



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

---

Prishtina, on 24 July 2020  
Ref.No.:RK 1589/20

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI176/19**

Applicant

**Liri Bibaj**

**Constitutional review of Judgment PML. No. 107/19 of the Supreme Court, of 14 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 Liri Bibaj, residing in Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the constitutionality of Judgment PML. No. 107/19, of the Supreme Court of 14 May 2019 (hereinafter: the challenged Judgment), which was served on him on 3 June 2019.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights guaranteed by Articles: 3 and 24 [Equality Before the Law], 31 [Right to Trial Fair and Impartial Trial], and 46 [Protection of Property], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 of the European Convention on Human Rights (hereinafter: ECHR), as well as Article 10 of the Universal Declaration of Human Rights (hereinafter: the UDHR).

## **Legal basis**

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

## **Proceedings before the Constitutional Court**

5. On 1 October 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 4 October 2019, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi, as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha (members).
7. On 8 October 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court. On the same date, the Basic Court in Prishtina was requested to provide the acknowledgment of receipt as an evidence of the receipt of the challenged Judgment by the Applicant.
8. On 11 October 2019, the Basic Court in Prishtina notified the Court that the challenged Judgment was served on the Applicant on 3 June 2019.
9. On 10 June 2020, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

## Summary of facts

10. On 12 June 2013, the Police Inspectorate of Kosovo filed a criminal report with the Basic Prosecution in Prishtina, against Z.T. and the Applicant due to a grounded suspicion of committing the criminal offense of “abusing official position or authority” under Article 422 of the Criminal Code of the Republic of Kosovo (hereinafter: CCRK).
11. On 3 February 2014, the Basic Prosecution in Prishtina rendered Decision to initiate investigations against Mr. Z.T. and the Applicant due to the existence of a grounded suspicion that the latter in the capacity of official person during the implementation of contract no. 214/12009/211 of 16 May 2012, regarding the Kosovo Police and the MSS company for the installation of static toilets and waste containers in the regions of the Kosovo Police, have made payments to the account of the MSS company for services which were not provided by the contract.
12. On 30 April 2018, the Basic Court in Prishtina, Department for Serious Crimes, by Judgment PKR. No. 210/2014, i) finds the Applicant guilty of the criminal offense charged and sentences him to six (6) months imprisonment, a sentence which would not be executed if the Applicant does not commit any other criminal offense within a period of one (1) year, ii) obliged the Applicant to pay the total amount of 490.56 euro on behalf of the costs of the court proceedings, and iii) rejected the request of the injured party (Kosovo Police) for compensation of material damages caused, as the company MSS had fully returned the amount collected which was the subject of the trial.
13. On 18 May 2018, the Applicant appealed the Judgment of the Basic Court in Prishtina, of 30 April 2018, to the Court of Appeals on the grounds of essential violations of the provisions of the criminal law and erroneous and incomplete determination of the factual situation, with proposal that: *“...the appellate judgment should be annulled so that the suspect is acquitted of the indictment (Article 402, item 2, of the CPC) or that the appeal be approved and the case be remanded for retrial and reconsideration (Article 398, item 3, of the CCK) with proposal that when a hearing of the Appellate Panel is scheduled to review the complaint of the accused and his defense counsel to be notified about the time of the hearing because they want to participate in the hearing (Article 390 of the CPCK).”*
14. On 10 April 2018, the Court of Appeals by Judgment PAKR. No. 286/2018, rejected the appeal filed by the Applicant’s defense counsel and upheld the Judgment of the Basic Court in Prishtina of 30 April 2018, with reasoning: *“...the allegations that in this case there is no damage and that even with financial expertise such a thing has not been proven are completely ungrounded. This is due to the fact that according to the financial expertise the damage caused is in the amount of € 2,495.96 while from the fact that the contractor “MSS” has returned these funds ... it cannot be concluded that in this case there is no damage caused. Given the abovementioned circumstances, it turns out that the conclusion of the first instance court that the defendants as co-executors have committed the criminal offense for which*

*they are charged is correct, therefore the allegations of their defence counsels that the criminal law has been violated in their elements are not grounded”.*

15. On 23 July 2018, the Applicant filed a request for protection of legality with the Supreme Court, due to allegations of violation of criminal law and essential violations of the provisions of criminal procedure, with the proposal that he be acquitted as it has been proven that he has committed the criminal offense for which he was charged and convicted, or the challenged judgments are annulled and the case is remanded for retrial.
16. On 14 May 2019, the Supreme Court rendered Judgment Pml. No. 107/2019, which rejected as ungrounded the request for protection of legality, exercised by the Applicant, against the Judgments of the first and second instance courts, reasoning that the criminal law was applied correctly because in the actions of the Applicant it was found that the elements of the criminal offense lie in co-perpetration abuse of official position or authority from Article 422 paragraph 1 in conjunction with Article 31 of the CCRK.

### **Applicant's allegations**

17. The Applicant alleges that the challenged Judgment and other decisions of the lower instance courts violated his rights guaranteed by Articles 3 and 24 of the Constitution, because he *“was not treated equally with other procedural parties”*.
18. The Applicant also alleges that the challenged Judgment violates his right to a “fair and impartial trial”, which is guaranteed by Article 31 of the Constitution, because: “the courts have not examined the evidence and facts provided by him”.
19. The Applicant further alleges that in his case the proceedings in the regular courts were not fair in their entirety. In this regard he refers to the case of the Court KI49/11, paragraph 34, where the Court referred to the Judgment of the European Court of Human Rights (hereinafter: the ECtHR), *Edwards v. the United Kingdom* of 10 July 1991 paragraph 3. Furthermore, the Applicant alleges that the rights guaranteed by Article 6 of the ECHR and Article 10 of the UDHR have also been violated by the decisions of the regular courts.
20. In addition, the Applicant alleges a violation of Article 46 of the Constitution, for which he has not provided any concrete reasoning.
21. Finally, the Applicant requests the Court to find constitutional violations of a fair and impartial trial and violations of applicable laws. The Applicant also requests the Court that: *“...judgments and decisions to be repealed and the case to be remanded in accordance with applicable laws, in a regular and impartial procedure”*.

## Admissibility of the Referral

22. The Court first examines whether the admissibility requirements established in the Constitution, and further specified in the Law in the Rules of Procedure have been met.

23. 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.”*

*[...]*

24. The Court also 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...”.*

25. With regard to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party; has exhausted the available legal remedies;

has specified the acts of the public authority which he challenges in Court and has also clarified the constitutional rights and freedoms which he alleges to have been violated by the challenged decisions, in accordance with Article 48 of the Law, and has submitted the Referral in time, in accordance with Article 49 of the Law.

26. In addition, the Court considers whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes the criteria based on which the Court may consider a referral, including the requirement that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) stipulates 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.”*

27. The Court recalls that the Applicant alleges that the challenged Judgment of the Supreme Court and the decisions of the lower instance courts violated his rights guaranteed by Articles 3, 24, 31 and 46 of the Constitution and Article 6 of the ECHR, as well as Article 10 of the UDHR.
28. The Court initially recalls that in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, *“human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”*.

***As to the allegation of violation of “a fair trial”***

29. The Court notes that the Applicant links the allegations of violation of his rights guaranteed by Article 31 of the Constitution, Article 6 of the ECHR and Article 10 of the UDHR with two issues: i) how the regular courts administered the evidence and the facts of the case and ii) that the proceedings as a whole were not fair.
30. With regard to the *administration and burden of proof*, the Court recalls the case law of the ECtHR which has established that the taking of evidence is governed primarily by the rules of domestic law and that it is in principle for the national courts to assess the evidence before them. The Court’s task under the Convention is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair. These rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him, either when he was making his statements or at a later stage of the proceedings (see, *Saïdi v. France*, Decision of 20 September 1993, series A no. 261-C, p. 56 § 43, and *AM v. Italy*, No. 37019/97, § 25, ECHR 1999 - IX).
31. Furthermore, the Court more specifically refers to its case law, namely cases KI10/15 and KI12/15, with Applicants *Shpresim Uka and Bekim Syl*a, Resolution on Inadmissibility, of 7 July 2016, joint cases KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, with Applicants *Arben Gjukaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and*



*Sami Lushtaku*, Resolution on inadmissibility, of 26 September 2016, where regarding the burden of proof, the Constitutional Court found that “it is beyond its jurisdiction to assess the quality of the conclusions of the courts regarding the assessment of the evidence, unless it is manifestly arbitrary. The Constitutional Court shall also not interfere in the way the courts have admitted the evidence as evidentiary material and will not interfere with the discretion of the court on assessing its probative value. It is the exclusive role of the regular courts, even when the statements of the witnesses (...) appear to be in conflict (see, similarly, the case of the ECtHR, *Doorson v. the Netherlands*, Judgment of 6 March 1996, published in report no. 1996-II, paragraph 78).

32. More specifically, the ECtHR has pointed out that when the evidence is very sustainable and not questioned at all, the need for further evidence in support of it becomes less (see the cases *Bykov v. Russia* [GC], application no. 4378/02, Judgment of 10 March 2009, paragraph 89, and other references cited therein; *Jalloh v. Germany*, application no. 54810/00 [GC], Judgment of 11 July 2006, paragraph 96). Consequently, the ECtHR has emphasized that it also attaches importance to the point whether or not the evidence in question was decisive for the outcome of the criminal proceedings (see *Gäfgen v. Germany* [GC], application no. 22978/05, Judgment of 1 June 2010, paragraph 164).
33. Therefore, whether the proceedings were fair as a whole, it should be borne in mind whether the rights of the defense have been respected, namely whether the Applicant had the opportunity to challenge the lawfulness of the evidence and to object to the use of such evidence (see, ECtHR Judgment, *Szilagyi v. Romania*, application 30164/04 of 17 December 2013; see also the case of Court KI34/18, Applicant *Albert Berisha*, Resolution on Inadmissibility, of 23 May 2018, paragraph 63).
34. The Court, referring to the proceedings before the regular courts, in particular with regard to the administration of evidence, refers to the relevant parts of the challenged Judgment of the Supreme Court, which states:

*“From the case file and the challenged judgments it results that the judgment of the first instance and that of the second instance regarding the factual situation are based on the evidence presented in the court hearing in the procedure of the first instance, of contract no. 214/112/009/211 of 16.05.2012 concluded between the Kosovo Police - Directorate for the management of Kosovo police facilities and the Company “MSS” in Pristina, for the installation of static toilets and waste containers, the statement of witness B.M., invoices for payment, presented by the company “MSS” and financial expertise by the forensic financial expert - legal auditor R.B.”*

35. Furthermore, the Court, with regard to the regularity of the proceedings as a whole, notes that the Supreme Court, by the challenged Judgment, reasoned:

*“The Supreme Court of Kosovo, ... considers that the criminal law was correctly applied when in the actions of the convict Liri Bibaj it was*

*ascertained that the elements of the criminal offense lie in co-perpetration abuse of official position or authority from Article 422 par.1 in conjunction with Article 31 of CCRK, because this convict even though he was aware of the conditions defined in the contract which is the object of the accusation and despite the fact that, as he himself stated, he noticed shortcomings and had dilemmas about the positions that should be applied for billing and payments on behalf of services rendered and on behalf of the MSS company, at prices that were higher than those to be applied respectively had consistently requested that payments be allowed on behalf of static toilet equipment, even though he was aware that this way of billing could be applied only once and that when placing toilets at certain points, therefore, the defense counsel's allegations that the judgments contain violation of criminal law are ungrounded, as the challenged judgments relied on administered evidence".*

36. In this regard, the Court considers that the Supreme Court, which *ex officio* takes care of the legality of the decisions of the lower instance courts, has responded in full to the Applicant's allegations, giving comprehensive and detailed reasons in his request for protection of legality. The Court further considers that the Applicant had sufficient opportunity to present to the regular courts all allegations of violation of his rights. Furthermore, the Court considers that his arguments have been duly heard and duly examined by the regular courts, in particular the Supreme Court. Furthermore, the Court notes that the proceedings conducted before the regular courts, viewed in their entirety, were not in any way unfair or arbitrary (see case of the ECtHR *Shub v Lithuania*, no. 17064/06, Judgment of 30 June 2009).
37. In fact, the Court considers that the Applicant's allegation regarding the administration of evidence raises issues of fact and law (legality) and as such falls within the scope of the courts of regular jurisdiction. No constitutional issue has been substantiated and proved by the Applicant in relation to this allegation.
38. In this regard, the Court has reiterated that it is not its role to deal with errors of facts or law allegedly committed by the regular courts (legality), unless and in so far as they may have infringed the rights and freedoms protected by the Constitution (constitutionality). It cannot itself assess the law that lead a regular court to issue one decision instead of another. If it were different, the Court would act as a "*fourth instance*" court which would result in exceeding the limitations provided for by its jurisdiction.
39. In fact, the role of regular courts is to interpret and apply the relevant rules of procedural and substantive law (see, the ECtHR case *Perlala v. Greece*, paragraph 25 and *Khan v. the United Kingdom*, paragraph 34, and see also cases: KI70/11, Applicants *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility of 16 December 2011; and KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility, of 18 December 2017, paragraph 41). The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments.



40. The Court further notes that the Applicant in support of his allegations refers to case KI49/11, Resolution on Inadmissibility, of 5 December 2012, paragraph 34, where the Court stated: *“Furthermore, the Referral does not indicate that the Supreme Court has acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to replace its determination of facts with those of the regular courts, as a general rule, it is the task of these courts to assess the evidence before them. The task of the Constitutional Court is to verify whether the procedures in the regular courts were fair in their entirety, including the way this evidence was taken.”* In this context, the Court referred to the case *Edwards v. the United Kingdom*, Judgment of 10 July 1991, paragraph 3, to which the Applicant also refers. The Court notes that the cases to which the Applicant has referred refer precisely to the reasons for declaring a Referral as manifestly ill-founded and consequently inadmissible, emphasizing that it is not its role to assess the facts and evidence of the case..
41. In addition, the Court has just assessed as above (paragraph 36) that the proceedings in their entirety conducted before the regular courts were not unfair and arbitrary, and therefore do not consider it necessary to deal with this Applicant’s allegation separately.

***Regarding the allegations regarding “equality before the law” and “protection of property”***

42. With regard to the allegation of a violation of the principle of equality before the law and of the protection of property, the Court notes that apart from the fact that the Applicant alleges that he was not treated equally with the other procedural parties, he further does not argue how and why the violation of Articles 3 and 24 of the Constitution occurred. The Court also notes that the Applicant, in relation to the allegation of violation of Article 46 of the Constitution, apart from the fact referred to in this Article, does not elaborate further on his allegation. In this regard, the Court recalls that it has consistently emphasized that the mere mentioning of articles of the Constitution and the ECHR is not sufficient to build a substantiated allegation of a constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (see, in this context, the cases of the Court, KI187/18 and KI11/19, Applicant: *Muhamet Idrizi*, Resolution on Inadmissibility, 29 July 2019, paragraph 73, and most recently case KI125/19, Applicant: *Ismajl Bajgora*, Resolution on Inadmissibility of 11 March 2020, paragraph 63).
43. Consequently, based on its case law, the Court will not further examine these allegations (see, in this context, the cases of Court KI136/14, Applicant: *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33 and KI187/18 and 11/19, Applicant *Muhamet Idrizi*, Judgment of 29 July 2019, paragraph 73).
44. Therefore, from the elaborations above, the Court notes that the Applicant merely does not agree with the outcome of the proceedings before the regular courts. However, the dissatisfaction of the Applicants with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim of violation of the constitutional rights (see Resolution on Inadmissibility of the

Constitutional Court in case KI25/11, Applicant *Shaban Gojnovci*, of 28 May 2012, paragraph 28; see also case KI56/17, Applicant *Lumturije Murtezaj*, Resolution of Inadmissibility of 18 December 2017, paragraph 42).

## **Conclusion**

45. In sum, the Court considers that the Applicant failed to show and prove that the proceedings before the regular courts, namely the Supreme Court, were unfair or arbitrary, or that his rights and freedoms protected by the Constitution, namely Articles 3, 24, 31 and 46 of the Constitution, Article 6 of the ECHR and Article 10 of the UDHR have been violated.
46. Therefore, the Court concludes that the Applicant's Referral is manifestly ill-founded on constitutional basis and in accordance with Rule 39 (2) of the Rules of Procedure, it is to be declared inadmissible.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law, and Rule 39 (2) and 59 (2) of the Rules of Procedure, on 10 June 2020, unanimously

## **DECIDES**

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

**Judge Rapporteur**

**President of the Constitutional Court**

Selvete Gërxheliu-Krasniqi

Arta Rama-Hajrizi

Kopje e vërtetuar  
Overena kopija  
Certified Copy

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