



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

Prishtina, 16 July 2020  
Ref. no.:RK 1579/20

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI163/19**

Applicant

**Hamid Kryeziu**

**Constitutional review of Judgment A.A. No. 555/2018 of the Court of Appeals of 8 May 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 Hamid Kryeziu, (hereinafter: the Applicant) from Gjilan.

## **Challenged decision**

2. The Applicant challenges Judgment A.A. No. 555/2018 of the Court of Appeals of 8 May 2019, as well as Decision A Rev. No. 5/2019 of the Supreme Court of Kosovo (hereinafter: the Supreme Court) of 4 September 2019.
3. Judgment AA. No. 555/2018 of the Court of Appeals of 8 May 2019 was served on the Applicant on 1 June 2019.

## **Subject matter**

4. The subject matter is the constitutional review of the challenged decisions, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 21 [General Principles], Article 24 [Equality Before the Law], Article 49 [Right to Work and Exercise the Profession], Article 54 [Judicial Protection of Rights] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution). The Applicant also alleges violation of international conventions without accurately specifying what international conventions he refers to.

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 26 September 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 4 October 2019, the President of the Court appointed Judge Safet Hoxha as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.
8. On 11 October 2019, the Court notified the Applicant about the registration of the Referral. By the same notification, the Court requested the Applicant to fill in the official referral form. On the same date, the Court sent a copy of the Referral to the Court of Appeals.
9. On 29 October 2019, the Applicant submitted to the Court the completed referral form.
10. On 9 January 2020, the Court requested the Basic Court in Prishtina to submit a copy of the acknowledgment of receipt indicating the date when the Applicant was served with Judgment AA. No. 555/2018 of the Court of Appeals of 8 May 2019.

11. On 5 February 2020, the Applicant requested that the Court consider his Referral urgently.
12. On 25 February 2020, the Basic Court in Prishtina submitted to the Court the acknowledgment of receipt of Judgment AA. No. 555/2018 of the Court of Appeals, indicating 1 June 2019 as the date of service.
13. On 10 June 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**

14. On 26 August 2010, the Tax Administration of Kosovo (hereinafter: TAK) for the Gjilan region obliged the Applicant to pay the fine for non-payment of income tax for the period from April 2005 to June 2010.
15. On an unspecified date, the Applicant filed a complaint against the TAK decision on punishment with the TAK Complaints Department.
16. On 25 November 2010, the TAK Complaints Department, by Decision No. 444/2010 rejected the Applicant's complaint and upheld the decision on punishment.
17. On an unspecified date, the Applicant filed an appeal against the decision of the TAK Complaints Department with the Independent Review Board of Appeals of the Assembly of Kosovo (hereinafter IRB).
18. On 19 June 2013, the IRB, by Decision No. 240/2010-TAK, rejected the appeal of the Applicant and upheld the decision of the Complaints Department of TAK.
19. On 8 September 2013, the Applicant filed an appeal against the decision of the IRB with the Department for Administrative Matters of the Court of Appeals (hereinafter: the Court of Appeals).
20. On 14 March 2018, the Court of Appeals by Judgment AA. No. 243/2013 remanded the case for retrial and reconsideration to the Basic Court in Prishtina - Department for Administrative Matters - Fiscal Division, reasoning that, *"Law No. 04/L-102 on Amending and Supplementing the Law on Tax Administration and Procedures, Article 81. A., paragraph 1. which stipulates: "As of 1st January 2013, the Fiscal Division shall assume the competencies of the Independent Review Board, and shall be the first instance court to which an appeal against Appeal Division decisions shall be lodged [...] The Panel of the Court of Appeals, deciding on this administrative matter, within the meaning of the provisions mentioned above, annulled the challenged decision of the Independent Board for Review, No. A. no. 240/2010 TAK of 19.06.2013, obliging the court of first instance, Department for Administrative Matters - Fiscal Division, that in reinstatement, in the retrial in the court session, assesses the legality of the decision on Notification of Assessment of the Tax Administration - Gjilan Region, namely Decision No. 444/2010 of 25.11.2010"*

*of the Tax Administration of Kosovo- Complaints Department, as a disputed decision between the parties in this case of the administrative conflict“.*

21. On 5 September 2018, the Basic Court in Prishtina - Department for Administrative Matters - Fiscal Division (hereinafter: the Basic Court) by Judgment A. No. 460/18 rejected the Applicant's statement of claim and upheld Decision No. 444/2010 of the Complaints Department of TAK of 25.11.2010, with the reasoning, *“the court finds that in the inspection report dated 26.08.2010 are given the descriptions of the control periods for which the claimant has rented out his premises for 2008-2010, creating income from rent. The court considers such assessment of the rent tax as fair and law-based decision as the assessment is also based on contracts for leasing of business premises, notes of the activity of the inspector, initial interviews with the taxpayer of 13.08.2010. The court did not accept as grounded the claimant's claims that he had not been notified in time by TAK of his obligations arising from the lease of the premises. No legal provision in force stipulates as an obligation of TAK to notify each taxpayer in advance of his obligations. With the creation of obligations which have not been paid and declared in time, legally follow the sanctions in accordance with Articles 51 and 28 of Law 03/L-222 on Tax Administration and Procedures. [...] Based on the factual situation, the case file and the confrontation of evidence, the court finds that decision No. 444/2010 of 25.11.2010 of the Department of Complaints of the Tax Administration of Kosovo in Prishtina, is completely fair and based on the legal provisions in force“.*
22. On 24 October 2018, the Applicant filed an appeal against the Judgment of the Basic Court, challenging its legality, due to erroneous application of the legal provisions and erroneous and incomplete determination of the factual situation.
23. On 8 May 2019, the Court of Appeals, by Judgment A.A. No. 555/2018 rejected, as ungrounded, the appeal of the Applicant and upheld the judgment of the Basic Court in entirety, on the grounds that, *“based on the evidence administered in the first instance court, it was decided correctly and sufficient and convincing reasons were given for the decisive facts and legal grounds on which the judgment for rejecting the statement of claim of the claimant is based, because it is undoubtedly confirmed by the control report dated 26.08.2010 where the descriptions of the control period for which the claimant has leased his premises 2008-2010, realizing income from the lease and not declaring the tax obligations provided by Article 10 of Law 03/L-115 on Personal Income Tax “.*
24. On 5 June 2019 the Applicant filed a revision against the Judgment of the Court of Appeals with the Supreme Court.
25. On 4 September 2019, by Decision A Rev. No. 5/2019, the Supreme Court rejected as inadmissible the Applicant's revision against the judgment of the Court of Appeals on the grounds that, *“Taking into account the abovementioned provisions of the Law on Administrative Conflicts, this court found that against the final decision of the competent court for administrative matters of the second instance, the party may file a request*

*for extraordinary reconsideration of the court decision with the Supreme Court of Kosovo, while the public prosecutor may file a request for protection of legality. From what was said above, it results that against the final decision of the court competent for administrative matters of the second instance no revision can be filed, therefore, this court rejected the revision of the claimant as inadmissible”.*

### **Applicant's allegations**

26. The Applicant alleges that the regular courts have violated his rights guaranteed by Articles 21, 24, 31, 49 and 54 of the Constitution, the Applicant also mentions the violation of international conventions, without specifying what international conventions the Applicant refers to.
27. The Applicant alleges that *„I was not notified that the issue of taxes was transferred from UNMIK to TAK, nor did I know this until 24.04.2010, when I applied voluntarily and I was registered as a taxpayer. After five years, TAK took action to collect rent tax. It is the fault of TAK and not of all taxpayers. Lack of communication and information is a violation of human rights under Article 21 and Article 24 (1. 2)”.*
28. The Applicant further alleges that *“The Basic Court in Prishtina on 05.09.2018 held a session, which was neither a hearing session nor a main hearing, without the presence of the responding party, thus depriving me of the right to present the lawsuit orally”.*
29. The Applicant added that *„ The Complaints Department did not communicate at any time with the taxpayers, Article 77. Article 31 (1.4) was violated, the independent review board was unprofessional, as a simple social commission. The word of defense was interrupted to me and there were no minutes, the Basic Court in Prishtina on 05.09.2018 held a session, which was neither a hearing session nor a main hearing, without the presence of the responding party, thus depriving me of the right to present the claim orally. This is confirmed also by the minutes. Article 31 (4) has been violated”.*
30. The Applicant cites constitutional guarantees under Article 49 of the Constitution, claiming that *„ the guaranteed rights to life and work guaranteed by Article 49 of the Constitution has been violated by TAK, the Basic Court in Prishtina, the Court of Appeals of Kosovo and the Supreme Court of Kosovo even without complete and correct application of the legal provisions in force, as well as provisions from the field of TAK, as well as provisions from the field of procedure led by the Basic Court, the Court of Appeals and the Supreme Court of Kosovo“.*
31. According to the Applicant's allegations, *„The Supreme Court of Kosovo, by Decision A. Rev. No. 5/2019 of 04.09.2019, rejected the request for extraordinary reconsideration, as I requested revision and not extraordinary reconsideration. I think that the Supreme Court has violated Article 102 of Law No. 03/L-006, as the Court was obliged to invite me to correct the error. Articles 21 and 31 (1) have been violated to my detriment“.*



## Admissibility of the Referral

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

33. 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”.*

34. In addition, the Court refers to the admissibility requirements as further specified in the Law. In that regard, the Court first refers to Article 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...”.*

35. As to the fulfillment of these criteria, the Court considers that the Applicant is an authorized party and challenges an act of a public authority, namely Judgment [A.A. No. 555/2018] of the Court of Appeals, of 8 May 2019, after

having exhausted all legal remedies provided by law. The Applicant has also clarified the fundamental 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.

36. In addition, the Court examines whether the Applicant has met the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria based on which the Court may consider a Referral including the criterion that the referral is not manifestly ill-founded. Specifically, Rule 39 (2) of the Rules of Procedure establishes that:

*“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”.*

37. In this regard, the Court first of all recalls that the Applicant considers that due to the procedure by which he was punished for non-payment of tax liability, his rights guaranteed by Articles 21, 24, 31, 49 and 54 of the Constitution have been violated, as well as violations of international conventions, not accurately specifying what international conventions the Applicant refers to.

38. In this regard, the Court notes that the Applicant alleges a violation of a large number of articles of the Constitution, but in essence all allegations may be reduced to erroneous application of the law, namely violation of the rights guaranteed by Article 24, Article 31 of the Constitution, stating that,

- (i) Due to the Applicant’s previous non-notification about the tax debt, namely lack of communication, Article 24 of the Constitution has been violated to the Applicant,
- (ii) That the Basic Court held the hearing without the presence of the Applicant, as well as the TAK authorities did not communicate with him and thus he was denied the right guaranteed by Article 31 of the Constitution.
- (iii) That the regular courts have violated Article 49 of the Constitution by not applying the legal provisions in force in a complete, correct and proven way, such as the provisions in the field of TAK, as well as the provisions in the field of procedure.
- (iv) That the Supreme Court, by not instructing the Applicant to correct the error made when filing the revision, has violated the right guaranteed by Article 31 of the Constitution.

**(i) Regarding the allegation of violation of Article 24 of the Constitution, namely that the Applicant did not enjoy equal treatment**

39. The Court notes that the Applicant only mentioned the provision which guarantees the principle of equality before the court. However, the Applicant did not clearly state how the principle of equality before the court was violated.
40. The Court also notes that with regard to the Applicant's allegations that the notification of the Applicant about the amount of debt was the obligation of TAK, the Basic Court in Prishtina, in Judgment (A. No. 460/18) of 5 September 2018, reasoned that, *"no legal provision in force has defined as an obligation of TAK to notify each taxpayer in advance about his/her obligations. With the creation of obligations which have not been paid and declared in time, the accompanying sanctions in view of Articles 51 and 28 of Law 03/L-222 on Tax Administration and Procedures legally follow."*
41. The Court also notes that the Court of Appeals by Judgment (A.A. No. 555/2018) of 8 May 2019 upheld the judgment of the Basic Court and reasoned in detail that there was no legal obligation to notify the Applicant about the tax debt.
42. In this regard, the Court reiterates that dissatisfaction with a decision, or merely the mentioning of articles and provisions of the Constitution, does not suffice for the Applicant to file allegation of a constitutional violation. When alleging constitutional violations, the Applicant must present convincing and indisputable arguments to support the allegations, for the referral to be considered grounded. (see: case of the Constitutional Court no. KI198/13 Applicant: *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 13 March 2014).
43. In this regard, the Applicant has not presented any convincing arguments to establish that the alleged violations mentioned in the Referral represent constitutional violations (see: *Vanek v. Republic of Slovakia*, No. 53363/99, ECtHR, of 31 May 2005).
44. Therefore, the Court rejects these allegations of the Applicant, which he brought in connection with the violation of Article 24 of the Constitution, as ungrounded.

**(ii) Regarding the allegation of violation of Article 31 of the Constitution, namely that a) the Applicant was not present at the time of the decision on his appeal and b) the TAK authorities did not communicate with him**

**a) As to the Applicant's allegation that he was not present at the hearing of the Basic Court**

45. The allegations that the hearing of the Basic Court in which it was decided upon the Applicant's claim was held without his presence and that he was not given the opportunity to declare his claim, simply does not stand, because from the case file, as well as from the judgment itself (A. No. 460/18) of the Basic



Court in Prishtina of 5 September 2018, it is seen that the authorized representative of the Applicant S.D was present at the hearing, and that there he gave a statement in support of his claim.

**b) As to the Applicant's allegation that the TAK authorities did not communicate with him**

46. As noted above, the Applicant had the opportunity to raise this allegation before all instances of the regular courts, which he did, exercising his right to present his arguments and the right to regular and extraordinary legal remedies. In addition, the Court considers that the reasoning given by the Basic Court and the Court of Appeals, in response to the Applicant's allegations, is clear and fair.
47. The Court, analyzing allegations of violation of Article 31 of the Constitution, notes that the Applicant had the benefit of the conduct of the proceedings based on adversarial principle; at the various stages of those proceedings he was able to submit the arguments he considered relevant to his case, that he was given the opportunity to challenge effectively the arguments and evidence presented by TAK, and that all arguments, that were relevant for the resolution of his case, were heard and reviewed by the regular courts; that the factual and legal reasons against the challenged judgments were presented in detail; and that, in accordance with the circumstances of the case, viewed in their entirety, the proceedings were fair (see, for example: the case of the Constitutional Court No. KI42/16, Applicant: *Valdet Sutaj*, Resolution on Inadmissibility of 7 November 2016, paragraph 40).
48. With regard to the Applicant's allegations regarding the assessment of evidence and the conduct of proceedings, the Court emphasizes that it is not the task of the Constitutional Court to deal with errors of facts or law (legality), allegedly committed by the regular courts, unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
49. In this regard, the Court reiterates that the requirement of "fairness" as guaranteed by Article 31 of the Constitution covers the proceedings as a whole, and the question whether a person has had a "fair" trial is looked at way by cumulative analysis of all the stages, not merely of a particular incident or procedural defect; as a result, defects at one level may be put right at a later stage (see, for example: *Monnell and Morris v. the United Kingdom*, submission no. 9562/81; 9818/82, Judgment of 2 March 1987, paragraphs 55-70).
50. The Constitutional Court also reiterates that it does not act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see: *mutatis mutandis*, *Garcia Ruiz v. Spain*, no. 30544/96, ECHR, Judgment of 21 January 1999, paragraph 28; See also case of the Constitutional Court no. 70/11, Applicants: *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

51. The Constitutional Court can only consider whether the proceedings before the regular courts, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see: *inter alia*,, *Edwards v. United Kingdom*, no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991).
52. The Court considers that the proceedings before the regular courts, including the proceedings before the Supreme Court, were fair and reasoned (see: *Shub v. Lithuania*, No. 17064/06, ECtHR, decision of 30 June 2009).
53. In that regard, the Court considers that the Applicant was given the necessary opportunity to exercise his rights to defend himself within the meaning of Article 31 of the Constitution.
54. Therefore, the Court rejects these Applicant's allegations, which he brought in connection with the violation of Article 31 of the Constitution, as ungrounded.

**(iii) As to the allegation of violation of Article 49 of the Constitution**

55. The Court recalls that the Applicant alleges that TAK and the regular courts "*without application in a complete, correct and proven way of the legal provisions in force, as well as the provisions of the TAK field, but also the provisions of the procedure field*", have violated his rights guaranteed by Article 49 of the Constitution.
56. The Court notes that Article 49 [Right to Work and Exercise Profession] stipulates:
  - "1. *The right to work is guaranteed.*
  2. *Every person is free to choose his/her profession and occupation*".
57. Therefore, and based on the above, the Court finds that right to work is guaranteed, as long as the individual acts in accordance with applicable law governing this area. In the proceedings before the regular courts, it was found in several cases that the Applicant did not act in accordance with the applicable laws which regulate that concrete field. Therefore, there is no evidence that the Applicant has been deprived of the right to legal work.
58. With regard to the Applicant's allegations regarding the violation of the rights and freedoms guaranteed by Article 49 of the Constitution, the Court finds these allegations as ungrounded, because the Applicant has not sufficiently proved and substantiated his allegation.
59. The Court notes that it is the Applicant's obligation to substantiate his constitutional allegations, and submit *prima facie* evidence indicating a violation of the rights guaranteed by the Constitution and the ECHR (See: case of the Constitutional Court No. K119/14 and KI21/14, Applicants *Tafil Qorri and Mehdi Sylja*, of 5 December 2013).

60. Therefore, the Court rejects these allegations of the Applicant, which he brought in connection with the violation of Article 49 of the Constitution, as ungrounded.

**(iv) Regarding the allegation of violation of Article 31 of the Constitution due to the fact that the Supreme Court of Kosovo rejected the request for extraordinary reconsideration**

61. In the present case, the Court notes that the Supreme Court rejected the Applicant's request for revision for purely formal reasons, as it was not filed as required by the relevant articles of the Law on Administrative Conflicts, and, accordingly, the Supreme Court did not specifically deal with the very essence of the Applicant's Referral.
62. In the present case, the Court notes that the Supreme Court has provided clear and sufficient reasons for its findings and conclusions, explaining in detail to the Applicant that after the final decision of the Court of Appeals in the administrative conflict, the decision becomes final and that against such a decision the request for protection of legality and a request for extraordinary reconsideration of the court decision may be filed, but not a request for revision as required by the Applicant.
63. Therefore, the Court notes that in accordance with applicable law, the Applicant's allegations (regarding the Supreme Court's obligation to invite the Applicant to correct the error, namely to file another form of claim) have no legal basis.
64. With regard to the other allegations of the Applicant regarding the violation of the rights and freedoms guaranteed by the Constitution (namely Articles 21 and 54), the Court also found them as ungrounded, because the Applicant only mentions these articles of the Constitution without giving any valid argument or evidence to support and justify the alleged violations.
65. Therefore, the Court rejects all the Applicant's allegations pertaining to erroneous application of the law, as well as the manner in which his request was rejected, and which he brought in connection with violation of Article 31 of the Constitution, as ungrounded.

**Conclusion**

66. Taking into account the allegations filed by the Applicant and the facts stated by him, the Court, based on the standards established in the case law of the Court in similar cases, as well as in the case law of the ECtHR, finds that the Applicant has not sufficiently proved and substantiated his allegations regarding the violation of fundamental rights and freedoms guaranteed by the Constitution.
67. Therefore, in accordance with Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis and, therefore, the Referral is to be declared inadmissible.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, Article 20 of the Law, and in accordance with Rule 39 (2) of the Rules of Procedure, on 10 June 2019, unanimously

### **DECIDES**

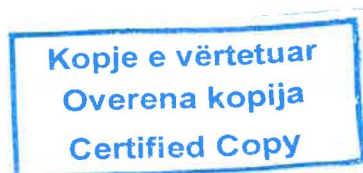
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Safet Hoxha

Arta Rama-Hajrizi



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