Krajkova, Municipality of Gllogovc (hereinafter: the Applicant). The Applicant is represented by Ibrahim Dobruna, a lawyer from Gllogovc.

Challenged decision

2. The subject matter is the constitutional review of Judgment Pml. No. 284/2019 of the Supreme Court of 4 November 2019 in conjunction with Judgment PAKR. No. 182/2019, of the Court of Appeals of 23 May 2019, as well as Judgment Pkr. No. 67/2018 of the Basic Court, Serious Crimes Department (hereinafter: the Basic Court) of 8 March 2019.

Subject matter

3. The subject matter of the Referral is the constitutional review of judgments of the regular courts, which allegedly violate the Applicant's rights and freedoms guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments], Article 29 [Right to Liberty and Security], Article 31 [Right to Fair and Impartial Trial], Article 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 5.3 and 4 (Right to freedom and security), and Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

4. The Applicant states that the Court should hold a public hearing *"in order to clarify certain facts and evidence."*

5. In addition, the Applicant requests the imposition of an interim measure which would suspend the execution of the final judgment of the Supreme Court of 4 November 2019.

Legal basis

6. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals], 27 [Interim Measures] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 32 [Filing of Referrals and Replies], 39 [Admissibility Criteria] and 56 [Request for Interim Measures] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 15 January 2020, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 17 January 2020, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel, composed of judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).

9. On 27 January 2020, the Court notified the Applicant's legal representative about the registration of the Referral and forwarded a copy of the Referral to the Supreme Court.

10. On 10 July 2020, 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

11. Based on the case file, it follows that on 20 February 2014, at 3:00 am, the person S.B. caused a traffic accident, during which his co-passenger suffered bodily injuries.

12. The Applicant and the person T.M., in their capacity as officers of the Kosovo Police, came to the place where the traffic accident occurred *ex officio* in order to conduct an investigation at the scene of event and make an official report on the circumstances of the traffic accident.

13. It appears from the case file that on the same date the person S.B. filed a report with the Police Inspectorate of Kosovo (hereinafter: PIK) against the Applicant and T.M., due to, as he stated in the report, "*the reason that the Applicant and the person T.M. took an amount of money of 100 euro from him, with the aim of not initiating criminal proceedings against him*".

14. On the basis of that report, PIK informed the State Prosecutor and requested that a decision be issued approving the covert measures of monitoring, tapping and surveillance of the Applicant and the person T.M.

15. On 20 February 2014, the State Prosecutor issued Order SEK.19/-10/14, ordering covert technical investigative and surveillance measures, secret photographing or video surveillance in public places and secret surveillance of conversations in public places for suspects.

16. On 21 February 2014, a meeting took place in restaurant X, which was attended by the Applicant, T.M. and person S.B. On that occasion, PIK, using approved secret measures, collected recordings of conversations, photographs, as well as other evidence that were sufficient grounds for PIK to file a criminal report.

17. On 27 February 2014, the PIK filed a criminal report with the Basic Prosecutor's Office, Serious Crimes Department (hereinafter: the Prosecutor's Office), against the Applicant and T.M., on suspicion of having committed a criminal offense in co-perpetration "*Abusing official position or authority under Article 422, paragraph 1 in conjunction with Article 31 of the CCK*".

18. Pursuant to the criminal report of PIK, the Prosecution issued a decision to conduct an investigation against the Applicant and T.M. and sent a request to the Pre-trial Judge of the Basic Court in Prishtina requesting imposition of detention of the Applicant and the person T.M.

19. The Pre-trial Judge of the Basic Court in Prishtina, rendered a decision ordering detention for the Applicant and T.M., for a period of one month, namely until 26 March 2014.

20. The Applicant's lawyer filed an appeal against the decision ordering detention.

21. The Pre-trial Judge of the Basic Court in Prishtina approved the appeal of the Applicant's lawyer, and accordingly issued a decision replacing the measure of detention with the measure of house arrest, for the period from 26 February 2014 to 11 April 2014.

22. On 20 March 2014, the Prosecution filed indictment PP. I. No. 192/2014 to the Basic Court - Serious Crimes Department (hereinafter: the Basic Court) against the Applicant and the person T.M., due to a grounded suspicion that they have committed a criminal offense *"Abusing official position or authority, in co-perpetration under Article 422, paragraph 1, in conjunction with Article 31 of the CCK"*.

23. On 8 November 2017, the Basic Court held a hearing open to the public which was attended by the Applicant as a defendant with his defense counsel, as well as the Prosecutor. On that occasion, the prosecutor presented the evidence from the indictment, while at the same time the defendant's lawyer presented the evidence in his defense.

24. On 14 November 2017, the Basic Court rendered Judgment PKR. No. 147/14, by which he sentenced the Applicant to imprisonment for a term of six months, in which included the time he spent under the house arrest.

25. In the reasoning of the judgment, the Basic Court stated that in determining the criminal offense and determining the length of sentence, it took into account,

> *„Book - Daily shift report II. - night shift, Regional Traffic Unit in Prishtina, cases of traffic accidents of 21.02.2014, of 23:00 - 07:00 hrs, it was determined that no road traffic accident was initiated during this time period;*
>
> *Daily schedule for 20.02.2014, according to which now the accused were on duty on the night of the case,*
>
> *A report from the clinical center where the injured person was transported from the car.*
>
> *Transcripts of two CDs recorded by PIK during the investigation against the Applicant, as well as photo documentation,*
>
> *Thus, from the examined witnesses, presented material evidence and the defense of the accused, analyzing each separately and all together, it was determined that in the proceedings of the accused Arben Shala and T. M, there are significant subjective and objective elements of the criminal offense of Abusing Official Position or Authority under Article 422, paragraph 1, in conjunction with Article 31 of the CCRK, therefore the court found them guilty, as it first found them criminally responsible and sentenced them as in the operative part of this judgment".*

26. The Applicant filed appeal with the Court of Appeals against the judgment of the Basic Court alleging essential violations of the provisions of criminal

procedure, erroneous and incomplete determination of factual situation, due to the decision on criminal sanction and violation of criminal law, with a proposal that the challenged judgment be modified and the accused be acquitted of criminal liability, and that the challenged judgment be annulled and the case be remanded for retrial.

27. On 15 February 2018, the Court of Appeals rendered Decision PAKR. No. 4/2018, by which it approved the Applicant's appeal, while it annulled Judgment PKR. No. 147/2014 of the Basic Court in Prishtina, of 14 November 2017, and remanded the case to the Basic Court for retrial.

28. The Court of Appeals in the reasoning of Decision PAKR. No. 4/2018, stated:

> *"The enacting clause of the judgment is in contradiction with the reasoning, the court did not give reasons for the decisive facts while the ones it gave are not sufficient. It did not give reasons for each point of the judgment and it is not clear and fully presented what facts and for what reasons it considers to have been established or not, it did not assess the accuracy of contradictory evidence or the reasons for not accepting the specific proposal of the parties on which it was based when resolving this criminal-legal matter".*

29. In the retrial, the Basic Court continued with the court hearings that were open to the public. The Basic Court held hearings on 30 July 2018, 12 September 2018 and 6 March 2019.

30. On 8 March 2019, in the retrial, the Basic Court rendered Judgment PKR. No. 67/18, by which it sentenced the Applicant to imprisonment for a term of 6 months, in which it also included the time period he spent under house arrest. The reasoning of Judgment PKR. No. 67/18, the Basic Court stated, *„... from the examined witnesses, administered material evidence and defense of the accused T. M., analyzing each separately and all together, it was established that in the proceedings of the accused Arben Shala and T. M, there are all subjective and objective basic elements of the criminal offence, Abusing official position or authority in co-perpetration, under Article 422, Paragraph 1, in conjunction with Article 31 of the Criminal Code of the Republic of Kosovo - CCRK, therefore the court found them guilty, as it had previously found them criminally liable and imposed a sentence as in the provision of this judgments.*

In determining the type and amount of the sentence, the court took into account all the circumstances that affect the type and amount of the sentence..."

31. Against Judgment PKR. No. 67/18 of the Basic Court, the appeals were filed by the Prosecutor's Office and the Applicant. The Prosecutor's Office, due to the decision on the criminal sanction, while the Applicant due to the violation of the provision of the criminal procedure, erroneous and incomplete determination of the factual situation, violation of the criminal law and the decision on punishment.

32. On 23 May 2019, the Court of Appeals rendered Judgment PAKR. No. 182/2019, rejecting the appeals of the Prosecutor's Office and the Applicant as ungrounded.

33. In the reasoning of Judgment PAKR. No. 182/2019, the Court of Appeals stated:

> *"The Court of Appeals, assessing the challenged judgment on the appeal of the defense of the accused but also on official duty in accordance with Article 394 paragraph 1 of the CCRK, finds that the challenged judgment does not contain basic violations of the criminal procedure provisions mentioned in the appeal, which would condition the annulment of the judgment, that the first instance court, in the complete and fair manner established what facts and for what reasons it considered them established, assessed the accuracy of the contradictory evidence and the reasons on which it was based when it established the existence of a criminal offense. The judgment was rendered in accordance with the provisions of Article 370 paragraph 7 of the CCRK, it is clear, concrete and understandable in the reasoning, provides the necessary reasons for all decisive facts, which are correctly established and fully reasoned.*
>
> *The Prosecutor's Office does not state in the appeal specific aggravating circumstances that would affect the severity of the sentence, while the defense of the accused in the appeal does not state specific mitigating circumstances that would affect the mitigation of the sentence, except for those assessed by the first instance court, because according to the findings of this court, the sentence imposed by the first instance court is in proportion to the social risk of the criminal offence, so this court considers that the imposed sentence is directly proportional to the intensity of social risk of the crime and the degree of criminal liability of the accused, and according to the judgment of this court, the sentence imposed on the accused will fully achieve the purpose of the sentence provided for in Article 41 of the CCRK".*

34. Against Judgment PAKR. No. 182/2019, of the Court of Appeals, the request for protection of legality was submitted to the Supreme Court by the Applicant for violation of the provisions of criminal procedure from Article 384 paragraph 1 sub- paragraphs 1.8 and 1.12 of the CCRK, violation of criminal law and other violations of criminal procedure, which influenced the legality of the court decision, with the proposal that the Supreme Court adopt as a grounded the request for protection of legality, to modify the challenged judgments, so as to acquit the convict charges.

35. The Office of the Chief State Prosecutor, by submission KMLP. II. No. 200/2019, proposed that the request for protection of legality be rejected as ungrounded.

36. On 4 November 2019, the Supreme Court rendered Judgment Pml. No. 284/2019, by which he rejected the request for protection of legality of the Applicant as ungrounded.

37. The reasoning of Judgment Pml. No. 284/2019, of the Supreme Court stated,

> *„As it follows from the case file, the first instance court judgment determined by the judgment of the second instance court is clear and specific, there is no contradiction with itself, with its reasoning or with the contents of the statement or document, it contains clear and sufficient reasons for all decisive facts. In its reasoning, the necessary factual and legal reasons are given, which are also determined by this court as fair and lawful. The court gave sufficient reasons for the decisive facts by assessing the accuracy of the contradictory evidence as well as the reasons on which it was based when deciding this criminal case, and especially when determining the existence of a criminal offense.*
>
> *On the part of the request for protection of legality of the convict's defense, where it refers to erroneous determination of the factual situation, the Supreme Court of Kosovo did not assess these allegations, because in accordance with Article 432 paragraph 2 of the CCRK, the request for protection of legality cannot be submitted due to erroneous and incomplete determination of factual situation".*

Applicant's allegations

38. The Applicant alleges that the decisions of the regular courts violated his constitutional rights guaranteed by Articles 22, 29, 31 and 53 of the Constitution, as well as Articles 5.3 and 5.4 of the ECHR, as a result of non-compliance with the investigative and court proceedings. *"That during the trial he was arbitrarily treated as an accused, thus the principle of equality of arms and the principle of contradiction have been violated. Bearing in mind that the judgments of the regular courts are based on violations, it follows that the decision to order detention is also contrary to the law and that he is arbitrarily deprived of liberty".*

39. The Applicant further alleges that he has also been denied the right to a fair and impartial trial within a reasonable time, which is guaranteed by Article 31 of the Constitution, Article 6.1 of the ECHR, as well as the case law of the ECtHR, and in this support, the Applicant states several cases *Pretto v. Italy, Dimitrov and Hamanov v. Bulgaria.*

40. The Applicant adds that the court proceedings before the first instance court, the second instance court and the Supreme Court, in a procedural and material aspect were irregular, *"as there has been a violation of his right to conduct a procedure that would enable to render a decision on merits in the end in his favor. The Applicant was denied the right to judicial protection, submission, management and elaboration of the issue in a proper procedural and organic manner, in order to take into account his claims and ultimately render a decision on merits..."*

41. The Applicant also considers that the courts based their judgments on inadmissible evidence which is essentially unreliable evidence, as established in Article 19, paragraph 1, sub-paragraph 1.29 of the CPC, and as such they are inadmissible evidence on which the decisions cannot be based.

42. The Applicant further alleges that the regular courts committed essential violations of the provisions of the criminal procedure, that the challenged judgments contain essential violations of the provisions of the criminal procedure from Article 384, 1.8 and 1.12 and Article 2 of the CPC.

43. More specifically, the Applicant states that it is clear that the appealed judgment of the first instance was not drafted in accordance with Article 370, paragraph 7 of the CPC, which constitutes essential violation of the provisions of Article 384, paragraphs 1.8 and 1.12 of the CPC. The abovementioned violations consist in the fact that the first instance court did not state in a clear and complete manner the facts that it considers established and that it did not reason its judgment.

44. In support of the allegation of unreasoned judgments, the Applicant alleges "*that the Constitutional Court in judgments KI 47/17 of 28.12.2018, KI135/14, of 8 February 2016, as well as Judgment KI 122/17 of 30 April 2018 found that the lack of reasoning in the main allegations of the parties constituted a violation of the right to a fair and impartial trial, guaranteed by Article 31 of the Constitution of Kosovo* ".

45. The Applicant further alleges that the courts in the criminal proceedings against him failed to ensure a fair trial, that they did not hear their arguments but only the arguments of the prosecutor, from which it can be concluded that he was convicted in advance, thus violating the principle *in dubio pro reo*.

46. The Applicant further states in the referral that the Court should hold a public hearing "*in order to clarify certain facts and evidence, as this was not done by the regular courts.*" In support of this allegation, the Applicant alleges "*that such a session would be of particular importance as it would provide the parties with an opportunity to explain a further issue in the treatment as well as to answer possible questions that would affect the adoption of a fair decision*".

47. The Applicant also requests the Court to impose an interim measure, which would suspend the enforcement of the judgment of the Supreme Court of 4 November 2019.

48. The Applicant addresses the Court with a request to render a judgment finding that the arbitrary trial of the Applicant constitutes a violation of his individual rights guaranteed by Articles 22, 29, 31 and 53 of the Constitution of the Republic of Kosovo and Articles 5.3, 5.4 and 6 of the ECHR, and that accordingly to annul the judgments and remand the case for retrial.

Relevant court provisions in the present case

Constitutional provisions

Article 22 [Direct Applicability of International Agreements and Instruments]

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.

[...]

"Article 29 [Right to Liberty and Security] of the Constitution

1. *Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court*
   [...]"

Article 31 [Right to Fair and Impartial Trial]

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

Relevant articles of the ECHR

"Article 5 Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
[...]
c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
[...]
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial..
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
[...]"

Article 6 Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [...]

Relevant legal provisions

Law No.03/L-231 on Police Inspectorate of Kosovo, Articles 17 and 19

"Article 17
Criminal investigation

The investigative scope of PIK is prevention, detection, documentation and investigation of the criminal offences committed by Kosovo Police employees, regardless of rank and position, during the exercise of their official duty or off duty, including investigations of high profile disciplinary incidents and disciplinary investigations of police officers having the highest rank within the senior police management level and senior appointed police positions.

Article 19
Collection of Data

In order to fulfill their duty, PIK investigators are authorized and responsible for using any lawful source of information for the collection, collation and protection of the data related to the investigation of criminal offences committed by Kosovo Police employees, regardless of their position or rank".

Code No. 04/L-123 on Criminal Procedure, Articles 188 and 189,

"Article 188
Procedure for Order of Detention on Remand

1. Detention on remand shall be ordered by the pre-trial judge of the competent court upon a written application of the state prosecutor and after a hearing."

Article 189
The Content of the Ruling Ordering Detention on Remand and the Appeal Against it

[...]

3. Each party may file an appeal within twenty-four (24) hours of being served with the ruling. The appeal shall not stay execution of the ruling. If only one party appeals, the appeal shall be served by the court on the other party who may submit arguments to the court within twenty-four (24) hours of being served with the appeal. The appeal shall be decided within forty eight (48) hours of the filing of the appeal."

Admissibility of the Referral

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

50. 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."*

51. In addition, the Court also examines whether the Applicant has met the admissibility requirements as defined by 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 stipulate:

> Article 47
> [Individual Requests]
>
> *"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*
>
> *2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law."*
>
> Article 48
> [Accuracy of the Referral]
>
> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".*
>
> Article 49
> [Deadlines]
>
> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...".*

52. As to the fulfillment of these criteria, the Court considers that the Applicant filed the Referral in a capacity of an authorized party, challenging an act of a public authority, namely Judgment Pml. No. 284/2019 of the Supreme Court of 4 November 2019, after having exhausted all legal remedies provided by law. The Applicant has also clarified the rights and freedoms which have allegedly been violated in accordance with Article 48 of the Law and has submitted the Referral in accordance with the deadlines foreseen in Article 49 of the Law.

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

54. In the present case, the Court notes that the Applicant filed before the Court several allegations of violation of both the constitutional rights guaranteed by Articles 22, 31 and 53, as well as the rights guaranteed by Articles 5 and 6 of the ECHR.

55. In this respect, the Court finds that most of the allegations in the Applicant's Referral can be grouped into two groups of allegations, namely: ***i)*** the allegations of violation of Article 29 of the Constitution in conjunction with Article 5 of the ECHR, and ***ii)*** the allegations relating to violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

56. As to the Applicant's allegations of violation of Articles 22 and 53 of the Constitution, the Court, having in mind the content and meaning of Articles 22 and 53 of the Constitution, states that when determining the grounds of the abovementioned violations it will take into account all mechanisms and instruments for protection human rights, and accordingly apply all general and special guarantees, principles as well as principles provided for in Articles 22 and 53 of the Constitution, which are applicable in the present case.

57. Based on the above, the Court will analyze the other allegations of the Applicant, which it has separated into two groups, in the continuation of the report.

Applicant's allegations regarding violation of Article 29 of the Constitution in conjunction with Article 5 paragraphs 3 and 4 of the ECHR

58. The Court notes that the Applicant in the Referral builds the allegation of violation of Article 29 of the Constitution in conjunction with Article 5 of the ECHR, on the violations of special guarantees provided for in paragraphs 3 and 4 of Article 5 of the ECHR.

59. In this regard, the Court first recalls that Article 29 of the Constitution in the relevant part reads,

"Article 29 [Right to Liberty and Security] of the Constitution

1. Everyone is guaranteed the right to liberty and security. No one shall be deprived of liberty except in the cases foreseen by law and after a decision of a competent court
[...]"

60. The Court also recalls that Article 5 of the ECHR reads in the relevant part of paragraphs 3 and 4 reads:

"3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or

other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
[...]"

61. As to the allegations of violation of Article 29 of the Constitution and Article 5, paragraphs 3 and 4, of the ECHR, the Court first finds that the Applicant does not explain in a concrete way how this violated Article 29 of the Constitution and Article 5 paragraphs 3 and 4 of the ECHR, but only alleges "*that the judgments of the regular courts were rendered with essential violations, thus it can be concluded that the measure of detention was also contrary to the law*".

62. However, having regard to the chronology of events, the Court finds that the allegations of a violation of Article 5 paragraphs 3 and 4 and 4 of the ECHR may relate exclusively to the period when by the decision of the Pre-trial Judge, the Applicant was imposed a detention in duration of 30 days, which was later replaced by a house arrest for 30 days by a decision of the same court. From this it can be concluded that the Applicant considers that he has been illegally deprived of liberty.

63. Having in mind the importance of the guarantees provided by Article 29 of the Constitution and Article 5 of the ECHR, the Court finds it necessary to analyze the allegations in order to determine whether the Article 29 of the Constitution and Article 5 paragraphs 3 and 4 of the ECHR were violated to the Applicant, in the context of unlawful and arbitrary deprivation of liberty in the period when the decision of the pre-trial judge ordered his house arrest for a period of 30 days.

64. Such a position of the Court is also in line with the case law of the ECtHR, which in its decisions emphasized that the right to personal liberty and security is one of the most important human rights, and that Article 5 of the ECHR provides protection that no one may be arbitrarily deprived of liberty. Exceptions to the prohibition of deprivation of liberty are also provided for in Article 5 of the ECHR. According to ECtHR case law, this is an exhaustive procedure that must be interpreted narrowly (see ECtHR judgment *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A25). Only such an approach is consistent with Article 5 of the ECHR, namely to ensure that no one shall be arbitrarily deprived of his liberty (see, judgment of the ECtHR, *Quinn v. France*, of 22 March 1995, Series A-311, and *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A-33).

65. Furthermore, the Court recalls that the ECtHR has taken the position in its case law that existence of the "*reasonableness of the suspicion*" on which deprivation of liberty must be based forms an essential part of the safeguard against arbitrary arrest and detention and represents *conditio sine qua non,*

namely *"a condition without which cannot"* detention of remand be imposed or extended. The existence of *„reasonable suspicion"* presupposes the existence of facts or information based on which, as the ECtHR stated, would satisfy an objective observer that the person concerned may have committed the criminal offence he is charged with. What may be regarded as *"reasonable"* will however depend upon all the circumstances of the case. Even in cases where the police and other prosecuting authorities are required to act urgently to protect the interests of public safety, the public authority have to furnish at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged criminal offence (see, ECtHR judgment, *Fox, Campbell and Hartley v. the United Kingdom*, of 30 August 1990, Series A no. 182, paragraphs 32-34), and *Stepuleac v. Moldova*, ECtHR Judgment of 6 November 2007, Application No. 8207/06, paragraph 68).

66. The Court also points out that at the moment of imposition of detention it cannot be established with certainty that the criminal offense for which the person is imposed a detention was actually committed, and finally the Court adds that pursuant to Article 5 of the ECHR, the imposition of detention must be in compliance with the domestic legislation.

67. As to the special guarantees provided for in paragraph 3 of Article 5 of the ECHR, the Court notes that the provisions of Article 5 paragraph 3 of the ECHR require that a person be deprived of his liberty in accordance with Article 5 paragraph 1c, namely that the deprivation is *"lawful"* within the meaning of the said article and includes both procedural and material protection of such persons. The ECtHR concluded that compliance with Article 5 paragraph 3 of the ECHR requires the judiciary to review all matters relating to detention and to decide on detention with reference to objective criteria provided by law. At the same time, *the existence of a well-founded suspicion* that the person was deprived of liberty, committed the criminal offense which he is charged with *conditio sine qua non* to order or extend detention, (see, ECtHR Judgment, *Trzaska v. Poland*, application no. 25792/94 of 11 July 2000).

68. Bringing the principles above in connection with the present case, the Court notes that the Pre-trial Judge of the Basic Court, in the criminal matter against the defendant (the Applicant), on suspicion of *abuse of official position or authority, in co-perpetration under Article 422 paragraph 1, in conjunction with Article 31 of the CCK*, issued a decision ordering the Applicant's detention in duration of 30 days.

69. In this regard, the Court first notes that such a decision was preceded by procedural actions taken by the competent state authorities in order to establish the existence of a criminal offense, namely the existence of *"reasonable suspicion"* that the Applicant had in fact committed the criminal offense which he was charged with.

70. More specifically, PIK, following a report by the injured party that the Applicant had committed a criminal offense, and based on the approval of SEK.19/-10/14 of the State Prosecutor, took covert technical, investigative and

surveillance measures, secret photography or video surveillance in public places and covert surveillance of conversations in public places for suspects.

71. The Court notes that Articles 17 and 19 of Law No. 03-L231, on the Police Inspectorate of Kosovo, also regulate the issue of the competence of the PIK to conduct criminal investigations and to collect data. In this regard, the Court recalls that Articles 17 and 19 of the Law state:

> *"Article 17*
> *Criminal investigation*
>
> *17. The investigative scope of PIK is prevention, detection, documentation and investigation of the criminal offences committed by Kosovo Police employees, regardless of rank and position, during the exercise of their official duty or off duty, including investigations of high profile disciplinary incidents and disciplinary investigations of police officers having the highest rank within the senior police management level and senior appointed police positions.*
>
> *Article 19*
> *Collection of Data*
>
> *19. In order to fulfill their duty, PIK investigators are authorized and responsible for using any lawful source of information for the collection, collation and protection of the data related to the investigation of criminal offences committed by Kosovo Police employees, regardless of their position or rank".*

72. The Court further notes that on that occasion PIK collected facts and evidence indicating that there were sufficient indications that the Applicant had committed the criminal offense for which S.B. had reported him to PIK.

73. This procedural procedure conducted by PIK affected the further course of the proceedings against the Applicant. More specifically, the PIK, based on the evidence it had collected, filed a criminal report with the prosecutor, placing the Applicant in the position of "*suspect, not defendant*".

74. Taking into account the PIK criminal report, the evidence gathered during the covert technical, investigative and surveillance measures, the Prosecutor's Office rendered decision to conduct an investigation and requested the pre-trial judge to order detention for the Applicant.

75. As regards the present part of the proceedings, the Court finds no flaws in the procedural steps taken by the competent authorities to establish "*reasonable suspicion*", which must exist, according to ECtHR case law, as a basic precondition for further course of the proceedings before the competent authorities, who will decide on the grounds of the request for detention against the suspect.

76. The Court further finds that the pre-trial judge, only after fulfilling all conditions, namely only after providing the necessary facts and information

from the competent state authorities, PIK and the Prosecutor's Office, from which it was evident that there was a *reasonable suspicion*, in the public interest, issued a decision ordering the Applicant's detention for 30 days.

77. The Court notes that the issue of detention is regulated by Article 188 of Law No. 04 / L-123 on Criminal Procedure,

> *"Article 188 Procedure for Order of Detention on Remand*
>
> *Detention on remand shall be ordered by the pre-trial judge of the competent court upon a written application of the state prosecutor and after a hearing".*

78. Accordingly, it is concluded that the competent authorities offered sufficient and specific reasons as well as reasoning to the competent judge in relation to the Applicant in support of the conclusion on the existence of "*reasonable suspicion*" and special reasons for ordering the Applicant's detention.

79. In support of this, the Court finds that the proceeding itself of imposition of 30-day detention by the pre-trial judge did not in any way prejudge the outcome of his criminal proceedings conducted by the regular courts, namely it did not directly affect the outcome of the court proceedings regarding his guilt, which can be seen on the basis of the further chronology of events that followed.

80. Furthermore, the Applicant alleges also violation of paragraph 4 of Article 5 of the ECHR. In this regard, the Court states that Article 5 paragraph 4 of the ECHR guarantees the right to *„everyone who is deprived of his liberty by arrest or detention"* to initiate the proceedings of examining the lawfulness of detention and to be released if the detention is unlawful.

81. Returning to the present case, the Court notes that the Applicant, using the legal possibility provided for in Article 189 paragraph 3 of the Criminal Procedure Code, filed appeal against the first-instance decision on detention of the pre-trial judge, thus creating an opportunity for the regular court to reconsider and examine the legality of its decision.

82. Nevertheless, the Court notes that, in accordance with the case law of the ECtHR, the guarantees of Article 5 paragraph 4 of the ECHR may lose their substance if the court, relying on domestic law and practice, ignores the appealing facts or treats them as irrelevant, which may call into question the existence of requirements, which pursuant to the ECHR, are lawful with regard to deprivation of liberty (see ECtHR Judgment, *Nikolova v. Bulgaria* [GC], No. 31195/96, § 61, ECHR 1999-II).

83. However, in the present case the Court finds that it was this procedural action, the filing of an appeal to the competent court by the Applicant's lawyer that led to the second decision of the pre-trial judge, who replaced the detention measure with a milder measure of house arrest, by which it can be indisputably concluded, that the court did not ignore or neglected the facts stated by the Applicant's lawyer in the appeal for review of the decision on detention.

84. Based on its findings in view of the entire proceedings which ended with the second-instance decision ordering the Applicant's house arrest, the Court finds that the competent authorities did not violate the Applicant's rights under Article 29 of the Constitution and Article 5 paragraphs 3 and 4 of the ECHR.

Applicant's allegations regarding violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

85. As to the allegations of a violation of Article 31 of the Constitution and Article 6 of the ECHR, the Court notes that the Applicant cited in support of this allegation a large number of allegations, which he brings into connection, with *a)* using evidence obtained in an unlawful manner and by erroneous application of law, *b)* violation of the principle of *dubio pro reo*, c) length of proceedings, d) unreasoned court decisions. The Court also notes that in support of these allegations, the Applicant referred to the case law of the Constitutional Court, as well as to the case law of the ECtHR.

86. Having in mind that, the part of the proceedings related to the violation of Article 29 of the Constitution and Article 5 of the ECHR, which the Applicant related to the course of the procedure ordering the detention, has already analyzed and found that there has been no violation, that in the analysis of the Applicant's allegations of possible violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, it will be limited exclusively to the court proceedings conducted before the competent courts where the criminal liability of the Applicant was determined.

a) Applicant's allegations on use of evidence gathered in unlawful manner and erroneous application of law

87. The Court notes that in support of the allegation of a violation of Article 31 of the Constitution and Article 6 of the ECHR, the Applicant alleges that the courts rendered judgments on the basis of evidence gathered during covert surveillance measures and that such evidence was unreliable and unlawful pursuant to Article 19 paragraph 1 subparagraph 1.29 of the CPC, which may lead to the conclusion that the courts have erroneously applied the law.

88. In this regard, the Court refers to the case law of the ECtHR, which underlines *"that the question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair."* (See ECtHR cases, *Khan v. the United Kingdom*, application no. 35394/97, Judgment of 12 May 2000, paragraph 34; *P.G. and J.H. v. the United Kingdom*, application no. 44787/98, Judgment of 25 September 2001, paragraph 76; and *Allan v. the United Kingdom*, application no. 48539/99, Judgment of 5 November 2002, paragraph 42).

89. However, as regards the Applicant's allegations regarding the unlawful collection of evidence, *"and therefore that they are unreliable as such pursuant to Article 19 paragraph 1 paragraph 1.29 of the CPC"*, the Court recalls that Article 19 paragraph 1 subparagraph 1.29 of the PIK stipulates that;

"1.29. Intrinsically Unreliable – evidence or information is intrinsically unreliable if the origin of the evidence or information is unknown, it is based upon a rumor, or on its face the evidence or information is impossible or inconceivable".

90. Returning to the Applicant's specific allegation, more specifically to the origin of the evidence used by the courts in determining his guilt, finds that the origin of the evidence challenged by the Applicant is not unknown, namely that it was collected as such by PIK during covert surveillance measures, moreover, PIK carried out such actions only after the order SEK.19/-10/14, of the State Prosecutor of 20 February 2014, ordering the conduct *of covert technical investigative and surveillance measures, secret photographic or video surveillance in public places and cover surveillance of conversations in public places for suspects".*

91. From which it can be concluded that they as such are not unlawful because the Court has already found that they were collected by PIK, in the manner regulated by the law itself, namely Article 19 of Law No.03-L231 on the Police Inspectorate of Kosovo, and that the issue of their legality was twice verified through the judicial review of the regular courts during the procedure of determining the criminal liability of the Applicant.

92. As to the Applicant's allegations which exclusively relate to the manner in which the regular courts determined the factual situation and applied substantive law, the Court recalls that these these allegations do not fall within the jurisdiction of the Court and, therefore, cannot in principle be considered by the Court (see, in this regard, among other cases, the cases of the Court KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 35, KI154/17 and 05/18 Applicants *Basri Deva, Afërdita Deva and Limited Liability Company "Barbas"* Resolution on Inadmissibility of 12 August 2019, paragraph 60, KI192/18, Applicant *Kosovo Energy Distribution and Supply Company*, KEDS jsc, Resolution on Inadmissibility, of 16 August 2019, paragraph 49).

93. The Court has consistently reiterated through its case law that it is not its duty 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 that have led the regular courts 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. (See ECtHR case, *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and see, also, *inter alia,* cases of the Court Kl70/11, Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011, Kl154/17 and 05/18 Applicants *Basri Deva, Aferdita Deva and Limited Liability Company "Barbas"*, Resolution on Inadmissibility of 12 August 2019, paragraph 61, KI192/18, Applicant, *Kosovo Distribution Company and Power Supply, KEDS jsc*, cited above, paragraph 50).

94. Accordingly, the Court rejects all the Applicant's allegations with regard to the erroneous application of law as well as the manner in which the evidence was collected during the investigation, which he brought in connection with the violation of Article 31 of the Constitution and Article 6 of the ECHR, as unfounded.

b) Applicant's allegations of violation of principle in dubio pro reo

95. With regard to the Applicant's allegations that the principle of the presumption of innocence or the principle *in dubio pro reo* was not respected, the Court notes that, according to the case law of the ECtHR, the presumption of innocence means that the accused is not obliged to defend himself, although he is entitled to, namely he is not obliged to prove his innocence, and the burden of proof is on the prosecutor. Accordingly, the court must render an acquittal judgment, not only when it is convinced of the innocence of the accused, but also when it is not convinced of either his guilt or his innocence. Therefore, when in doubt, the court must apply the principle *in dubio pro reo,* which is an essential element of the right to a fair trial under Article 6 of the ECHR (see the judgment of the ECtHR, *Barbera, Messeque and Jabardo v. Spain*, of 6 December 1988), Series A number. 146, paragraph 77).

96. In this regard, the courts are obliged to assess all evidence individually and in relation to other evidence, and then, on the basis of such a careful assessment, draw a conclusion as to whether a fact has been proved or not. responsibility of the accused, the court must render an acquittal. If, after the criminal proceedings, the criminal liability of the accused remains in doubt, the court must render an acquittal judgment.

97. In view of the previous reasoning in this Decision, and bearing in mind the fact that the issue of the Applicant's criminal liability was the subject of a special examination, both by the Basic Court and the Court of Appeals in two proceedings, after conscientious assessment of evidence, individually and in connection with other evidence, it is concluded that they had not the slightest doubt about the existence, namely non-existence of some of the decisive facts that characterize the criminal offense for which the Applicant is accused, and thus no doubt about the existence of criminal liability of the Applicant. Moreover, the Court notes that they provided detailed, convincing and logical reasoning for their conclusions, which do not indicate any arbitrariness in their decision-making.

98. In this respect, the Court finds that the Applicant's allegations that the challenged Judgments do not satisfy the principle *in dubio pro reo* as an element of the right to a fair trial, which is protected by Article 6 paragraph 2 of the ECHR are also manifestly (*prima facie*) ill-founded.

e) Applicant's allegations of violation of the length of the court proceedings

99. As to the allegations relating to the length of the court proceedings, the Court notes that in accordance with the consistent case law of the ECtHR and of the Constitutional Court, the reasonableness of the length of proceedings must be

assessed in the light of the circumstances of the individual case having regard to the criteria laid down in the case law of the ECtHR and of the Constitutional Court, in particular, the complexity of the case, the conduct of the parties to the proceedings and of the competent court or other relevant authorities, and the importance of what is at stake for the Applicant in the litigation (see ECtHR Judgment *Mikulic v. Croatia*, application no. 53176/99, of 7 February 2002, Report number 2002-I paragraph 38; see also the case of Court: KI23/16, Applicant *Qazim Bytyqi and others*, Resolution on Inadmissibility of 5 May 2017).

100. With regard to the part of the Referral concerning the length of the proceedings before the regular courts, the Applicant considers that he did not have a fair trial because the criminal proceedings lasted more than four years, that his conduct was flawless and that the delay and length were solely due to conduct of public authorities. In support of that, the Applicant also stated the case law of the ECtHR in the case *Pretto v. Italy*.

101. In considering these allegations, the Court analyzed the proceedings on the criminal matter against the Applicant for the criminal offense "*abusing official position or authority, in co-perpetration under Article 422, paragraph 1, in conjunction with Article 31 of the CCK* ". In this regard, the Court may find that the proceedings lasted for more than 4 years, as the Applicant alleges in the Referral, in fact the proceedings in which the Applicant's criminal liability was established lasted for less less than 6 years.

102. However, on this occasion the Court also noted that there is a certain specificity which affected the very length of the proceedings. More specifically, the Court concluded that there were two court proceedings related to the determination of the Applicant's criminal liability.

103. In fact, the first procedural action before the Basic Court lasted from 20 March 2014, when the Prosecutor filed an indictment against the Applicant, and that part of the court proceedings ended on 15 February 2018, when the Court of Appeals approved the appealing allegations of the Applicant and annulled the judgment of the Basic Court, while it remanded the case for retrial. In this regard, the Court finds that the first proceeding was completed within less than 4 years, in which the courts rendered two court judgments.

104. As to this first court proceeding, the case file shows that the Basic Court took various procedural actions in order to hear witnesses, where it also held two hearings on 8 and 14 November 2017, where both the Prosecution and the Applicant's Defense presented evidence. It can also be concluded from the proceedings before the Court of Appeals that despite the fact that the Applicant presented many appealing allegations that the Court of Appeals had to analyze, it managed to render a decision within 3 months, more precisely on 15 February 2018, which annulled the judgment of the Basic Court and remanded the case for retrial to the Basic Court.

105. With regard to the retrial, the Court notes that the Basic Court was very efficient in the repeated proceding, as shown by the number of hearings held, of which there were a total of 4 (30.07.2018, 12.09.2018, 06.03.2019 and on

8.3.2019), that the Basic Court had to analyze and eliminate all objections and flaws that the Court of Appeals stated in the operative part of the judgment of 15 February 2018, and that despite that fact it rendered the judgment In less than one year.

106. Further, the procedure before the Court of Appeals in the repeated proceeding lasted a little more than 2 months, namely until 23 May 2019, when it rendered the judgment on the Applicant's appeal. While the procedure before the Supreme Court lasted a little more than 4 months, namely until 4 November 2019, when it rendered the final judgment regarding the criminal liability of the Applicant.

107. Based on all the above, the Court does not find that the length of the court proceedings in the present case exceeds the limits of "reasonableness" within the meaning of Article 31 of the Constitution and Article 6 paragraph 1 of the ECHR.

d) Applicant's allegations of unreasoned court decisions

108. The Court notes that the Applicant bases his allegations of a violation of Article 6 of the ECHR in relation to unreasoned court decisions on the allegations *"that the alleged violations arose in such a way that the regular courts did not clearly and completely state the facts which he considered to be established, and for what reasons he was found guilty"*, and in support of this allegation, the Applicant also cites the case law of the Constitutional Court KI 47/17 of 28 December 2018. KI135/14, of 8 February 2016, as well as Judgment KI 122/17 of 30 April 2018, in which the Court found *"that the lack of reasoning in the main allegations of the parties constitutes a violation of the right to fair and impartial trial, guaranteed by Article 31 of the Constitution of Kosovo*".

109. As to the allegations regarding the unreasoned court decisions, the Constitutional Court emphasizes that, according to the established case law of the ECtHR and the case law of the Constitutional Court, Article 6, paragraph 1 of the ECHR, obliges the courts to, *inter alia*, reason their judgments. This obligation, cannot, however, be understood as an obligation to state all the details in the judgment and to answer all the questions raised and arguments presented. The extent to which this obligation exists depends on the nature of the decision (see ECtHR Judgment, *Ruiz Torija v. Spain*, of 9 December 1994, Series A, No. 303-A, paragraph 29). The ECtHR and the Constitutional Court in numerous decisions noted that, even though domestic courts have a certain margin of appreciation when choosing arguments and admitting evidence in a particular case, at the same time domestic courts are obliged to reason their decisions, by giving clear and comprehensible reasons on which they base their decisions (see ECtHR judgment, *Suominen v. Finland*, of 1 July 2003).

110. The Court considers that in the present case a comprehensive analysis of the evidence adduced was not lacking, but that the Basic Court in its judgment fully described the process of individual assessment of the evidence, linking it and concluding that the Applicant had committed a criminal offense and was criminally liable for the commission of the latter. Namely, the Court notes that the Basic Court conducted a very extensive evidentiary procedure in the retrial,

that in this regard it re-examined witnesses, conducted an expertise of evidence collected during covert measures of surveillance by the PIK, and examined the extensive documentation found in the case file.

111. Based on thus conducted evidentiary proceding, the regular courts found that the Applicant committed the criminal offense of "abusing official position or authority, in co-perpetration under Article 422, paragraph 1, in conjunction with Article 31 of the CCK, in the manner and time described in the operative part of the judgment"annd that they gave a detailed and clear reasoning for all their conclusions, which in no part seem arbitrary or unacceptable in itself, nor does it call into question the conclusions on the commission of the criminal offense by the Applicant, for which he was convicted.

112. The Court also emphasized that it has noted that the Applicant alleges that the Constitutional Court in a number of its judgments found a violation of the rights and freedoms guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, because the courts did not reason their decisions in accordance with the principles of the right to a reasoned court decision.

113. In this regard, the Court states that it is an indisputable fact that the Court found in a number of its decisions a violation of Article 31 of the Constitution and Article 6 of the ECHR, which it linked to unreasoned court decisions, but the Court also wishes to note that each case before the Constitutional Court has its own peculiarities and specifics, which may be a sufficient reason for the Court to find a certain violation. However, any reference to such judgments and a comparison of its case with such cases is not a sufficient reason and basis for the Court, and in the present case, to establish a violation of the rights guaranteed by the Constitution.

114. Based on all the foregoing, the Court finds that the Applicant's allegations that the unreasoned court judgments led to a violation of Article 31 of the Constitution and Article 6 of the ECHR are ungrounded.

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

Conclusion

116. The Court finds that nothing in the case presented by the Applicant indicates that the proceeding imposing the house arrest and the court proceedings before the Basic Court, the Court of Appeals and the Supreme Court related to the establishment of the criminal liability, were unfair or arbitrary in order to satisfy the Constitutional Court that the Applicant has been denied any procedural guarantees, which would lead to a violation of the right guaranteed by Article 29 of the Constitution, in conjunction with Article 5 of the ECHR, and Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

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

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

Request for interim measure

119. The Court recalls that the Applicant also requests the Court to grant an interim measure, which would suspend the execution of the final judgment of the Supreme Court of 4 November 2019.

120. However, the Court has just concluded that the Applicant's Referral should be declared inadmissible on constitutional basis.

121. Therefore, in accordance with Article 27.1 of the Law, and pursuant to Rule 57 (4) (a) of the Rules of Procedure, the Applicant's request for interim measure should be rejected, as the latter cannot be subject of review, as the Referral was declared inadmissible.

Request for hearing

122. The Court noted, among other allegations in the Referral, that the Applicant also requested to hold a public hearing, stating that the Constitutional Court should convene a public hearing *"in order to clarify certain facts and evidence, since this was not done by the regular courts"*. In support of that request, the Applicant alleges *"that such a session would be of particular importance as it would provide the parties with an opportunity to explain a further issue in the treatment, as well as to answer possible questions that would affect the adoption of a fair decision"*.

123. In this regard, the Court refers to Article 20 of the Law:

> *"1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.*
>
> *2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files"*.

124. The Court notes that there is no reason invoked by the Applicant in support of this request.

125. The Court considers that the documents in the Referral are sufficient to decide this case in accordance with the text of Article 20, paragraph 2 of the Law (see, *mutatis mutandis*, Case of the Constitutional Court No. KI34/17, Applicant *Valdete Daka*, Judgment of 12 June 2017, paragraphs 108-110).

126. Therefore, the Applicant's request to hold an oral hearing was rejected as ungrounded.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Articles 20 and 27.1 of the Law and Rules 39 (2) and 57 (1) of the Rules of Procedure, in its session held on 10 June 2020, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for interim measure;

III. TO REJECT the request for holding a public hearing;

IV. TO NOTIFY this decision to the Parties;

V. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20 (4) of the Law;

VI. This Decision effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Selvete Gërxhaliu-Krasniqi	Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.