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

Prishtina, on 28 December 2020
Ref.No:RK 1671/20

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case no. KI111/20

Applicant

Elez Elezi

Constitutional review of
Judgment Pml. No. 48/2020 of the Supreme Court
of 27 May 2020

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu, 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 Elez Elezi, residing in Gjilan (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment [Pml. No. 48/2020] of 27 May 2020 of the Supreme Court of Kosovo (hereinafter: the Supreme Court) in conjunction with the Judgment [PAKR. No. 144/2019] of 9 July 2019 of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) and the Judgment [PKR. No. 111/2016] of 21 February 2019 of the Basic Court in Gjilan, Serious Crimes Department (hereinafter: the Supreme Court).

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgments, whereby, according to the Applicant's allegations, his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) have been violated

4. The Applicant in his Referral requests the approval of the request *"for the prohibition of the commencement of the execution of the sentence imposed by the judgment of the first instance court in deciding this case by this court".*

5. The Applicant further requests the non-disclosure of his identity in the proceedings before the Constitutional Court of the Republic of Kosovo. (hereinafter: the Court).

Legal basis

6. The Referral is based on paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals], 27 [Interim Measures] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 32 [Filing of Referrals and Replies] and 56 [Request for Interim Measures] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

7. On 13 July 2020, the Court received the Applicant's Referral.

8. On 21 July 2020, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).

9. On 4 August 2020, the Court notified the Applicant about the registration of the Referral and requested the submission of the following additional documents: copies of Judgment P. No. 662/12, of the Municipal Court in Gjilan of 30 July 2017; Judgment PAKR. No. 1076/2012 of the Court of Appeals of 13 November 2013; Judgment Pml. No. 3/14 of the Supreme Court of 16 January 2014; Judgment PKR. No. 28/2014 of the Basic Court in Gjilan, Serious Crimes Department of 9 December 2015; Judgment PAKR. No. 77/2016 of the Court of Appeals, (date of Judgment unknown); as well as a copy of the appeal against Judgment PKR 111/2016 of the Basic Court in Gjilan of 21 February 2019 filed

with the Court of Appeals. On the same date, the Court sent a copy of the Referral to the Supreme Court.

10. On 19 August 2020, the Applicant submitted the requested documents to the Court.

11. On 25 November 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral and the rejection of the request for an interim measure, and by a majority recommended to the Court the rejection of the Applicant's request for non-disclosure of identity.

Summary of facts

12. It follows from the case file that the Applicant was a doctor, the pulmonology specialist at the Regional Hospital in Gjilan, a public health institution.

13. On 22 May 2012, based on the request of the Municipal Prosecutor's Office in Gjilan and based on Article 240, paragraph 4 of the Provisional Criminal Procedure Code of Kosovo (hereinafter: PCPCK), the pre-trial judge in the Municipal Court in Gjilan by the Order [Pn. No. 3139/12] ordered the covert measure-simulation of the criminal offense of corruption.

14. The above-mentioned Order also specified that *"responsible for implementing the criminal offense simulation order to be assigned ECCU* [Economic Crimes and Corruption Unit] *in Gjilan, which is obliged to report to the Prosecutor within 30 days regarding the implementation of the Order"*. On the same date, by the ECCU the simulation of the criminal offense for which the Ordinance [Pn. no. 3139/12] was issued was performed. On the same date, the Applicant was placed under house arrest for the period 22 May 2012 until 20 June 2012.

15. On 29 May 2012, the Public Prosecutor's Office in Gjilan filed indictment against the Applicant [PP. No. 912/12] under a reasonable suspicion that he had committed the criminal offense *"accepting bribes"* under Article 343, paragraph 1 of the Provisional Criminal Code of Kosovo (hereinafter: the PCCK).

16. On 30 July 2012, the Municipal Court in Gjilan (hereinafter: the Municipal Court) by Judgment [Pno. 662/12] found the Applicant guilty of committing the criminal offense "accepting bribes" *under Article 343, paragraph 1 of the CCK and sentenced him to imprisonment for a term of five (5) months by imposing an accessory punishment "prohibition to exercise the profession-activity or official duty for a period of one (1) year"* which measure would be executed after serving the imprisonment sentence.

17. The Municipal Court confirmed that the Applicant on 22 May 2012, in the capacity of a doctor at the Regional Hospital of Gjilan *"requested material benefit to perform an action within his authority which action should not have been performed, namely from the injured party [x], requested the amount of 10 euro for each specialist medical report, where two of them are*

on behalf of the injured party and her son [x], which [the applicant] did not check them at all, even though he was obliged to do so, while he also issued a specialist report for one of the injured son, even though he is not in Kosovo at all and was not physically present at all, thus requesting and taking from the injured party the amount of 30 euro for three medical reports, also that, a banknote of 1x20 euro, and 1x10 euro, thus performing an action which he should not have performed and providing himself with personal material benefit".

18. The Judgment of the Municipal Court also specified that the Applicant during the public court hearing pleaded guilty to committing a criminal offense.

19. On an unspecified date, the Applicant filed an appeal against the Judgment of the Municipal Court with the Court of Appeals on the grounds of essential violations of the provisions of criminal procedure and criminal law, proposing that his appeal be upheld and the criminal case be annulled and remanded to the first instance court for retrial or a more lenient sentence be imposed on the accused.

20. Against the same Judgment of the Municipal Court, an appeal was filed by the Municipal Prosecution in Gjilan, by which it requested that the Applicant be sentenced to a more severe sentence of imprisonment and a measure of prohibition to exercise the profession for a longer period.

21. On 13 November 2013, the Court of Appeals by Judgment [PAKR. No. 1076/2012] approved the Applicant's appeal and modified the Judgment [Pno. 662/12] of 30 July 2012 of the Municipal Court regarding the decision on the sentence and the commission of the criminal offense "accepting bribes" under Article 343, paragraph 1 of the CCK sentenced him to imprisonment for a term of three (3) months.

22. The Court of Appeals reasoned its decision to modify the Judgment of the Municipal Court regarding the sentence that *"the appealing allegations of the defense counsel of the accused that the criminal sanction is high are ungrounded and the first instance court, when calculating and rendering decision on the sentence assessed the aggravating and mitigating circumstances in terms of the provision of Article 64 of [the CCK]. [...] it is not disputable that [the Applicant] committed the criminal offense for which he was found guilty, however, taking into account the consequences of the criminal offense which are not small and with it the criminal legal liability and social danger as well as the gravity of the criminal offense and failure to assess the degree of responsibility on the measurement of the sentence by the court of first instance, [...] imprisonment for a period of 3 (three) months and by which sentence its purpose is expected to be achieved and provided by Article 41 of [CCK]".*

23. On an unspecified date, the Applicant against the Judgment of the Court of Appeals filed a request for protection of legality with the Supreme Court on the grounds of essential violations of the provisions of criminal procedure and criminal law.

24. On 16 January 2014, the Supreme Court by Judgment [Pml. No. 3/2014] approved the request for protection of legality submitted by the Applicant and annulled the Judgment [P. No. 662/12] of 30 July 2012 of the Municipal Court and the Judgment [PAKR. No. 1076/2012] of 13 November 2013 of the Court of Appeals and remanded the case to the Basic Court for retrial.

25. The Supreme Court by its Judgment initially found that during the court hearing in the Municipal Court the Applicant stated that *"he has understood the indictment and the criminal offense for which he is charged with"* and has pleaded guilty to committing this offense, however according to the Supreme Court the Applicant was not notified by the Municipal Court about the consequences of pleading guilty, as provided under Article 359 of the CPCK and has also not decided that the requirements that a guilty plea be approved as provided by Article 315 of the CPCK. Consequently, the Supreme Court found that the first instance Judgment, namely the Judgment of the Municipal Court contains violation of Article 384, paragraph 2, item 1 of the Criminal Procedure Code of the Republic of Kosovo (hereinafter CPCRK).

26. Secondly, the Supreme Court, regarding the accessory punishment, namely the allegation for prohibition of exercising profession, assessed that the Judgment of the Municipal Court by which it was decided that the measure of prohibition to exercise the profession be executed after serving the imprisonment sentence is not in accordance with Article 57, paragraph 2 of the CCK. According to the Supreme Court, the accessory punishment begins to be executed after the decision becomes final.

Proceedings after remanding the case for retrial

27. On 9 December 2015, the Basic Court, after holding the court hearings and addressing the remarks of the Supreme Court, by the Judgment [PKR. No. 28/2014] found the Applicant guilty of committing the criminal offense of "accpeting bribes" under Article 343, paragraph 1 of CCK and sentenced him to imprisonment for a term of three (3) months by imposing an accessory punishment "prohibition to exercise the profession-activity or official duty for a period of one (1) year", which begins to be executed after the decision becomes final. The Basic Court in its Judgment specified that during the main court hearing held on 11 June 2014, the Applicant in the presence of his defense counsel stated that *"he does not feel guilty about the criminal offense, which he is charged with"*.

28. On an unspecified date, the Applicant against the Judgment [PKR. No. 28/2014] of 9 December 2015 of the Basic Court filed an appeal with the Court of Appeals on the grounds of essential violations of the provisions of criminal procedure and criminal law, erroneous and incomplete determination of factual situation and the decision on the punishment. In his appeal, the Applicant proposed to annul the Judgment of the Basic Court and remand the case for retrial or to modify the same Judgment and impose a more lenient sentence on him.

29. On 5 May 2016, the Court of Appeals by Decision [PAKR. No. 77/2016] approved the Applicant's appeal and annulled the Judgment by remanding the case for retrial to the Basic Court.

30. In its Judgment, the Court of Appeals found that the challenged Judgment of the Basic Court (i) is incomprehensible because it is not clear whether the Applicant was sentenced to imprisonment for a term of three (3) months, which sentence can be replaced by a fine or a sentence of imprisonment for a period of three (3) months has been imposed, in which sentence is calculated the time spent under house arrest during the period of 22 May 2012 to 20 June 2012; (ii) the enacting clause of the Judgment is also incomprehensible in relation to the decisive facts that are closely related to the imposition of the criminal sanction; (iii) and the Judgment contains violation of Article 384, paragraph 1, subparagraphs 1.1 and 1.12 in conjunction with Article 365, paragraph 1, subparagraph 1.3 and Article 370, paragraph 8 of the CPCRK due to the fact that the court hearing sessions were not held continuously and after the expiration of three (3) months from the last court hearing, in accordance with the provisions of the criminal procedure, the court hearing had to be recommenced where all evidence would be re-examined.

The second procedure after remanding the criminal case for retrial

31. On 30 June 2016, the Basic Court, by Decision [PKR. No. 111/196], deciding *ex officio* on the admissibility of the evidence, decided to declare inadmissible "*the proposed and attached evidence to the Indictment of the Municipal Prosecution, PP. No. 912/12 of 29.05.2012, that is:*

1. Evidence of the injured party L.H.,
2. Testimony of witness Xh.V.,
3. Testimony of witness M.L.
4. Testimony of witness H.L.
5. Minutes on the search of the apartment and persons of 29.05.2012,
6. Photo documentation of 1x20 and 1xl 0 euro banknotes,
7. Photocopy of banknotes at the scene and
8. Property form".

32. By this Decision, the Basic Court reasoned that:

> "*In the present case, the Municipal Court in Gjilan by Order PN. No. 3139/12, of 22.05.2012, has not complied with this paragraph,* ***the order does not indicate at all, does not include the identification of the person against whom the order was issued, the description of the items requested by the search is not made, the special description of the person, the location or property where the control is applied is not specified,*** *which means it lacks the essential elements of this order.*
> *If we follow this logic, this order can be applied to any person in the region of Gjilan, any location or property.*
> *The Court is satisfied that the order of the Municipal Court PN. No. 3139/12, of ate 22.05.2012 does not comply - does not contain the necessary elements provided by Article 245 [240] paragraph 5 of PCCK.*

Accordingly, conform to Article 97 paragraph 4 and Article 257 paragraph 3 of the CPCRK, the court decided as in the enacting clause of this decision, declaring the above mentioned evidence inadmissible, because they were provided on the basis of an order which does not meet the legal requirements".

33. On 14 July 2016, the Court of Appeals by Decision PN. No. 497/16 declared the above evidence admissible.

34. On 21 February 2019, the Basic Court after holding the hearing sessions and addressing the remarks given by the Judgment [PAKR. No. 77/2016] of 5 May 2016 of the Court of Appeals, rendered the Judgment [PKR. 111/2016] by which found the Applicant guilty of committing the criminal offense "accepting bribes" under Article 343, paragraph 1 CPCK and sentenced him to imprisonment for a term of one hundred and eighty (180) days and imposed an accessory punishment, prohibition to exercise the profession-activity or official duty for a period of one (1) year", sentence which would be applied from the date the Judgment becomes final. The court also decided that the time spent under house arrest would be counted in the sentence of imprisonment.

35. The Basic Court by the Judgment in the part regarding the imposition of the sentence stated that *"When calculating the sentence, the court took into account the circumstances that affect the type and length of the sentence based on Articles 73, 74, 75 and 76 of the CCRK, as aggravating circumstance for [the Applicant], the court took into account the fact or the latter used the difficult social economic position of the injured party, the degree of criminal liability and social danger in the case of committing the criminal offense, while in the present case for the accused the court did not find mitigating circumstances".*

36. On 11 March 2019, the Applicant filed an appeal against the Judgment of the Basic Court with the Court of Appeals on the grounds of essential violations of the provisions of criminal procedure and criminal law, erroneous and incomplete determination of factual situation and the decision on the criminal sanction. The Applicant specifically alleged a violation of Article 384, paragraph 1, subparagraph 1.13 of the CPCRK. In the context of this allegation, the Applicant first specifies that *"such a violation is manifested in the fact that the Judgment by which the accused is found guilty according to paragraph 1 of Article 365 decisively provides for the determination of the elements which must necessarily be contained in the enacting clause of the latter".* Secondly, with regard to his allegation of a violation of criminal law, the Applicant states that *"in [his] actions we have nothing to do with the formation of elements of the criminal offense for which the accused was found guilty [...]"* Thirdly, with regard to his allegation of erroneous and incomplete determination of factual situation, the Applicant alleges that *"the vast majority of evidence which has been taken as a basis has been provided on the basis of this order of the pre-trial judge of this court under the number Pn. No. 3139/12 of 22.05.2012 which order does not contain the necessary elements provided by Article 245 [240] paragraph 5 of the CCP, as it does not list: identification of the person against whom the order has been issued, the items required for control have not been identified, the special description of the person has not been*

determined, the location or property where the control is applied and other information necessary for the implementation of the control have not been established." Finally, with regard to his allegation regarding the sentence, the Applicant alleges that *"[...] the first instance court in the case of imposing the sentence assessed only the aggravating circumstances specified in the judgment by not assessing at all the existence of mitigating circumstances [...]".*

37. On an unspecified date, the Appellate Prosecutor by submission [PPA/No. 141/19] proposed that the Applicant's appeal be rejected as ungrounded.

38. On 9 July 2019, the Court of Appeals by Judgment [PAKR. No. 144/2019] partially upheld the Applicant's appeal and modified the Judgment [PKR. 111/2016] of 21 February 2019 of the Basic Court only in relation to the decision on the sentence deciding that the Applicant for the commission of the criminal offense for which he was found guilty be sentenced to imprisonment for a term of three (3) months, in which sentence would be counted the time spent under the house arrest from 22 May 2012 to 7 June 2012. The Court of Appeals further specified that *"in the other part, the mentioned judgment remains unchanged."*

39. Initially, the Court of Appeals regarding the allegations of violation of the provisions of the criminal procedure found that the Applicant's allegations are ungrounded.

40. Secondly, with regard to the allegation of erroneous and incomplete determination of factual situation, namely the allegation that the Order [Pn. No. 3139/2012] of 22 May 2012 does not contain all the elements set out in Article 240, paragraph 5 of the PCPCK, the Court of Appeals held that *"[...] evidence that has been provided in accordance with the order of the pre-trial judge under the sign P. No. 3139.12 of 22.05.2012, to which the appeal refers, has been declared admissible evidence by Decision PN. No. 497/16 of the Court of Appeals of 19.07.2016, therefore, due to the same degree, this court cannot enter its assessment". In this regard, the Court of Appeals found that "the factual situation in this criminal case, in addition to the mentioned evidence that was provided according to the order for simulation of the case, is based on the statement of the injured party-witness given in the court hearing and in the investigative stages of the criminal procedure, but also on material evidence, namely medical reports issued by [the Applicant] [...]".*

41. The Court of Appeals in its Judgment regarding the decision on punishment stated that the Judgment [PKR. No. 111/2016] of 21 February 2019 of the Basic Court must be necessarily modified in this part for "due to restriction *reformatio in peius*" as provided by Article 395 of the Criminal Procedure Code. In this context, the Court of Appeals reasoned that the Applicant by the Judgment [PAKR. No. 1076/2012] of 13 November 2013 of the Court of Appeals was found guilty and sentenced to imprisonment for a term of three (3) months, in which sentence was calculated the time spent under house arrest. Subsequently, the Court found that as a result of the submission of the request for protection of legality by the Applicant to the Supreme Court, the Supreme Court by the Judgment [Pml. No. 3/2014] of 16 January 2014

annulled the above-mentioned Judgment of the Court of Appeals and consequently on the grounds that the request for protection of legality was filed in favor of the Applicant, in the retrial procedure based on the restriction *reformatio in peius* his position cannot be aggravated.

42. On an unspecified date, the Applicant against the Judgment [PKR. No. 111/2016] of 21 February 2019 of the Basic Court filed a request for protection of legality with the Supreme Court on the grounds of essential violations of the provisions of criminal procedure and those of the criminal law.

43. First, with regard to his allegations of violation of the provisions of criminal procedure, the Applicant specifically alleged a violation of Article 384, paragraph 1, subparagraph 1.8 on the grounds that *"the evidence which has been taken as a basis, has been provided based on the order of the pre-trial judge under the sign Pn. No. 3139/12 of 22.05.2012 which order does not contain the necessary elements provided for in Article 245 [240] paragraph 5 of the CCK"*. In the following, regarding his allegation of violation of Article 384, paragraph 1, subparagraph 1.12 of the CPCRK, the Applicant states that the enacting clause is unclear because it does not contain the reasons for all the decisive facts in this criminal case. Subsequently, the Applicant alleged a violation of Article 384, paragraph 2, subparagraphs 2.1 and 2.2 of the CPCRK. Finally, the Applicant specifies that during the court hearing procedure in the Basic Court his request for postponement of the hearing due to health problems was not taken into account, and consequently Article 310, paragraph 1 of the CPC has been violated.

44. Second, in the context of his allegation of a violation of criminal law, the Applicant alleges a violation of Article 385 of the CPCRK on the grounds that *"in the actions of the accused we have nothing to do with formation of elements of the criminal offense [...]"*.

45. On 27 May 2020, the Supreme Court by Judgment [Pml. No. 48/2020] rejected as ungrounded the request for protection of legality submitted by the Applicant.

46. In its Judgment, the Supreme Court initially with respect to the allegation of violation of the provisions of the criminal procedure, namely Article 384 paragraph 1, subparagraph 1.8 of the CPCRK found that the Judgment of the Basic Court did not contain a violation because *"[...] the order of the court on the basis of which the evidence in this case was provided, was issued in accordance with the legal provisions for the covert measure-simulation of the criminal offense and not for a search order. Then, at the request of the Prosecutor, the identity of the convict, the place where he works, the offense he is suspected of and the reasons for simulating the criminal offense in the present case are stated, therefore, it is unfoundedly claimed that the search warrant does not contain the necessary elements provided in Article 245 [240], paragraph 5 of [PCPCK]"*.

47. Secondly, the Supreme Court regarding the allegation of violation of the provisions of the criminal procedure, namely Article 384 paragraph 1, subparagraph 1.12 of the CPCRK found that the Judgment of the Basic Court

did not contain the violation because *"[...] the enacting clause of the Judgment is clear and clearly describes the incriminating provisions of the convict, actions that present the features of the criminal offense for which he was convicted, and in the reasoning are given sufficient reasons for all the decisive facts, in accordance with the provision of Article 370, par. 7 of the CPC, therefore all items of the judgment have been assessed. Whereas, the Court has given reasons for all the evidence administered and in relation to them has presented its conclusions, which as are accepted by this Court as correct, and since the defense counsel in this regard does not specify where these contradictions or ambiguities lie but only paraphrases the legal provision, this court does not consider it necessary to give more reasons in this regard"*.

48. The Supreme Court, further regarding the allegation of violation of criminal law, found that this allegation of the Applicant relates to *"erroneous and incomplete determination of factual situation (as it is alleged that it has not been proved that [the Applicant] has committed the criminal offense for which he was tried) on which legal ground the request for protection of legality cannot be filed. Despite this, the court finds that the allegations in this regard do not call into question the accuracy of the decisive facts established by the decisions against which the request was filed and there is no violation of criminal law"*.

Applicant's allegations

49. The Applicant alleges that the challenged Judgments violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, as a result of violations of Article 240, paragraph 5 of the PCPCK; Article 384, paragraph 1, subparagraph 1.12; Article 365, paragraph 1; and Article 384, paragraph 2, subparagraphs 2.1 and 2.2 of the CPCRK.

50. The Applicant in his Referral, in essence, raises three groups of violations of various articles of the law which, according to the Applicant, have resulted in a violation of Article 31 of the Constitution, namely alleging a violation on the grounds that (i) the evidence in the proceedings were obtained in an unlawful manner; (ii) the decisions are unclear and do not contain sufficient reasons for the decisive facts; and (iii) there is insufficient evidence that the Applicant has committed the criminal offense for which he was convicted.

(i) Allegations that the evidence in the proceedings was obtained in an unlawful manner

51. The Applicant regarding his allegation of violation of Article 384, paragraph 1, subparagraph 1.8 of CPCRK states that the evidence which has been taken into account and which has been provided on the basis of the order of the pre-trial judge [Pn. No. 3139/12] of 22 May 2012, does not include the necessary elements provided in paragraph 5 of Article 240 of the PCPCK.

(ii) Allegations that the decisions are unclear and do not contain sufficient reasons for the decisive facts

52. With regard to violation of Article 384, paragraph 1, subparagraph 1.12 of the CPKRK, the Applicant alleges that the enacting clause of the challenged Judgment of the Basic Court *"is unclear, not concrete and as such does not contain sufficient reasons for the decisive facts"*. In this context, the Applicant specifies that the enacting clause of the Judgment of the Basic Court does not *"contain the appropriate description of incriminating actions as in the present case the decisive features and facts of the criminal offense are not given and as such remain close to the position that it does not incorporate elements under Article 365, paragraph 1 of CPCK"*.

53. Regarding the allegation of violation of Article 384, paragraph 2, sub-paragraphs 2.1 and 2.2 of the CPCRK, the Applicant states that he will not elaborate further because *"the latter have been previously explained to an acceptable extent"*.

(iii) Allegations that there is insufficient evidence that the Applicant has committed the criminal offense for which he was convicted

54. Furthermore, the Applicant alleges that the challenged Judgments also consist in a violation of Article 385, paragraph 1 of the CPCRK reasoning that *"in my actions we have nothing to do with the formation of the elements of the criminal offense which I have been charged with and found guilty, given the fact that the criminal offense that has been the subject of review by the challenged judgment in its corpus is not considered a presentation of genuine arguments through which it would be proven that I have been involved in the alleged manner in committing incriminating actions in order to benefit myself from the illegal property measure"*. In this context, the Applicant specifies that no evidence has been obtained to prove that he was in possession of the confiscated banknotes, because a relevant expertise has not been conducted to establish the latter.

55. The Applicant requests the Court that his Referral: (i) be declared admissible; and (ii) Judgment [Pml. No. 48/2020] of 27 May 2020 of the Supreme Court; Judgment [PAKR. No. 144/2019] of 9 July 2019 of the Court of Appeals; and Judgment [PAKR. No. 144/2019] of 21 February 2019 of the Basic Court be annulled and the case be remanded for retrial.

Request for suspension of execution of imprisonment sentence

56. In addition, the Applicant also requests that *"the request for prohibition to commence the execution of the sentence imposed by the judgment of the Ist instance be approved until this case is decided by this court"*.

Request for non-disclosure of the Applicant's identity

57. The Court notes that the Applicant requested that his identity be not disclosed in the proceedings before this Court.

58. In the context of this request, the Applicant reasons that: *"in this case the image of my personality would be damaged, then my profession of pulmonologist specialist with a work experience of over three decades*

especially now my retirement in old age would damage me in my further life".

Relevant constitutional and legal provisions

Constitution of the Republic of Kosovo

Article 31 [The 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.

Provisional Criminal Code

[UNMIK Regulation 2003/25, published in the Official Gazette on 6 July 2003, and repealed by Code no. 04/L-082 Penal, published in the Official Gazette of the Republic of Kosovo on July 13, 2012]

Article 343

ACCEPTING BRIBES

(1) An official person who solicits or accepts a gift or some other benefit for himself, herself or another person or who accepts a promise of a gift or some other benefit to perform within the scope of his or her authority an official or other act which he or she should not perform or to fail to perform an official or other act which he or she should or could have performed shall be punished by imprisonment of six months to five years.
[...]

Provisional Criminal Procedure Code

[UNMIK Regulation 2003/26, published in the Official Gazette on 6 July 2003, and repealed by Code No. 04/L-123, published in the Official Gazette of the Republic of Kosovo on 28 December 2012]

Article 57

PROHIBITION ON EXERCISE OF PROFESSION, ACTIVITY OR DUTY

(1) The court may prohibit a perpetrator from exercising a profession, an independent activity, a management or administrative duty or duties related to the disposition, management or use of socially-owned property or the protection of such property, if the such person has abused his or her position, activity or duty in order to commit a criminal offence or if there is reason to expect that the exercise of such profession, activity or duty can be misused to commit a criminal offence.
(2) The court determines the duration of the punishment ordered according to paragraph 1 of the present article, which may not be less than one year or more than five years, starting from the day the decision of the court becomes final, provided that the period of time served in a prison or in a health care institution is not included in the duration of this punishment.
(3) When imposing a suspended sentence, the court may decide that the suspended sentence will be revoked if the perpetrator does not comply with the prohibition on exercising a profession, activity or duty..

5. SEARCH AND TEMPORARY CONFISCATION

Article 240

(1) A *pre-trial judge may order a search of a house and other premises and property of a specific person if there is a grounded suspicion that such person has committed a criminal offence prosecuted ex officio and there is a sound probability that the search will result in the arrest of such person or in the discovery and confiscation of evidence important for the criminal proceedings.*
(2) A pre-trial judge may order a search of a house and other premises and property of a person not suspected of a criminal offence only in cases in which:
1) There is a sound probability that the search will result in the arrest of a defendant; or

2) It is necessary to preserve evidence of a criminal offence or to confiscate specific objects which cannot be preserved or obtained without the search and there is a sound probability that such evidence or objects are in the premises or property to be searched.

(3) A pre-trial judge may order a personal search of a specific person if there is a sound probability that the search will result in the discovery of traces or confiscation of evidence of a criminal offence.

(4) A search order shall be issued in writing upon a written application of the public prosecutor or, in exigent circumstances, the judicial police.

(5) A search order shall contain: an identification of the person against whom the order is directed, a designation of the criminal offence in relation to which the order has been issued, an explanation of the basis for the grounded suspicion and sound probability in accordance with the present article, a description of the objects sought in the search, a separate

description of the person, premises or property to be searched and other information relevant for the implementation of the search.

CRIMINAL No. 04/L-123 PROCEDURE CODE

Article 384
Substantial Violation of the Provisions of Criminal Procedure

1. There is a substantial violation of the provisions of criminal procedure if:
[...]
1.8. the judgment is based on inadmissible evidence;
1.9. the accused, when asked to enter his or her plea, pleaded not guilty on all or certain counts of the charge and was examined before the presentation of evidence was completed;
[...]

1.12. the judgment was not drawn up in accordance with Article 370 of the present Code.

2. Substantial violation of provisions of criminal procedure shall be considered if during the course of criminal proceedings, including pretrial proceedings, the court, the state prosecutor or the police:
2. 1. omitted to apply a provision of the present Code or applied it incorrectly; or
2.2. violated the rights of the defense; and this influenced or might have influenced the rendering of a lawful and fair judgment.

Article 385
Violation of the Criminal law

1. *There is a violation of the criminal law:*
1.1. the act for which the accused is prosecuted is not a criminal offence;
1.2. circumstances exist which preclude criminal liability;
1.3. circumstances exist which preclude criminal prosecution and, in particular, whether criminal prosecution is prohibited by the period of statutory limitation or precluded due to an amnesty or pardon, or prior adjudication by a final judgment;;

1.4. an inapplicable law was applied to the criminal offence which is the subject-matter of the charge;
1.5. in rendering a decision on punishment, alternative punishment or judicial admonition, or in ordering a measure of mandatory rehabilitation treatment or the confiscation of material benefit acquired by the commission of a criminal offence, the court exceeded its authority under the law; or
1.6. provisions were violated in respect of crediting the period of detention on remand and an earlier served sentence.

Admissibility of the Referral

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

60. 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".*

61. In addition, the Court also examines whether the Applicant has met the admissibility requirements as defined by the Law. In this regard, the Court first refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

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

62. With regard to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely Judgment [Pml. No. 48/2020] of 27 May 2020 of the Supreme Court

after having exhausted all legal remedies provided by law. In this respect, the Applicant's Referral is in accordance with the criteria set out in paragraphs 1 and 7 of Article 113 of the Constitution and Article 47 of the Law. The Applicant also submitted the Referral in accordance with the deadline set out in Article 49 of the Law.

63. However, the Court also examines whether the Applicant has met the admissibility requirements specified in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure 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."*

64. The Court initially notes that the above rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) and of the Court, enables the latter to declare inadmissible referrals for reasons related to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on and after assessing its merits, i.e. if it deems that the content of the referral is manifestly ill-founded on constitutional basis, as defined in paragraph 2 of Rule 39 of the Rules of Procedure.

65. Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as "manifestly ill-founded" in its entirety or only with respect to any specific claim that a referral may constitute. In this regard, it is more accurate to refer to the same as "manifestly ill-founded claims". The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as claims of "fourth instance"; (ii) claims that are categorized as "clear or apparent absence of a violation"; (iii) "unsubstantiated or unsupported" claims; and finally, (iv) "confused or far-fetched" claims. (See, more precisely, the concept of inadmissibility on the basis of a referral assessed as "manifestly ill-founded", and the specifics of the four above-mentioned categories of claims qualified as "manifestly ill-founded", The Practical Guide to the ECtHR on Admissibility Criteria of 31 August 2019; part III. Inadmissibility Based on Merit; A. Manifestly ill-founded applications, paragraphs 255 to 284).

66. In this context of the assessment of the admissibility of the referral, respectively, in the circumstances of this case, the assessment of whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the merits of the case that this referral entails and the relevant claims of the Applicant, in the assessment of which the Court will apply the standards of case law of the ECtHR, in accordance with which, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

67. The Court first recalls that the Applicant alleges that the challenged Judgment of the Supreme Court was rendered in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution as a result of violations of Article 240, paragraph 5 of the PCPCK;

Article 384, paragraph 1, subparagraph 1.12; Article 365, paragraph 1; and Article 384, paragraph 2, subparagraphs 2.1 and 2.2. of the PCPCK.

68. The Court notes that the abovementioned allegations of the Applicant refer to the challenged Judgments of the Basic Court [PKR. No. 111/2016, of 21 February 2019], that of the Court of Appeals [PAKR. No. 144/2019, of 9 July 2019] and of the Supreme Court [Pml. No. 48/2020, of 27 May 2020], which were rendered as part of the second procedure after the remand of the criminal case for retrial.

69. Therefore, the Court notes that the Applicant's allegations of a violation of the right to a fair trial relate to the way in which the regular courts have interpreted the provisions of criminal law and of the criminal procedure, and how they have assessed the evidence during the examination of his case when he was found guilty of committing the criminal offense of "accepting bribes" under Article 343, paragraph 1 of the CPCK and consequently was sentenced to imprisonment.

70. The Applicant in his Referral, in essence, alleges three groups of violations of different articles of the law which, according to the Applicant, have resulted in a violation of Article 31 of the Constitution, namely the allegations of violation because (i) the evidence in the proceedings was obtained unlawfully; (ii) the decisions are unclear and do not contain sufficient reasons for the decisive facts; and (iii) there is insufficient evidence that the Applicant has committed the criminal offense for which he was convicted.

71. In the following, and in the context of the allegations raised by him in his Referral to the Court, the Court recalls that the same allegations regarding the violation of the abovementioned provisions of criminal law and criminal procedure were raised by the Applicant also in his request for the protection of legality against the Judgment [PKR. No. 111/2016] of 21 February 2016, of the Basic Court in the Supreme Court.

(i) As to the allegations that the evidence in the proceedings was obtained unlawfully

72. First, with regard to his allegation of a violation of Article 384, paragraph 1, subparagraph 1.8 of the CPCRK, the Applicant states that the evidence which was taken into account and which was provided on the basis of the order of the pre-trial judge [Pn. No. 3139/12] of 22 May 2012, does not include the necessary elements provided in paragraph 5 of Article 240 of the PCPCK.

73. In this respect, the Court refers to Article 240, paragraph 5 of the PCPCK which provides that: "*(5) A search order shall contain: an identification of the person against whom the order is directed, a designation of the criminal offence in relation to which the order has been issued, an explanation of the basis for the grounded suspicion and sound probability in accordance with the present article, a description of the objects sought in the search, a separate description of the person, premises or property to be searched and other information relevant for the implementation of the search.*"

74. In this regard, the Court notes that on the basis of the submitted submissions, the Applicant raised this specific allegation for the first time in the procedure after the retrial of the criminal case, namely in his appeal filed with the Court of Appeals on 11 March 2019 against the Judgment [PKR. No. 111/2016] of 21 February 2016, of the Basic Court.

75. The Court of Appeals by Judgment [PAKR. No. 144/2019] of 9 July 2019 regarding the Applicant's allegation that the Order [Pn. No. 3139/2012] of 22 May 2012 does not contain all the elements set out in Article 240, paragraph 5 of the PCPCK assessed that *"[...] the evidence that has been provided on the basis of the Order of the pre-trial judge under the sign P. No. 3139.12 of 22.05.2012, to which the appeal refers, are declared admissible evidence by the Decision of the Court of Appeals PN. No. 497/16 of 19.07.2016, therefore, due to the same degree this Court cannot enter their assessment"*. In this regard, the Court of Appeals found that *"the factual situation in this criminal-legal case, in addition to the mentioned evidence that was provided according to the order for simulation of the case, is based on the statement of the injured party-witness given in the main trial and in the investigative stages of the criminal procedure, but also on the material evidence, namely the medical reports issued by [the Applicant] [...]"*.

76. Whereas the Supreme Court, by the challenged Judgment in relation to the same allegation raised by the Applicant in his request for protection of legality found that Judgment [Pn. No. 3139/2012] of the Basic Court did not contain violation because the Order of 22 May 2012 which ordered the covert measure of simulation of the criminal offense, and on the basis of which evidence was provided *"[...] was issued in accordance with the legal provisions for the covert measure - simulation of a criminal offense and not for a search warrant. Then, at the request of the Prosecutor, the identity of the convict, the place where he works, the offense he is suspected of and the reasons for simulating the criminal offense in this case are stated, therefore it is allegedly claimed that the search warrant does not contain the necessary elements provided in Article 245 [240], paragraph 5 of [CPCK]"*.

(ii) As to the allegation that the decisions are unclear and do not contain sufficient reasons for the decisive facts

77. Secondly, with regard to the allegation of a violation of Article 384 [Substantial Violation of the Provisions of Criminal Procedure] paragraph 1, sub-paragraph 1.12 of the CPCRK, the Applicant alleges that the enacting clause of the Judgment of the Basic Court *"is unclear, not concrete and as such does not contain sufficient reasons for the decisive facts."* In this context, the Applicant specifies that the enacting clause of the Judgment of the Basic Court does not *"contain the appropriate description of incriminating actions as in this case the decisive features and facts of the criminal offense are not given and as such remain close to the position that it does not incorporate elements from Article 365, paragraph 1 of the CPCK"*.

78. With regard to this allegation, which the Applicant also raised before the Supreme Court, the latter found that *"[...] the enacting clause of the Judgment is clear and clearly describes the incriminating provisions of the convict,*

actions that present the features of the criminal offense for which he was convicted, and in the reasoning are given sufficient reasons for all the decisive facts, in accordance with the provision of Article 370, par. 7 of the CPC, therefore all items of the judgment have been assessed. Whereas, the Court has given reasons for all the evidence administered and in relation to them has presented its conclusions, which as are accepted by this Court as correct, and since the defense counsel in this regard does not specify where these contradictions or ambiguities lie but only paraphrases the legal provision, this court does not consider it necessary to give more reasons in this regard".

(iii) Regarding the allegation that there is insufficient evidence that the Applicant has committed the criminal offense for which he was convicted

79. Thirdly, the Applicant alleges that the challenged Judgments also consist of a violation of Article 385 [Violation of the Criminal Law], paragraph 1 of the PCPCK, reasoning that *"in my actions we have nothing to do with the formation of the elements of the criminal offense which I have been charged with and found guilty, given the fact that the criminal offense that has been the subject of review by the challenged judgment in its corpus is not considered a presentation of genuine arguments through which it would be proven that I have been involved in the alleged manner in committing incriminating actions in order to benefit myself from the illegal property measure"*. In this context, the Applicant specifies that no evidence has been obtained to prove that he was in possession of the confiscated banknotes, because a relevant expertise has not been conducted to establish the latter.

80. Regarding this allegation, the Court recalls that the Supreme Court, found that this allegation of the Applicant relates to *"erroneous and incomplete determination of factual situation (as it is alleged that it has not been proved that [the Applicant] has committed the criminal offense for which he was tried) on which legal ground the request for protection of legality cannot be filed. Despite this, the court finds that the allegations in this regard do not call into question the accuracy of the decisive facts established by the decisions against which the request was filed and there is no violation of criminal law"*.

81. Therefore, the Court notes that following the request for protection of legality filed by the Applicant against the Judgment of the Basic Court, the Supreme Court rejected as ungrounded his allegations of violation of the provisions of criminal law and criminal procedure.

82. The Court further reiterates that the Applicant only mentioned the violation of his right to fair and impartial trial, guaranteed by Article 31 of the Constitution, specifying that in his case Article 240, paragraph 5 of the PCPCK; Article 384, paragraph 1, subparagraph 1.12; Article 365, paragraph 1; and Article 384, paragraph 2, subparagraphs 2.1 and 2.2 of the PCPCK have been violated. Subsequently, the Applicant has not reasoned or specified as to how the violation of these provisions has resulted in a violation of his right to fair and impartial trial.

83. The Court first reiterates that it is not its duty to deal with errors of fact or law allegedly committed by the regular courts, unless and insofar as they may have

violated the fundamental rights and freedoms protected by the Constitution (see case, *Garcia Ruiz v. Spain*, [GC], application no. 30544/96, Judgment of 21 January 1999, paragraph 28).

84. The Court notes that although the regular courts have a certain margin of appreciation when choosing arguments and admitting evidence in a particular case in support of the parties' allegations, courts are obliged to reason their activities by explaining the reasons for their decisions. The Constitutional Court states that it is not its role to examine whether the refusal of the regular courts to admit the evidence presented by the Applicant was grounded, it is within the jurisdiction of the regular courts to decide on such matters. (see, *Suominen v. Finland*, no. 37801/97, paragraph 36, Judgment of 24 July 2003).

85. However, it is the primary role of the regular courts to resolve the issues of interpretation of the domestic legal rules. This applies in particular to the interpretation of substantive and procedural law by the courts (see case, *Pekinel v. Turkey*, No. 9939/02, 18 March 2008, paragraph 53). The role of the Court is only to determine whether the effects of such interpretation are in accordance with the Constitution in entirety and with the principle of legal certainty, in particular those guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.

86. The Court reiterates that Article 6 of the ECHR and Article 31 of the Constitution oblige the courts to give reasons for their decisions, but this cannot be understood as an obligation of the court to give a detailed answer to any arguments of the Applicant (see case, *Van de Hurk v. the Netherlands*, Judgment of 19 April 1994, paragraph 61). The extent to which the duty to give reasons applies may vary according to the nature of the decision. It should also take into account, *inter alia*, the variety of submissions submitted by a party to proceedings that may make the courts give various legal opinions and conclusions when drafting judgments. Therefore, the question whether the court has fulfilled the obligation to explain the reasons for its decision, stemming from Article 6 of the ECHR, can only be determined in the light of the circumstances of each individual case.

87. The Court wishes to emphasize in its principled position that it is not the task of the Constitutional Court to deal with errors of fact of law (legality) allegedly committed by the Supreme Court or any other court of lower instances, unless and in so far as such errors may have infringed rights and freedoms protected by the Constitution (constitutionality). The Court further reiterates that it is not its task under the Constitution to act as a court of "fourth instance", in respect of the decisions taken by the regular courts.. In fact, it is the role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (shih *mutatis mutandis*, case of the Constitutional Court: KI68/16, Applicant: *Fadil Rashiti*, Resolution on Inadmissibility of 2 June 2017, paragraph 51 and 52, case KI70/11, Applicant: *Faik Hima, Magbule Hima* and *Besart Hima*, Resolution on Inadmissibility of 16 December 2011, paragraph 29).

88. In this context, the Constitutional Court can only consider whether the evidence has been presented in a correct manner and whether the proceedings

in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair and non-arbitrary trial (see, *mutatis mutandis*, cases of the Constitutional Court: KI68/16, Applicant: *Fadil Rashiti*, Resolution on Inadmissibility of 2 June 2017, paragraph 54, and KI70/11, Applicant: *Faik Hima, Magbule Hima* and *Besart Hima*, Resolution on Inadmissibility of 16 December 2011, paragraph 30).

89. The Court reiterates that the Applicant repeats before the Court the same allegations he had filed before the Court of Appeals and the Supreme Court after the remand of the criminal case for retrial. The Court notes that the Applicant was able to conduct the adversarial procedure; that he was able to present arguments and evidence that he considered relevant to his case; that he has been given the opportunity to effectively challenge the arguments and evidence presented by the opposing party; that all his arguments, viewed objectively, which were relevant to the resolution of the dispute, have been duly heard and examined by the courts; that the factual and legal reasons against the challenged decisions were presented and examined in detail; and that, according to the circumstances of the case, the proceedings, viewed in entirety, were fair (see case *Garcia Ruiz v. Spain* [GC], application no. 30544/96, Judgment of 21 January 1999 and case *De Tommaso v. Italy* [DHM], application no. 43395/09, Judgment of 23 February 2017, paragraph 172).

90. The Court also notes that the Supreme Court and the Court of Appeals, referring to the Applicant's allegation, dealt with the Applicant's allegations raised in his appeal, namely in his request for protection of legality.

91. In the present case, as explained above, the Supreme Court in particular found that the arguments presented by the Applicant did not prove that the Order on simulation of a criminal offense was issued in violation of Article 240, paragraph 5 of the PCPCK, and also in the end found that his allegations do not "*call into question the accuracy of the decisive facts established by the decisions against which the request was filed and there is no violation of criminal law*".

92. Therefore, the Court notes that the reasoning of the regular courts given in their respective Judgments, challenged by the Applicant, is clear and, after examining all the proceedings, the Court also finds that the proceedings in the regular courts were not unfair or arbitrary (see, mutatis mutandis, cases of the Constitutional Court: KI68/16, Applicant: *Fadil Rashiti*, Resolution on Inadmissibility, of 2 June 2017, paragraph 55, and KI70/11, Applicant: *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011, paragraph 32).

93. The Court recalls that the mere fact that the Applicant does not agree with the outcome of the decisions of the regular courts, or mentioning of articles of the Constitution, are not sufficient to build a reasoned allegation of constitutional violations. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (see, Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca*, KI136/14, paragraph 33).

94. In conclusion, the Court notes that the Applicant in his Referral has failed to prove and substantiate his allegation that the Supreme Court in interpreting and applying the substantive law, namely the provisions of the Criminal Code and the Criminal Procedure Code has violated his right guaranteed by Article 31 of the Constitution, and consequently, this allegation is manifestly ill-founded on constitutional basis, as established in paragraph (2) of Rule 39 of the Rules of Procedure.

Request for suspension of execution of imprisonment sentence

95. The Court recalls that the Applicant also requests that *"the request for prohibition to commence the execution of the sentence imposed by the judgment of the first instance is approved until this case is decided by this court".*

96. The Court notes that the Applicant in his Referral has not specified that he is submitting a request for an interim measure in accordance with Article 27, paragraph 1 of the Law and Rule 57, paragraph 1 of the Rules of Procedure. However, taking into account the content of his request for suspension of imprisonment sentence imposed by the final judgment, the Court considers that such a request is considered as a request of the Applicant for the imposition of an interim measure.

97. In this context, and following this, the Court has just concluded that the Applicant's Referral is inadmissible as manifestly ill-founded on constitutional basis, as set out in Articles 47 and 48 of the Law and paragraph (2) of Rule 39 of the Rules of Procedure..

98. Therefore, the Applicant's request for suspension of imprisonment sentence imposed by the final judgment of the Basic Court is without subject of review, because the Referral is declared inadmissible.

Applicant's request for non-disclosure of identity

99. The Court notes that the Applicant has requested that his identity before this Court be not disclosed.

100. In the context of this request, the Applicant reasons that: *"in this case the image of my personality would be damaged, then my profession of pulmonologist specialist with a work experience of over three decades especially now my retirement in old age would damage me in my further life".*

101. The Court refers to Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure, which provides *"[...] 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".*

102. In relation to this request, the Court considers that the reasoning given by the Applicant for non-disclosure of identity, which refers to damage of his

reputation, does not constitute a sufficient basis which would justify the approval of his request for non-disclosure of his identity (see in a similar way case of the Court, KI74/17 Applicant *Lorenc Kolgjeraj*, Resolution on Inadmissibility of 5 December 2017, paragraph 32).

103. Therefore, based on the above, the Court decides to reject the Applicant's request for non-disclosure of identity.

Conclusion

104. In conclusion, the Court: (i) finds that the Applicant has not substantiated his allegation of a violation of the right to a fair and impartial trial guaranteed by Article 31 of the Constitution, as a result of violations of the provisions of criminal law and those of criminal procedure; (ii) decides to reject the Applicant's request for an interim measure; and (iii) decides to reject the Applicant's request for non-disclosure of identity.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20, 27 and 48 of the Law, and in accordance with Rule 39 (2) of the Rules of Procedure, on 25 November 2020,

DECIDES

I. TO DECLARE unanimously the Referral inadmissible;

II. TO REJECT unanimously the request for interim measure;

III. TO REJECT with majority of votes the Applicant's request for non-disclosure of identity;

IV. TO NOTIFY this Decision to the parties;

V. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;

VI. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Radomir Laban

Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.