



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

Prishtina, on 28 August 2020  
Ref.No.:RK 1615/20

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI122/19**

Applicant

**F.M.**

**Constitutional review of Judgment PML. No. 49/2019 of the Supreme Court of Kosovo, of 7 March 2019 in conjunction with Judgment PA1. No. 358/2018 of the Court of Appeals of Kosovo of 19 November 2018 and Judgment P. No. 927/14 of the Basic Court in Prishtina, of 15 January 2018**

### **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 is submitted by F.M., (hereinafter: the Applicant), who is represented by Flutra Hoxha, a lawyer in Prishtina.

## **Challenged decision**

2. The Applicant challenges the constitutionality of the Judgment PML. No. 49/2019, of 7 March 2019 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), in conjunction with Judgment PA1. No. 358/2018 of 19 November 2018 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) and Judgment P. No. 927/14, of 15 January 2018 of the Basic Court in Prishtina (hereinafter: the Basic Court).
3. The Applicant was served with Judgment PML. No. 49/2019, of the Supreme Court, of 7 March 2019 on 30 March 2019.

## **Subject matter**

4. The subject matter is the constitutional review of the challenged decisions, which allegedly violated the Applicant's fundamental rights and freedoms guaranteed by Article 24 [Equality Before the Law] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 14 (Prohibition of discrimination) of the European Convention on Human Rights (hereinafter: the ECHR) and Article 7 of the Universal Declaration of Human Rights (hereinafter: the UDHR), Article 29 [Right to Liberty and Security] of the Constitution in conjunction with Article 5 (Right to liberty and security) of the ECHR, Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, as well as Articles 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution.

## **Legal basis**

5. The Referral is based on paragraph 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**

6. On 24 July 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 31 July 2019, 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).
8. On 19 August 2019, the Court notified the Applicant about the registration of the Referral and requested him to submit the acknowledgment of receipt, which proves when he received the challenged decision of the Supreme Court. On the same date, the Court sent a copy of the Referral to the Supreme Court of Kosovo.

9. On 30 August 2019, the Applicant submitted to the Court the acknowledgment of receipt, which proves that he was served with the challenged decision on 30 March 2019.
10. On 24 January 2020, the Court requested the Applicant to submit additional documents, namely a copy of the Judgment of the Court of Appeals, a copy of the appeal, submitted to the Court of Appeals, as well as a copy of the request for protection of legality.
11. On 3 February 2020, the Applicant submitted the requested documents to the Court.
12. On 12 February 2020, the Court requested from the Applicant information regarding the status of his request for review of the criminal proceedings.
13. On 26 February 2020, the Applicant submitted to the Court the requested information and relevant documents regarding his request for review of the criminal proceedings.
14. On 9 July 2020, after having considered the Report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral. On the same date, the full Court examined and decided not to disclose the identity of the Applicant.

### **Summary of facts**

15. On 13 February 2012, the former District Public Prosecutor's Office, through Indictment PP. No. 510/05/2011 accused the Applicant of committing two criminal offenses, namely (i) "*Attempted unlawful termination of pregnancy*" under Article 152 paragraph 2, in conjunction with Article 20 of the Provisional Criminal Code of Kosovo (hereinafter: the PCCK); and (ii) "*Light bodily injury*" under Article 153 paragraph 1 in conjunction with subparagraph 1 of the CCK. According to the case file, in this case, the Applicant was accused of having committed this criminal offense against person X, with whom he had been in a relationship for a certain period of time.
16. In the main trial before the Basic Court, the Applicant was defended in silence. However, the Applicant's defense counsel during the main hearing requested that an acquittal judgment be rendered on the grounds that for the criminal offense "*Light bodily injury*" an absolute statute of limitations was reached while for the other criminal offense "*Attempted unlawful termination of pregnancy*" based on the additional clarification of the forensic expertise, it was not established that the Applicant committed this criminal offense. Based on the case file, the Applicant's defense counsel filed an objection regarding the testimony of person X, which in the proceedings had the capacity of the injured party as well as other evidence administered by this Court.
17. On 15 January 2018, the Basic Court by Judgment P. No. 927/14:

(i) found the Applicant guilty of committing the criminal offense of *Attempted unlawful termination of pregnancy* under Article 152, paragraph 2, in conjunction with Article 20 of the CCK, sentencing him to imprisonment for a term of one (1) year; (ii) rejected the indictment relating to the criminal offense of *Light bodily injury* under Article 153 paragraph 1 in conjunction with sub-paragraph 1 of the CCK due to the absolute statute of limitations for criminal prosecution; and (iii) person X, in the capacity of the injured party instructed him in civil dispute.

18. The Basic Court found that the Applicant *"in order to terminate the pregnancy, physically abused the injured party [person X] with whom he was in a love affair by tying her hands with handcuffs, legs with straps, and closing her mouth with handkerchief, and then hit her with fists on various parts of the body, including the lower part of the back, in order to terminate the pregnancy, which was unwanted for him, without the consent of the injured party, who initially threatened her over the phone. in order for the injured party to abort the child, but this termination has remained an attempt"*. Finally, the Basic Court found that the Applicant, with the intention of terminating the pregnancy, and as a result of the physical violence exercised against the injured party X, had committed the criminal offense of termination of pregnancy, which had remained an attempt.
19. The Basic Court, during the review and assessment of the case, had administered the following evidence: (i) the testimony of the injured party (person X); (ii) the report of the Emergency Center no. 20158, dated 6 July 2011; (iii) Report from UCK, Clinic of Gynecology, of 6 July 2011 (iv) report on physical examination, of 6 July 2011 prepared by forensic expert A.G.; (v) report no. PP-510/5/2011, dated 23 December 2011, prepared by forensic expert A.G.; (vi) photo documentation; (vii) confidential photo documentation, made during the forensic examination, of 6 July 2011; and (viii) SMS from the report of Post Telecom of Kosovo (hereinafter: PTK), of 8 August 2011.
20. On an unspecified date, the Applicant filed an appeal against Judgment P. No. 927/14, of 15 January 2018, of the Basic Court in the Court of Appeals, alleging essential violations of the provisions of criminal procedure, incomplete and erroneous determination of factual situation, as well as violations of criminal law.
21. The Applicant in his appeal, regarding (i) the allegation of essential violation of the provisions of the criminal procedure specified that the enacting clause of the Judgment of the Basic Court was incomprehensible and contradictory to the reasoning given by this Court. The Applicant specifically alleged that the Judgment of the Basic Court was based only on the testimony of the injured party X, which is contrary to the Applicant's defense, and on the material evidence of the medical and forensic institutions, including the report of PTK sms. As for (ii) allegations of incomplete and erroneous determination of the factual situation and violation of criminal law, the Applicant stated that he did not commit the criminal offense for which he was found guilty. The Applicant further alleged that the Basic Court administered the evidence in a biased and subjective manner, and consequently this Court violated the criminal law.



22. On 19 November 2018, the Court of Appeals by Judgment PA1. No. 358/2018 rejected as ungrounded the Applicant's appeal and upheld Judgment P. No. 927/14, of the Basic Court, of 15 January 2018.
23. Initially, the Court of Appeals found that the challenged Judgment did not contain essential violation of the criminal provisions, with the reasoning that the Judgment was clear, contains convincing reasoning in relation to the decisive facts, in particular in relation to the establishment of a criminal offense. The Court of Appeals further found that the challenged judgment based its reasoning and assessment on the testimony of the injured party, forensic expertise, as well as other evidence and evidence, administered by the Basic Court, which the latter has listed in its judgment.
24. Secondly, with regard to the Applicant's allegation of erroneous determination of factual situation and violation of criminal law, the Court of Appeals found that his allegations are ungrounded. With regard to the determination of the factual situation, the Court of Appeals reasoned that: *"From all this evidence administered and correctly assessed by the court of first instance but also from the testimony of the witness, there is no doubt that the criminal offense was committed by [the Applicant], as [the Applicant] used violence on the critical night but also intimidation of the injured party with the claim of termination of pregnancy, therefore the appealing allegations of the defense counsel that the factual situation in this criminal case has not been established is not true"*.
25. Thirdly, with regard to the allegation of a violation of the criminal law, the Court of Appeals, confirming the fact that the Applicant was found guilty of the criminal offense of *"Unlawful termination of pregnancy"*, considered that the Basic Court correctly applied the criminal law. Furthermore, regarding the Applicant's specific allegation that this criminal offense can be committed only by authorized persons, namely specialist doctors or midwives, the Court of Appeals confirmed that *"[...] according to the legal provisions in force, in addition to health workers, the criminal offense can be committed by any other person who attempts to terminate a pregnancy without the consent of the wife"*.
26. Finally, with regard to the sentencing decision, the Court of Appeals found that with the sentence imposed on the Applicant by the Basic Court for committing a criminal offense, for which, according to the provisions of the CCK, a sentence of one (1) up to eight (8) years of imprisonment was foreseen, the purpose of the punishment, provided by Article 41 of the CCK, will be achieved.
27. On an unspecified date, the Applicant filed a request for protection of legality against Judgment P. No. 927/14 of the Basic Court and Judgment PA1. No. 358/2018 of the Court of Appeals, alleging essential violations of the provisions of criminal procedure and violation of criminal law with the proposal that the challenged judgments be annulled and the case be remanded for retrial.
28. The Applicant, regarding the allegation of violation of the provisions of the criminal procedure, stated that the challenged judgments were based on the testimony of the injured party, which evidence is contrary to the material

evidence. Furthermore, the Applicant specifies that the Judgment of the Basic Court did not mention the Applicant's defense, submitted to the Prosecution on 7 September 2011, and also did not mention the fact that the Applicant defended himself in the main hearing session at the Basic Court in silence. The Applicant also alleged that the Court of Appeals did not give importance to the Applicant's defence and the forensic expert report.

29. Regarding the allegation of violation of the criminal law, the Applicant stated that the Basic Court found him guilty of the offense "*Attempted unlawful termination of pregnancy*" under Article 152, paragraph 2 in conjunction with Article 20 of the CCK, although this provision, according to him, sanctions the actions of persons who are authorized to terminate pregnancy, namely doctors or midwives.
30. On 15 February 2019, the State Prosecutor through the submission KLMP. II. No. 36/2019, proposed to the Supreme Court that the request for protection of legality, submitted by the Applicant be rejected as ungrounded.
31. On 7 March 2019, the Supreme Court by Judgment PML. No. 49/2019 rejected the request for protection of legality, filed by the Applicant as ungrounded.
32. The Supreme Court, in relation to the Applicant's allegation of violation of the provisions of the criminal procedure, reasoned that "[...] *The first instance judgment was not only based on the statement of the injured party [X], but also on other evidence that was in the court hearing [...]. The reasoning assesses all the evidence administered and does not support the fact that both judgments are based on only one piece of evidence - the statement of the injured party*". According to the Supreme Court, the Basic Court took into account other evidence, namely the reports of relevant medical institutions and forensic expertise, including material evidence of electronic communication, which proved that the pregnancy of the injured party was unwanted. Further, the Supreme Court also reasoned that the Basic Court had not considered his defense in the Prosecution because the Basic Court in accordance with Article 346, paragraph 1 of the Criminal Procedure Code of Kosovo (hereinafter: CPCK) respected the right of the Applicant to defend himself in silence during the court hearings of this Court.
33. As to the Applicant's allegations regarding the violation of the criminal law, namely Article 152 [Unlawful Termination of Pregnancy], paragraph 2 in conjunction with Article 20 [Attempt] of the CCK, the Supreme Court reasoned: "[...] *doctors and midwives are not the only persons who can commit this criminal offense as alleged in the Referral, but this criminal offense can be committed by anyone, and in this case [the Applicant] has attempted to terminate the unwanted pregnancy for him, without the consent of the injured party [...] This is evidenced by the injuries [...] caused by the violent blows with a strong tool [defense] [...]*".
34. Based on the case file, it results that the Applicant, at the time of submission of the Referral, was serving a prison sentence imposed by the Judgment of the Basic Court in a correctional facility in the Republic of Kosovo.

35. Furthermore, based on the submissions submitted by the Applicant, it results that on 9 August 2019, the latter filed a request for review of the criminal proceedings with the Basic Court in Prishtina. By notifying the Applicant on 26 February 2020, and submitting a copy of the Decision KP. No. 1472/2019, of 20 September 2019, the Basic Court in Prishtina rejected the Applicant's request for review of the criminal proceedings as ungrounded.

### **Applicant's allegations**

36. The Applicant alleges that by the Judgment of the Supreme Court, in conjunction with Judgment PA1. No. 358/2018, of the Court of Appeals of 19 November 2018 and Judgment P. No. 927/14, of the Basic Court in Prishtina, of 15 January 2018, his rights and freedoms guaranteed by Article 24 [Equality Before the Law] of Constitution in conjunction with Article 14 (Prohibition of discrimination) of the ECHR and Article 7 of the UDHR, Article 29 [Right to Liberty and Security] of the Constitution in conjunction with Article 5 (Right to liberty and security) of the ECHR Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, as well as Article 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution.
37. The Court recalls that the Applicant, in addition to the final Judgment of the Supreme Court, specifically challenges the Judgments of the Basic Court and the Court of Appeals.
38. The Applicant essentially alleges that the administration of criminal evidence was not properly conducted in the Applicant's case. Second, the Applicant states that in the proceedings before the Basic Court the Applicant was defended in silence.
39. With regard to the allegation of the administration of evidence, the Applicant states that the issue of *"taking of evidence lawfully constitutes an important aspect of respecting the right to a fair trial, provided by the Constitution and Article 6 of the ECHR"*. In this regard, the Applicant refers to the case law of the European Court of Human Rights (hereinafter: the ECtHR), namely the cases *Bykov v. Russia*, application no. 4378/02, Judgment of 10 March 2009], and *Van Mechelen and Others v. the Netherlands*, applications no. 21363/93, 21364/93, 21427/93, and 22056/93, Judgment of 23 April 1997.
40. With regard to this allegation, the Applicant *"[...] requests the Court to assess the legality of the procedural actions related to criminal evidence, obtaining, administering, verifying and assessing them, the means of seeking evidence and the whole process of proving, are provided by the provisions of the Criminal Code of Kosovo, which derive and the whole probation process, are provided by the provisions of the Criminal Code of Kosovo, which originate and are in full compliance with the Constitution, the European Convention on Human Rights and other international acts"*.
41. With regard to the allegation of defense in silence, the Applicant *"[...] the court's assessment of the defendant's silence during the defense (even though the lawyer had repeatedly denied committing the offense) should be made*

*with the same degree of credibility and without prejudice, but based on the elements resulting from the available evidence“.*

42. The Applicant alleges that the Court of Appeals did not take into account the exculpatory evidence presented by the Applicant. The Applicant specifies that *“The Court of Appeals, when deciding on the appeal of the defendant’s defense counsel, did not find it appropriate to go into more detail regarding the determinaton of factual situation, it did not take as a very important fact the acquittal evidence of the defendant during the conduct of the criminal proceedings. [...]”*.
43. The Applicant initially states that: *“Starting from the procedure in the first instance until the Judgment of the third instance - the Supreme Court, the rights of [the Applicant] for a fair trial has been violated [...]”*. In this regard, the Applicant alleges that *“the principle of a fair trial also includes the right of each party to be given a reasonable opportunity to present its case, provided that they do not place him in an unfavorable position vis-a -vis another party”*.
44. The Applicant further alleges that: *“The Supreme Court, acting as a court of third instance, did not provide clear legal constitutional reasons regarding the facts relevant for the issuance of a lawful decision, but very briefly assessed as ungrounded the appeals decisions of the Applicant”*.
45. The Applicant also specifies that: *“The Supreme Court decided the same as the Court of Appeals, disregarding the alleged violations of the criminal procedure and disregarding the violations which affected the legality of the court decision. Based on the purpose of the request for protection of legality, as a legal remedy filed by the defense counsel of the applicant, the Supreme Court was obliged to remove the legal violations from the final decision on the sentence of the applicant. Having established procedural violations in the conducted court proceedings, the Supreme Court was able to annul the sentencing decision and order holding the court hearing (Article 439 of the Criminal Procedure Code of Kosovo)”*.
46. Finally, the Applicant reiterates that during the criminal proceedings before the regular courts *“The court has mostly protected the injured party [person x] and this care to protect her in public life has also been noticed from the institutional point of view, namely with the sentence of [the applicant] and gender discrimination that the court and the prosecution have done to him from the beginning throughout the procedure”*.
47. The Applicant states that *“[...] the right to a fair and impartial trial, as guaranteed by the Constitution of the Republic of Kosovo - Article 31, then by the ECHR, Articles 5 and 6, and Article 14”*.
48. According to the Applicant in his case, the Supreme Court violated the equality of arms in the proceedings because it outweighed the arguments of one party. In this regard the Applicant underlines that his main allegation relates to *“evidence for the determination of guilt”* especially in the pre-trial procedure and *“the length of the proceedings of 7 years- of such an offense”*.



49. The Applicant, alleging a violation of the above-mentioned Articles of the Constitution, and the ECHR clarifies that *"The alleged articles were violated, due to the adoption of an unfair Judgment by the local Court, the violation of the rights to submit relevant evidence, the fairness of the procedure, that the intervention of this nature is not proportionate and sufficient to provide the applicant with procedural guarantees that are necessary in a democratic society and respect for the protection of human rights and freedoms, guaranteed by the Constitution and international acts"*.
50. Finally, the Applicant requests the Court to deal with his case urgently and requests to: (i) declare the Referral admissible; (ii) find a violation of the Applicant's rights guaranteed by Articles 24, 29, 31, 53 and 54 of the Constitution; Articles 5, 6, 14 of the ECHR; and Article 7 of the UDHR.

### **Relevant constitutional and legal provisions**

#### **Constitution of the Republic of Kosovo**

##### **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.*
2. *Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*
3. *Trials shall be open to the public except in limited circumstances in which the court determines that in the interest of justice the public or the media should be excluded because their presence would endanger public order, national security, the interests of minors or the privacy of parties in the process in accordance with law.*
4. *Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.*
5. *Everyone charged with a criminal offense is presumed innocent until proven guilty according to law.*

#### **European Convention on Human Rights**

##### **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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion*



*of the court in special circumstances where publicity would prejudice the interests of justice.*

*2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.*

*3. Everyone charged with a criminal offence has the following minimum rights:*

*(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*

*(b) to have adequate time and facilities for the preparation of his defence;*

*(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*

*(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

*(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

#### Article 14 (Prohibition of discrimination)

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

### **Universal Declaration of Human Rights**

#### Article 7

*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

### **Provisional Criminal Code of Kosovo (UNMIK/REG/2003/25)**

#### Article 20

#### ATTEMPT

*(1) Whoever intentionally takes action toward the commission of an offense but the action is not completed or the elements of the intended offense are not fulfilled, is considered that he or she has attempted to commit a criminal offense.*

#### Article 152

#### UNLAWFUL TERMINATION OF PREGNANCY

*(1) Whoever, with the consent of the pregnant woman, but in violation of the Law for Termination of Pregnancy terminates a pregnancy, commences to terminate a pregnancy, or assists in terminating a pregnancy shall be punished by imprisonment of six (6) months to three (3) years.*

*(2) Whoever terminates or commences to terminate a pregnancy without the consent of the pregnant woman shall be punished by imprisonment of one (1) to eight (8) years.*

*(3) When the offense provided for in paragraph 1. or 2. of this Article results in grievous bodily injury, serious impairment to health or the death of the pregnant woman, the perpetrator shall be punished by imprisonment of six months to five years in the case of the offense provided for in paragraph 1 or at least three years of imprisonment in the case of the offense provided for in paragraph 2.*

**Criminal Procedure Code No. 04/L-123, published in the Official Gazette on 28 December 2012**

**Article 9  
Equality of Parties**

*1. The defendant and the state prosecutor shall have the status of equal parties in criminal proceedings, unless otherwise provided for by the present Code. 2. The defendant has the right and shall be allowed to make a statement on all the facts and evidence which incriminate him or her and to state all facts and evidence favorable to him or her. He or she has the right to request the state prosecutor to summon witnesses on his or her behalf. He or she has the right to examine or to have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.*

**Article 346  
Examination of the Accused**

*1. The accused has the right to not declare. If he or she chooses to declare, his or her testimony shall be conducted in accordance with paragraph 2 through 4 of the present Article.*

*2. The lead defense counsel shall question the defendant in accordance with Article 333 of the present Code.*

*3. The state prosecutor shall question the defendant in accordance with Article 334 of the present Code.*

*4. The co-defendants, if any, may question the defendant in accordance with Article 334 of the present Code*

## Admissibility of the Referral

51. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, and as further specified by the Law and foreseen by the Rules of Procedure.
52. 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.”*

53. The Court further examines whether the Applicant has met the admissibility requirements as defined by the Law. In this regard, the Court first refers to Article 47 [Individual Requests], Article 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

### 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...”*

54. As regards the fulfillment of these criteria, the Court finds that the Applicant is an authorized party challenging an act of a public authority namely Judgment Pml. No. 49/2019, of 7 March 2019 of the Supreme Court after having exhausted all the legal remedies provided by the law, regarding Judgment PA1.

nr. 358/2018 of the Court of Appeals, of 19 November 2018 and Judgment P. No. 927/14 of the Basic Court, of 15 January 2018. The Court notes, that the Applicant after the challenged Judgment of the Supreme Court was rendered filed request for review of the criminal proceedings with the Basic Court in Prishtina, which request by Decision, KP. No. 1472/2019, of 20 September 2019 was rejected as ungrounded. Therefore, the Court finds that the last and challenged decision in the Applicant's case is Judgment Pml. No. 49/2019 of the Supreme Court, of 7 March 2019.

55. Further, the Court also notes that the Applicant submitted his Referral within a period of 4 (four) months, as provided by Article 49 of the Law.
56. In this case, the Court will also examine whether the Applicant has met the other admissibility criteria set out in Rule 39 (2) of the Rules, which stipulates:

*“(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.”*

57. The Court first recalls that the Applicant alleges that the challenged Judgment of the Supreme Court, in conjunction with the Judgment of the Court of Appeals, PA1. No. 358/2018, of 19 November 2018 and the Judgment of the Basic Court P. No. 927/14, of 15 January 2018, violated his rights and freedoms guaranteed by Article 24 [Equality Before the Law] of the Constitution in conjunction with Article 14 (Prohibition of discrimination) and Article 7 of the UDHR, Article 29 [Right to Liberty and Security] of the Constitution in conjunction with Article 5 (Right to Liberty and Security) of the ECHR, Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, as well as Articles 53 [Interpretation of Human Rights Provisions] and 54 [Judicial Protection of Rights] of the Constitution.
58. The Court notes, however, that the Applicant's substantive allegations raised in his Referral refer to the right to fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, as well as equality before the law and prohibition of discrimination guaranteed by Article 24 of the Constitution, in conjunction with Article 14 of the ECHR and Article 7 of the UDHR respectively.
59. In addressing the Applicant's allegations related to his allegation regarding the right to fair and impartial trial, as well as his second allegation that he was discriminated against during the criminal proceedings, the Court will apply the case law of the ECtHR on the basis of which the Court, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

***I. Regarding allegations of violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR***

60. With regard to the Applicant's allegation of a violation of his right to fair and impartial trial, the Court notes that the Applicant's allegations refer to: (i) the

administration of evidence by the court and the principle of equality of arms; (ii) defense in silence; and (iii) the reasoning of the judgment by the Supreme Court.

*(i) Regarding the principle of equality of arms and the administration of evidence by regular courts and equality of arms*

61. In this regard, the Court recalls that the Applicant alleges that the administration of criminal evidence in the Applicant's case was not properly conducted in the Basic Court. Furthermore, the Applicant alleges that the Court of Appeals also did not take into account the exculpatory evidence presented by the Applicant.
62. In this respect, the Applicant "[...] requests the Court to assess the legality of procedural actions related to criminal evidence, obtaining, administering, verifying and assessing them, the means of seeking evidence and the whole process of proving, are provided by the provisions of the Criminal Code of Kosovo, which derive and the whole probation process, are provided by the provisions of the Criminal Code of Kosovo, which originate and are in full compliance with the Constitution, the European Convention on Human Rights and other international acts".
63. The Court further recalls that in the context of his allegation regarding the administration of evidence, the Applicant also states that the regular courts have violated the principle of equality of arms because, in his view, the regular courts have consistently "*over-weighed the arguments of one party*", underlining that his main allegation has to do with "*evidence for determination of guilt*" especially in the pre-trial proceedings and "*the length of the proceedings of 7 years - of such an offense*". In this respect, namely with regard to the issue of length, the Applicant, in addition to mentioning this allegation in the Referral and in the context of violation of the principle of equality of arms, does not elaborate further and reasons this in the Referral. Furthermore, the Court notes that this allegation has not been raised or specifically mentioned in its submissions before the lower courts.
64. However, the Court notes that the Applicant only specifies that in the proceedings before the regular courts his right to a fair trial has been violated, which according to him "*the principle of a fair trial also includes the right of each party to be given a reasonable opportunity to present his case, provided that it does not place it in an unfavorable position vis-a-vis another party*".
65. In the case law of the ECtHR and that of the Court it has been emphasized that the principle of "*equality of arms*", requires "*fair balance between the parties*" that each party must be afforded a reasonable opportunity to present his or her case, under conditions that do not place him/her at a substantial disadvantage *vis-a-vis* his/her opponent (see the cases of the ECtHR *Yvon v. France*, application no. 44962/98, Judgment of 24 July 2003, paragraph 31 and *Dombo Beheer B.V. v. the Netherlands*, application no. 14448/88, Judgment of 27 October 1993, paragraph 33 see also other references in this Judgment, *Öcalan v. Turkey* [GC], paragraph 140, see Cases of the Court, KI52/12,



Applicant *Adije Iliri*, Judgment of 5 July 2013, KI103/10, Applicant *Shaban Mustafa*, Judgment of 20 March 2012, paragraph 40).

66. In the following, and in the context of the specific allegation concerning the administration of evidence by the courts, the Court first refers to the case law of the ECtHR, which in principle has stated that “*While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is therefore primarily a matter for regulation under national law*” (see ECtHR case *Schenk v. Switzerland*, no. 10862/84, Judgment, 12 July 1988 paragraphs 45-46).
67. However, the ECtHR has pointed out that the aspect to be considered in such cases is whether the proceedings, including the manner in which the evidence was collected, were fair in its entirety (see ECtHR cases *Khan v. 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).
68. Therefore, whether the proceedings were fair as a whole, it should be borne in mind whether the rights of the defense have been respected. In that regard, the Court shall assess 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).
69. 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).
70. Based on the above and referring to the proceedings before the regular courts, in particular as regards the administration of evidence by these courts, the Court first refers to the Judgment of the Basic Court, which in its decision finding the Applicant guilty was based on the testimony of person X in the capacity of injured party in criminal proceedings, medical reports issued by various health institutions, forensic reports, photo-documentation, conducted during the examination by medical experts and forensic ones, and communication via sms from the PTK report.
71. The Court notes, on the basis of the submissions submitted by the Applicant, that he was given the opportunity to challenge the evidence in the Basic Court, through his legal representative. In this context, in its Judgment, the Basic

Court regarding the Applicant's objection to the administration of the abovementioned evidence stated that *"The court could not accept the position of the defense counsel of the accused [...] that the accused did not commit the criminal offense of Attempted Unauthorized Termination of Pregnancy under Article 152 par. 2, in conjunction with Article 20 of the CCK, as there is no evidence to prove this, but assessed this defense as unfounded and aimed at avoiding criminal responsibility, as this defense was contrary to the testimony of the witness - of the injured party [person X] and other material evidence such as: the report of the Emergency Center no. 20158, of 06.07.2011, Report of UCCK Gynecology Clinic, of 06.07.2014, report on the Physical Examination, of 06.07.2011, prepared by the forensic expert Dr. A. G., photo-documentation and confidential photo-documentation made during the forensic examination of 06.07.2011, as well as by sms and the PTK report of 08.09.2011, which were in compliance with each other."*

72. In conclusion, after elaborating on each of the Applicant's objections to the evidence administered by the Basic Court, the latter found that the court, in its assessment, has the authority to admit and consider any evidence, and to assess the importance of each piece of evidence to be taken into account during the criminal proceedings. The Basic Court further stated that the court during the administration of evidence *"In particular, assesses the accuracy of the evidence, the reason for their approval as well as the reasons on which it is based when resolving this criminal-legal case in the case of determination of criminal offenses and the criminal responsibility of the accused"*.
73. In conclusion, the Basic Court with regard to the material evidence administered during the criminal proceedings concluded that *"The statement of the injured party - witness stated above and the material evidence were assessed by the court as convincing, real and objective, so it gave trust to them and basing the judgment in this criminal case, while the material-legal and formal-legal protection in the present case aimed to justify the incriminating actions of the accused to avoid criminal liability"*.
74. In addition, the Court also refers to the Judgment of the Court of Appeals, through which it was found that the challenged Judgment of the Basic Court based its reasoning and assessment on the testimony of the injured party, the expertise of forensic medicine and the evidence and testimony of others, administered by the Basic Court, which it has listed in its judgment. The Court of Appeals concluded that the Basic Court has reviewed the Applicant's defense, giving the relevant reasoning as to why it did not give trust to the Applicant's defense in this case.
75. Finally, the Supreme Court, referring to the specific allegation regarding the administration of evidence by the Basic Court and the Court of Appeals, which the Applicant had raised in his request for protection of legality, found that: *"[...] The first instance judgment was not only based on the statement of the injured party [X], but also on other evidence that was in the court hearing [...]. The reasoning assesses all the evidence administered and does not support the fact that both judgments are based on only one piece of evidence - the statement of the injured party"*.

76. In the present case, the Supreme Court established that the Basic Court took into account other evidence, namely the reports of the relevant specialized medical institutions and forensic expertise, including the material evidence of electronic communication, on the basis of which upheld the legal position of the lower courts.
77. In light of the general principles of the ECtHR elaborated above and the reasoning of the regular courts, the Court first notes that in the Applicant's case the regular courts have rendered their decisions in accordance with the standards required for fair and impartial trial and based their decision-making not only on one piece of evidence but on a number of evidence, all of which the Basic Court had listed in its Judgment.
78. Second, the Court also notes that the criminal proceedings against the Applicant were fair in its entirety, as the courts respected the right of defense. In this regard, the Court notes that the Applicant in the proceedings before the regular courts through his legal representative has been given the opportunity to challenge the evidence, namely to challenge the testimony of the injured party and the material evidence, which was presented during the course of the criminal proceedings.
79. Thirdly, the Court also notes that the regular courts, namely the Basic Court and the Court of Appeals, respectively, reasoned concretely and sufficiently why they did not give trust to the Applicant's defense.
80. Finally, the Court also notes that the Basic Court through its Judgment had given the concrete reasoning, consequently concluding that all the evidence administered by this Court, and listed in its Judgment were decisive for finding the Applicant guilty for the commission of a criminal offense, for which he was consequently convicted.
81. Therefore, based on the reasoning above, the Court notes that the Applicant failed to prove that in his case the regular courts did not administer the evidence in accordance with the principles established through the case law of the ECtHR, which are also embodied in the relevant provisions of criminal procedure.
82. The Court further considers that the Applicant, apart from mentioning the allegation of violation of the principle of equality of arms in the proceedings, which he raises in the context of the administration of evidence, has not provided additional arguments and proved the grounds of this allegation in his referral.
83. The Court notes in this respect that the Applicant's dissatisfaction with the outcome of the proceedings by the regular courts cannot in itself raise a substantiated claim of a violation of the fundamental rights and freedoms guaranteed by the Constitution (see the case of the ECtHR *Mezotur -Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21).
84. Therefore, the Court considers that the Applicant has not substantiated his allegation of a violation of fair and impartial trial, as a result of the improper

administration of evidence by the regular courts, and has also not provided any relevant reasoning and arguments regarding the grounds of his allegation of a violation of the principle of equality of arms in the proceedings, and consequently his allegations are ungrounded on constitutional basis.

*(ii) As to the right to be defended in silence*

85. The Court recalls that the Applicant in his Referral states that during the proceedings before the regular courts, namely before the Basic Court, he was defended in silence.
86. In this regard, the Applicant states that “[...] *the court’s assessment of the defendant’s silence during the defense (even though the lawyer had repeatedly denied the commission of the criminal offense) should be made with the same degree of credibility and without prejudice, but based on the elements resulting from the available evidence*“. In the context of this allegation, the Court notes that the Applicant tries to relate to some extent the issue of the defense in silence with the principle of presumption of innocence, which, however, he does not continue to elaborate and further specify in his Referral.
87. Initially and with regard to the Applicant’s allegation regarding his right to be defended in silence and in the context of the criminal proceedings before the courts, the Court refers to Article 346 of the CPCK, which provides that: “*1. The accused has the right to not declare. If he or she chooses to declare, his or her testimony shall be conducted in accordance with paragraph 2 through 4 of the present Article*”.
88. The Court also recalls that the right to fair trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, provides certain minimum guarantees for any person charged with a criminal offence, which includes the right to be defended in silence and the right to liberty from self-blame, according to the ECtHR case law (see ECtHR Judgment, *Saunders v. United Kingdom*, application No. 19187/91, paragraph 68 and 69, of 17 December 1996, as well as the ECtHR *John Murray v. United Kingdom*, application no. 18731/91, paragraph 45, of 8 February 1996 paragraph 45, see also the above-mentioned case of the Court, KI34/18, Applicant *Albert Berisha*, paragraph 59).
89. In the Applicant’s case, with regard to his defense in silence in the proceedings before the regular courts, the Court notes on the basis of the submissions submitted with the Referral that the Basic Court respected the Applicant’s right to remain silent.
90. In this regard, based on the challenged Judgment of the Supreme Court, the latter had also established that the Basic Court in accordance with Article 346 of the CPCK had respected the Applicant’s right of defense to be defended in silence during the court hearings of this court.
91. Furthermore, during the criminal proceedings before the regular courts, the Applicant at all times had the opportunity of his legal representation through a lawyer. In this regard, the Court, based on the Judgment of the Basic Court



reiterates that the Applicant's defense counsel in the hearings of this court had the opportunity to challenge the testimony of person X and the material evidence presented before it.

92. The Court notes that, based on the proceedings before the regular courts and the reasons given by the latter, it cannot be concluded that during his defense in silence the regular courts prejudged the guilt or treated the Applicant as guilty before the latter decided on his guilt.
93. Therefore, the Court considers that the allegations raised by the Applicant regarding his right to be defended in silence are ungrounded on constitutional basis.

*(iii) Regarding the right to a reasoned decision of the court decision*

94. The Court recalls that the Applicant alleges that the Supreme Court, through its Judgment, briefly assessed his allegations in the request for protection of legality, failing to provide a detailed reasoning regarding the relevant facts.
95. The Applicant specifically alleged that *"The Supreme Court decided the same as the Court of Appeals, disregarding the alleged violations of the criminal procedure and disregarding the violations which affected the legality of the court decision. Based on the purpose of the request for protection of legality, as a legal remedy filed by the defense counsel of the applicant, the Supreme Court was obliged to remove the legal violations from the final decision on the sentence of the applicant. [...]"*
96. In light of this allegation of the Applicant, the Court first recalls that the Court of Appeals rejected his appeal against the Judgment of the Basic Court and then the Supreme Court also rejected his request for protection of legality, filed against the Judgments of the Basic Court and that of the Court of Appeals. In this context, the Court notes that the Supreme Court and the Court of Appeals during the decision-making have fulfilled their constitutional and legal obligations to provide sufficient legal reasoning as required by Article 31 of the Constitution and Article 6 of the ECHR.
97. In this respect, the Supreme Court through its Judgment concluded that *"[...] after examining the allegations from the request as well as based on the case file found that none of the allegations is grounded. This is due to the fact that the judgment of the court of first instance was not based only on the statement of the injured party [...], but also on other evidence which were examined in the court hearing and for which sufficient legal reasons were given in the judgment. The Court also finds that the provisions of the judgments are clear and include all legal justifications for the decisive facts on the basis of which the decision on merits was taken, and which reasons this court considers as legal and fair"*.
98. Consequently, the Supreme Court reached this conclusion after considering the reasoning given by the Basic Court, when it found the Applicant guilty of the committed criminal offense, his appeal submitted to the Court of Appeals and his request for protection of legality, filed with the Supreme Court.



99. In this regard, the Court recalls that in rejecting an appeal, or as the case may be, in rejecting a request for protection of legality, the Supreme Court may, in principle, merely approve the reasons for rendering the decision of the lower courts, in this case the Court of Appeals and the Basic Court (see the cases of the ECtHR, *García Ruiz v. Spain*, cited above, paragraph 26; *Helle v. Finland*, application no. 20772/92, Judgment of 19 December 1997, paragraphs 59-60).
100. In this regard, the Court also recalls that cases where a court of third instance or appellate court, as in the case of the Applicant, the Supreme Court, which confirms the decisions taken by the lower courts - its obligation to reason decision-making differs from cases where a court changes the decision-making of lower courts. In the present case, the Supreme Court did not change the decision of the Court of Appeals or that of the Basic Court- which found the Applicant guilty but only proved their legality, given that, according to the Supreme Court, there were no essential violations of criminal procedure and criminal law (see the case of Court KI194/18, Applicants *Kadri Muriqi and Zenun Muriqi*, Resolution on Inadmissibility of 5 February 2020, paragraph 106).
101. In this respect, the Court considers that, even though the Supreme Court may not have responded at every possible issue raised by the Applicants in his request for protection of legality, it has addressed the Applicant's substantive arguments as to the application of the substantive and procedural law (see, *mutatis mutandis*, the ECtHR cases: *Van de Hurk v. the Netherlands*, paragraph 61; *Buzescu v. Romania*, cited above, paragraph 63; and *Pronina v. Ukraine*, Application No. 63566/00, Judgment of 18 July 2006, paragraph 25, see case of the Court KI194/18, Applicant *Kadri Muriqi and Zenun Muriqi*, Resolution on Inadmissibility, of 5 February 2020, paragraph 107). In doing so, the Supreme Court has fulfilled its constitutional obligation to provide a reasoned court decision, in accordance with the requirements of Article 31 of the Constitution in conjunction with Article 6 of the ECHR and the case law of the ECtHR and this Court itself.
102. Therefore, based on the above, the Court finds that the Applicant has not proved and has not sufficiently substantiated his allegation of non-reasoning of the court decision, and is, therefore, manifestly ill-founded on constitutional basis.
103. Finally, having regard to all his abovementioned allegations, presented in his Referral and referring to the right to fair and impartial trial, guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, and the facts presented by it, the Court, based on the reasoning above and the principles established by this Court and the case law of the ECHR in similar cases, finds that his referral regarding the allegation is manifestly ill-founded on constitutional basis.

**II. Regarding allegations of violation of Article 24 of the Constitution, in conjunction with Article 14 of the ECHR and Article 7 of the UDHR, as well as Article 29 of the Constitution**

104. The Applicant alleges that during the criminal proceedings before the regular courts *"The court has mostly protected the injured party [person x] and this care to protect her in public life has also been noticed from the institutional point of view, namely with the sentence of [the applicant] and gender discrimination that the court and the prosecution have done to him from the beginning throughout the procedure"*.
105. In this regard, the Court also notes that the Applicant relates this allegation to the issue of the administration of evidence by the regular courts and the equality of arms in the proceedings. With regard to the issue of the administration of evidence, the Applicant has consistently alleged that the regular courts based their judgments mainly on the testimony of person X. However in this regard, the Court in elaborating his allegation and the reasoning of the regular courts, applying the principles of the ECtHR, found that the Applicant's allegation was manifestly ill-founded, on constitutional basis. Regarding the allegation of violation of the principle of equality of arms, the Court recalls that this allegation was not supported by the Applicant with relevant reasons and evidence.
106. With regard to the Applicant's allegation of a violation of equality before the law, the Court refers to its case-law and that of the ECHR, which notes that only differences in treatment, based on an identifiable characteristic, *or status*, may constitute unequal treatment within the meaning of Article 24 of the Constitution. Furthermore, in order for a case to be raised under Article 24, there must be a change in the treatment of persons in analogous or similar situations (see, *mutatis mutandis*, the case of the Constitutional Court, KI157/18, Applicant. *the Supreme Court of Kosovo*, Judgment of 13 March 2019, paragraph 33, see also the cases of the ECtHR *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, applications Nos. 5095/71, 5920/72 and 5926/72, 7 December 1976, paragraph 56; and *Carson and Others v. the United Kingdom*, application no. 42184/05, Judgment of 16 March 2010, paragraph 61). Moreover, not every difference in treatment will be discriminatory if it lacks objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if it lacks a reasonable relationship between the means used and the aim pursued (see the case of the ECtHR *Guberina v. Croatia*, Judgment of 22 March and other references cited therein).
107. Therefore, the Court notes that the Applicant has not substantiated his allegation of being discriminated against on the basis of gender, moreover given the fact that Applicant and person X in criminal proceedings before the regular courts were not in same factual situations, because in the conducted criminal procedure one was in the capacity of the suspect and the other was in the capacity of the witness and the injured party.
108. Consequently, the Applicant's allegation of a violation of Article 24 of the Constitution, in conjunction with Article 14 of the ECHR and Article 7 of the UDHR, is manifestly ill-founded on constitutional basis.

109. Finally, with regard to the Applicant's allegation of a violation of Article 29 [Right to Liberty and Security] of the Constitution, in conjunction with Article 5 (Right to liberty and security) of the ECHR, and Article 54 [Judicial Protection of Rights] of the Constitution, the Court notes that the Applicant has not submitted any argument as to how these constitutional provisions, in relation to the equivalent provisions of the ECHR, have been violated by the regular courts in rendering their judgments in the criminal proceedings. The Applicant cited these Articles of the Constitution and the ECHR without providing any relevant justification for supporting his allegations.
110. In this regard, the Court, recalling its case law, states that merely citing Articles of the Constitution or the ECHR cannot be considered as fulfillment of the obligation deriving from Article 48 of the Law in conjunction with item (d) of paragraph (1) of Rule 39 of the Rules of Procedure, which requires Applicants to clarify "*accurately and adequately [...] the allegations of violations of constitutional rights or provisions*".
111. In the context of his allegation of a violation of Article 29 of the Constitution, in conjunction with Article 5 of the ECHR, the Applicant did not specify and clarify how the application of this Article was applicable in his case, namely in the criminal proceedings before the regular courts, the judgments of which he challenged in his referral before the Court.
112. In this respect, and in line with the case law of this Court, the latter, the Applicant's allegation of a violation of Article 29 of the Constitution, in conjunction with Article 5 of the ECHR, as well as Article 54, will not further address, as the Applicant has not clearly clarified and provided relevant justification regarding the merits of his allegations of violation of these provisions (see, in this regard, cases KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning]*, paragraphs 40-41, Resolution on Inadmissibility of 20 June 2019; and KI91/18, Applicants *Njazi Gashi, Lirije Sadikaj, Nazife Hajdini-Ahmetaj and Adriana Rexhepi*, Resolution on Inadmissibility of 10 September 2019, paragraphs 52-54).
113. Therefore, and based on the above, the Court concludes that the Applicant's Referral regarding his allegations of violation of Article 29 of the Constitution, in conjunction with Article 5 of the ECHR, as well as Article 54 of the Constitution is inadmissible in accordance with Article 48 of the Law in conjunction with item (d) of paragraph (1) of Rule 39 of the Rules of Procedure.

## Conclusion

114. For the reasons set out above, the Court concludes that in accordance with Rule 39 (2) of the Rules of Procedure, the Applicant's Referral relates to his allegations of violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, as well as Article 24 of the Constitution in conjunction with Article 14 of the ECHR and Article 7 of the UDHR, is manifestly ill-founded on constitutional basis.

115. Whereas, the Applicant's Referral regarding his allegations of violation of Article 29 of the Constitution in conjunction with Article 5 of the ECHR, as well as Article 54 of the Constitution is inadmissible under Article 48 of the Law in conjunction with item (d) of paragraph (1) of Rule 39 of the Rules of Procedure.

### **Non-disclosure of identity**

116. Finally, the Court first notes that the Applicant did not file a request for non-disclosure of identity. However, in the circumstances of the present case, the Court refers to Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure, which stipulates that *"[...] The Court by majority vote authorizes non-disclosure of identity or grants it without a request from a party. When non-disclosure of identity is granted by the Court, the party should be identified only through initials or abbreviations or a single letter"*.
117. In this regard, the Court, based on the case file, as well as taking into account the sensitivity of the case, considers that in order to protect the identity of the victim and the minor child, the non-disclosure of the identity of the Applicant is considered necessary. Therefore, the Court referred to the Applicant in this Resolution with initials.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20, 47 and 48 of the Law and Rules 32 (6), 39 (1) (d) and (2) and 39 (1) (b) of the Rules of Procedure, on 9 July 2020, unanimously:

### **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO NOT DISCLOSE the Applicant's identity;
- III. TO NOTIFY this Decision to the Parties;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- V. This Decision is 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.*