



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

Prishtina, on 28 December 2020  
Ref. no.:RK 1679/20

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

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI128/20**

Applicant

**Ramadan Sopaj**

**Constitutional review of Judgment PML. No. 137/2020 of the Supreme Court of Kosovo, of 15 June 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 Ramadan Sopaj, residing in Malisheva, who is represented by Reshat Millaku, a lawyer from Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Judgment PML. No. 137/2020 of the Supreme Court of Kosovo (hereinafter: the Supreme Court) of 15 June 2020.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).
4. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) "*to impose the interim measure, to postpone the execution of [his] imprisonment sentence*".

## **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 (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 25 August 2020, the Court received the Applicant's Referral.
7. On 9 September 2020, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha (members).
8. On 14 September 2020, the Court notified the Applicant's representative about the registration of the Referral and requested him to submit to the Court the power of attorney signed by the Applicant authorizing him to represent the Applicant before the Court.
9. On 24 September 2020, the Court received from the Applicant's representative the power of attorney signed by the Applicant.
10. On 25 September 2020, the Court notified the Supreme Court about the registration of the Referral.

11. On 10 November 2020, the Review Panel considered the Report of the Judge Rapporteur, and unanimously recommended to the Court the inadmissibility of the Referral.

### **Summary of facts**

12. The Applicant was employed as a specialist doctor at the Family Medicine Center in Malisheva (hereinafter: FMC).
13. On 30 November 2018, the Basic Prosecution in Gjakova (hereinafter: the Basic Prosecution) by Decision [PP/I. No. 84/2018] initiated the investigations against the Applicant for the criminal offense under paragraph 1, subparagraph 1.3 of Article 235 [Sexual abuse of persons under the age of sixteen (16) years] of the Criminal Code of the Republic of Kosovo No. 04/L-082 (hereinafter: the CCRK).
14. On 28 January 2019, the Basic Prosecution filed an indictment [PP/I. No. 84/2018] against the Applicant due to the criminal offense from paragraph 1, subparagraph 1.3 of Article 235 [Sexual abuse of persons under the age of sixteen (16) years] of the CCRK, under the suspicion that on 29 November 2018, during the medical examination of the person F.H. the Applicant "*sexually abused a person under the age of 16*".
15. On 10 December 2019, the Basic Court in Gjakova, Department for Minors (hereinafter the Basic Court), by Judgment [PKR. No. 3/2019], found the Applicant guilty of the criminal offense which he was charged with, because on 29 November 2018, in the FMC he had sexually abused a person under the age of sixteen (16) years, during the visit of the minor F.H. to the FMC.
16. Against the Judgment [PKR. No. 3/2019] of the Basic Court, the Applicant filed an appeal on the grounds of essential violation of the provisions of the criminal procedure, violation of the criminal law, erroneous and incomplete determination of factual situation and decision on sentence. The Applicant alleged before the Court of Appeals, *inter alia*, that *a*) the composition of the trial panel in the Basic Court was not in accordance with the Juvenile Justice Code No. 06/L-006, as according to the abovementioned Code, the composition of the trial panel should have been composed entirely of professional judges and not lay judges as was the composition of the trial panel in his case, based on the Juvenile Justice Code No. 03/L-193, because the latter was not applicable in his case; *b*) The Basic Court had not established the "intent" as an element of the criminal offense for which the Applicant was convicted; *c*) testimony of the injured party F.H. was not credible; and *d*) the enacting clause of the Judgment is contradictory to the evidence, specifically the expert evidence.
17. The representative of the injured party also filed an appeal on the grounds of the sentence imposed on the Applicant requesting that the Judgment [PKR. No. 3/2019] of the Basic Court be annulled and the case be remanded for retrial or that a more severe punishment be imposed on the Applicant. The Appellate Prosecution of Kosovo (hereinafter: the Appellate Prosecution),

through by submission [PPAM/I No. 17/2020] of 20 January 2020, proposed that the appeal of the injured party's representative be upheld.

18. On 26 February 2020, the Court of Appeals of Kosovo [hereinafter: the Court of Appeals], by Judgment [PAKR. No. 25/2020], rejected the appeal filed by the Applicant and the appeal of the injured party as ungrounded and upheld the Judgment [PKR. No. 3 / 2019] of the Basic Court.
19. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court against the Judgment [PKR. No. 3/2019] of the Basic Court and the Judgment of the Court of Appeals [PAKR. No. 25/2020] on the grounds of essential violations of the provisions of criminal procedure and erroneous application of criminal law with the request that it be approved and the convict be acquitted of charges or that the case be remanded for retrial to the Basic Court. The Applicant alleged a legal violation regarding a) the composition of the trial panel; b) establishment of the "subjective" element of the criminal offense; and c) the reasoning of the Basic Court and the Court of Appeals regarding the testimony of the injured party and expert witnesses. The State Prosecutor by the letter KMLP. II. 75/2020 of 3 June 2020, proposed to reject the Applicant's request for protection of legality as ungrounded.
20. On 15 June 2020, the Supreme Court by Judgment [PML. No. 137/2020] rejected the Applicant's request for protection of legality as ungrounded. Regarding the composition of the trial panel in the Basic Court, the Supreme Court assessed that in this case it is established that the criminal proceedings in this case began before the entry into force of the Juvenile Justice Code No. 06/L-006, namely the decision to initiate the investigation was conducted on 30 November 2018, therefore, the composition of the trial panel was in accordance with the Juvenile Justice Code No. 03/L-193, which was in force at the time the investigation began. Whereas, according to Article 138 of the Juvenile Justice Code, it is foreseen that the proceedings initiated before the entry into force of the Code No. 06/L-006, shall be completed in accordance with the provisions of the Code No. 03/L-193 on the Juvenile Justice Code. Regarding the allegation that the Basic Court and the Court of Appeals based their decisions on contradictory evidence and that they did not adequately reason their decisions regarding the commission of the criminal offense by the Applicant, the Supreme Court found that in addition to the statement of the minor injured party, the statement of the forensic expert Dr. B.C. was taken into account, which describes in detail the examination of the genital area which found a fresh injury to the injured party F.H. Also, the statement of the expert Dr. V.H. in the case file, which described the duties of the family medicine specialist and he specified that the gynecological examination should be done with gloves and if the patient is a minor, the consent of the parent should be taken, which procedures in this case were not respected by the Applicant. Therefore, according to the Supreme Court, in the case file there is evidence which coincides with the reasoning given by the Basic Court and the Court of Appeals.

## **Applicant's allegations**

21. The Applicant alleges before the Court that the Judgment of the Supreme Court [PML. No. 137/2020], in conjunction with the Judgment [PAKR. No. 25/2020], of the Court of Appeals and the Judgment [PKR. No. 3/2019] of the Basic Court violate his rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR.
22. With regard to his allegations of a violation of the right to a fair trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, which the Applicant also links to a violation of Article 22 of the Constitution, he initially states that the regular courts did not prove convincing reasons that the "subjective" element of the commission of the criminal offense for which the Applicant was convicted has been met, and that the "subjective" element should have been included in the enacting clause. This is because in order for the criminal offense to be committed, Article 235 of the CCRK requires "*the intent, which means that the perpetrator for sexual purpose touches the other person*". And this, according to the Applicant, proves that the regular courts have been biased in his case.
23. The Applicant also alleges that the composition of the judges that adjudicated in the Basic Court was contrary to law because the trial panel consisted of one (1) professional judge and two (2) lay judges, based on Juvenile Justice Code No. 03/L-193. Whereas, according to the Juvenile Justice Code no. 06/L-006, which entered into force on 2 May 2019, and has repealed the Juvenile Justice Code No. 03/L-193, the trial panel should have consisted of three (3) professional judges, because according to him, the court hearing against the Applicant started after the Juvenile Justice Code No. 06/L-006, entered into force. Therefore, this constitutes an essential violation of the provisions of the criminal procedure, and this violation should have been avoided by the Court of Appeals and the Supreme Court, but the Supreme Court, without giving convincing reasons, rejected this allegation of the Applicant.
24. The Applicant further alleges that the regular courts did not take into account the expertise of Dr. B.C., who stated that the injured party F.H. had no injuries to the genital organ proving that the injured F.H. "*lied and did not tell the truth, when she testified that allegedly [the Applicant] inserted 2 fingers into her vagina during the second examination, because otherwise, the expert would ascertain her defloration - the loss of virginity*". He adds that the Supreme Court gives no reason as to how it is possible for the Applicant "*to have inserted both index and middle fingers into her vagina while her hymen is unchanged and undamaged?*"
25. In this regard, the Applicant also states that the regular courts did not provide adequate explanations as to why the statement of the injured party F.H., regarding the information of her mother is credible as the statements of the injured party F.H. do not match with each other as well as with the statements of other witnesses but also with the expertise of the forensic expert. He adds

that witness B.M, a nurse testified that the injured party F.H. *“on the critical day when she left [...] the doctor’s [the Applicant] room did not cry and had normal behavior”*, which according to him contradicts what the injured party F.H. said.

26. He further adds that in the opinion of expert H.M. from the swabs received from the injured party F.H, and the Applicant, it has been established that with the injured party F.H. *“no sperm or DA of any male person was found. This means that the injured party did not speak the truth when she stated to the police that the accused allegedly kissed her on her lip- mouth”*. While from the family medicine expert Dr. V.H. the authorization of the family medicine doctor has been established, same as the Professional Practice Implementation Plan during the specialization of Family Medicine, issued by the Ministry of Health *“that the family doctor has the right to perform three gynecological examinations: that: genital examination, vaginal gynecology and taking genital swabs”*.
27. With regard to the alleged violation of equality before the law guaranteed by Article 24 of the Constitution, the Applicant states that everyone enjoys the right to equal legal protection, without discrimination, and that *“Article 9 of the Criminal Procedure Code is also in the spirit of the Constitution, which provides for the equality of the parties”*. However, this practice in the present case has not been respected. Furthermore, the Applicant states that he is a victim *“of a criminal procedure conducted in an unprofessional manner by the prosecution and the courts, adding that he has performed both checks in accordance with his powers as a specialist family medicine, which during the procedure was clearly explained by the expert Dr. V.H.”*.
28. With regard to the request for the imposition of an interim measure, the Applicant requests the Court *“to impose an interim measure, based on Article 27 of the Law on the Constitutional Court of the Republic of Kosovo, to postpone the execution of [his] imprisonment sentence, because in this way a repairable damage [...] for the convict would be avoided, because in his actions the elements of the criminal offense are not manifested”*.
29. Finally the Applicant proposes the Court to:
  - a) approve the interim measure, *“to postpone the execution of the imprisonment sentence”* against the Applicant; *as well*
  - b) annul the court decisions related to his case, namely the Judgment [PML. no. 137/2020] of the Supreme Court, the Judgment [PAKR. No. 25/2020] of the Court of Appeals and the Judgment [PKR. No. 3/2019], of the Basic Court as well as to remand his case for reconsideration to the Basic Court.

## Admissibility of the Referral

30. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution, and further specified by the Law and foreseen by the Rules of Procedure.
31. 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.”*

32. The Court also examines whether the Applicant has fulfilled the admissibility requirements as required by 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 [...]”.*

33. With regard to the fulfillment of the abovementioned criteria, the Court finds that the Applicant is an authorized party; has exhausted available legal remedies; has clarified the act of the public authority which constitutionality is challenged, namely Judgment PML. No. 137/2020 of the Supreme Court of Kosovo, of 15 June 2020; has specified the constitutional rights which he

claims to have been violated; as well as submitted the referral within the legal deadline.

34. In addition, the Court also examines whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure establishes 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.”*

***Regarding the right to a fair trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR***

35. The Court notes that the Applicant’s allegations of a violation of the right to a fair trial relate to the way the regular courts have interpreted the CCRK, the Juvenile Justice Code, and the way they assessed the evidence during the examination of his case, specifically regarding the allegations that:

- a) the trial panel in the Basic Court was not composed according to the Juvenile Justice Code No. 06/L-006, which entered into force on 2 May 2019, and for this reason no proper reasoning was given by the regular courts;
- b) the Applicant was convicted on the basis of contradictory statements, and the necessary expertise of forensic experts has not been taken into account;
- c) the “subjective” element of the commission of the criminal offense for which the Applicant was convicted has not been fulfilled because in order to commit the criminal offense for which he was convicted it is required to prove the “intent”, specifically that the perpetrator touches the other person for a sexual purpose, and no proper reasoning was given for this.

36. In relation to the Applicant’s allegations, the Court first notes that the Supreme Court, in relation to the allegation that the trial panel in the Basic Court was not composed under the Juvenile Justice Code No. 06/L-006, which entered into force on 2 May 2019, reasoned as follows:

*“it is true that the court hearing in this criminal matter started on 18.06.2019, and that the Juvenile Justice Code [No. 06/L-006] entered into force on 02.05.2019 and that according to this code, the lay judges could not be part of the trial panel, but according to Article 138 par.1 of the Juvenile Justice Code [No. 06/L-006] it is foreseen that the procedures initiated before the entry into force of this Code will be conducted according to the provisions of the Juvenile Justice Code No. 03 L-193 of 20.08.2010, which code provides that the trial panel for minors be composed of two lay judges and a professional judge who will serve as presiding judge. In the present case, it is confirmed that the criminal*

*proceedings in this case started before the entry into force of the Juvenile Justice Code [No. 06/L-006] which is currently in force, namely the decision to initiate investigations was taken on 30.11 .2018 and this makes this allegation ungrounded”.*

37. As to the allegation that the Applicant was convicted on the basis of contradictory statements, and if the necessary expertise of the forensic experts was taken into account, the Supreme Court reasoned that *“in the case file there is evidence which coincides with the reasoning given by the [Basic] court which was upheld by a judgment of the [Court of Appeals]. Thus, in addition to the statement that the minor injured party, there is also the statement of the forensic expert dr. B.C. which in detail describes the examination of the genital area which was performed on 29.11.2018, namely less than 12 hours from the time of commission of the alleged criminal offense and that the latter has ascertained a fresh damage but has also ascertained that the hymen has remained undamaged. Also in the case file is also the statement of the expert Dr. V.H. who has described the duties of the family medicine specialist and he has specified that the gynecological examination should be done with gloves and if the patient is a minor there should be the consent of the parent, also in the documents there are is the material evidence which was administered and sufficient legal reasons have been given which are accepted as correct by the [Supreme Court]”.*
38. Furthermore, with regard to the allegation that the regular courts did not give convincing reasons whether the “subjective” element of the commission of the criminal offense for which the Applicant was convicted has been met, because in order to commit the criminal offense for which he was convicted the “intent” is required to be established that is, that the perpetrator for sexual purpose touches the other person, the Court recalls the Judgment of the Court of Appeals, which was also upheld by the Supreme Court, and in the relevant parts reads that:

*“[t]he enacting clause Judgment of the [Basic Court] is clear, comprehensible and presents all the necessary elements, including all the essential elements and the circumstances of the commission of the criminal offense. Considering the fact that in the enacting clause of the [Basic Court] it was found that [the Applicant] has committed “sexual abuse of a person under the age of 16” and taking into account the other circumstances described in the enacting clause of the Judgment of the [Basic Court], for the trial panel for minors of the Court of Appeals of Kosovo is sufficient to establish [...] the intent and aim of [the Applicant] to commit the criminal offense for which he was found guilty, always taking into account the circumstances of the commission of the criminal offense, the manner of action, as well as the personal qualities of the accused. On the other hand, the enacting clause of the appealed judgment is not contradictory to itself or to the reasoning of the latter. The [Basic] Court in the reasoning of the appealed judgment clearly and fully presented the facts which it has established, as well as the reasons on the basis of which it has considered them to be established. Also, in the Judgment of the [Basic Court] the accuracy of the contradictory evidence was assessed and*

*the [Basic] Court provided sufficient reasons as to why the certain evidence was given trust, on the basis of which it has been determined that [the Applicant] is the perpetrator of the criminal offense for which he was found guilty”.*

39. Therefore, the Court notes that following the Applicant’s appeal against the Judgment of the Basic Court, namely the request for protection of legality, the regular courts rejected his allegations of violation of criminal law, including the Juvenile Justice Code, by fully upholding the Judgment of the Basic Court, namely of the Court of Appeals. The Supreme Court responded to the substantive allegations of legal violations raised by the Applicant.
40. The Applicant repeats before the Court the same allegations he had filed before the regular courts, namely regarding: a) the composition of the trial panel; b) contradictory statements of the injured party and experts regarding the guilt of the Applicant; and, c) failure to meet the “subjective” element of the criminal offense.
41. In this regard, the Court, initially, recalls that the Constitutional Court does not have the jurisdiction to decide whether an Applicant was guilty of committing a criminal offence or not. Nor does it have jurisdiction to assess whether the factual situation was correctly determined or to assess whether the judges of the regular courts have had sufficient evidence to determine the guilt of an Applicant (see case of the Constitutional Court KI68/16, Applicant: *Fadil Rashiti*, Resolution on Inadmissibility, of 2 June 2017, paragraph 50).
42. The Court puts emphasis on 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 lower instance court, unless and in so far such errors may have infringed the 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 “fourth instance” court in respect of the decisions taken by the regular courts. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see *mutatis mutandis*, cases of the Constitutional Court: KI68/16, Applicant: *Fadil Rashiti*, Resolution on Inadmissibility, of 2 June 2017, paragraph 51 and 52; see also case KI70/11, Applicants: *Faik Hima, Magbule Hima dhe Besart Hima*, Resolution on Inadmissibility of 16 December, paragraph 29).
43. In this regard, the Constitutional Court can only consider whether the proceedings in the regular courts, viewed in their entirety, have been conducted in such a way that the Applicant had a fair or 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).
44. In the present case, as explained above, the Supreme Court found that the arguments presented by the Applicant did not prove that the composition of

the trial panel was in violation of the legislation in force, as this composition was determined in accordance with the Juvenile Justice Code, which was applicable at the time when the criminal proceedings were initiated against the Applicant. The Court also notes that the Supreme Court and the Court of Appeals, referring to the Applicant's allegation, addressed the Applicant's allegations of failure to fulfill the "subjective" element of the criminal offense, as well as, regarding the contradictory statements of the injured party and addressed the statements of the experts regarding the guilt of the Applicant.

45. In addition, the Court emphasizes that in case when a court of third instance, as in the case of the Applicant, the Supreme Court, which upholds 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 cases of the Constitutional Court: KI122/19, Applicant: *F.M*, Resolution on Inadmissibility, of 9 July 2020, paragraph 100, and KI194/18, Applicants *Kadri Muriqi and Zenun Muriqi*, Resolution on Inadmissibility of 5 February 2020, paragraph 106).
46. The Court also recalls that in rejecting an appeal, or as in the present case, rejecting a request for protection of legality, the Supreme Court may, in principle, merely approve the reasons for rendering the decision of the lower instance courts, in this case the Court of Appeals and the Basic Court (see ECtHR cases, *Garcia Ruiz v. Spain*, cited above, paragraph 26; *Helle v. Finland*, application No. 20772/92, Judgment of 19 December 1997, paragraphs 59-60).
47. Therefore, the Court notes that the reasoning of the regular courts, referring to Applicant's allegations of violations of the criminal legislation, is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the regular courts have not been 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).
48. The Court recalls that the mere fact that the Applicant is not satisfied with the outcome of the decisions of the regular courts, or the mentioning of articles of the Constitution is not sufficient to build an allegation of constitutional violation. When alleging such violations of the Constitution, the Applicant must present reasoned allegations and compelling arguments (see, Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca* KI136/14, paragraph 33).
49. Therefore, the Court finds that the Applicant failed to prove that the challenged decision violated his right to fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. Consequently, the Court finds that

the Applicant's Referral regarding the allegation of violation of Article 31 of the Constitution and Article 6 of the ECHR is manifestly ill-founded on constitutional basis.

***Regarding the right to equality before the law guaranteed by Article 24 of the Constitution***

50. The Court notes that the Applicant alleges that the challenged decision violated his right to equality before the law, which is guaranteed by Article 24 of the Constitution. In this regard he emphasizes that everyone enjoys the right to equal legal protection, without discrimination, adding that he is a victim "*of a criminal proceeding conducted in an unprofessional manner by the prosecution and the courts, adding that he performed the two checks in accordance with his authorizations as a family medicine specialist [...]*".
51. In this regard, the Court takes into account Article 24 [Equality Before the Law] of the Constitution which stipulates that:
  - "1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination."*
  - 2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status. [...]"*
52. The Court refers to its case law, which notes that only differences in treatment based on an identifiable characteristic *or status*, may represent unequal treatment within the meaning of Article 24 of the Constitution. In addition, in order for an issue to be raised under Article 24, there must be a difference in the treatment of persons in analogous situations or similar situations (see, *mutatis mutandis*, case of the Constitutional Court, KI157/18, Applicant *the Supreme Court of Kosovo*, Judgment of 13 March 2019, paragraph 33, see also cases of the ECtHR *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Judgment of 7 December 1976, paragraph 56; and *Carson and others v. United Kingdom*, Judgment of 16 March 2010, paragraph 61).
53. The Court notes that the Applicant has not submitted any *prima facie* evidence indicating on what identifiable characteristic, or status, he was discriminated against in the proceedings before the Supreme Court. In this regard, the Court considers that it is not sufficient for the Applicants to refer in general to an unequal treatment to establish discrimination, without showing the ground of this inequality.
54. Therefore, the Court considers that the Applicant has not proved and established the violation of his rights on the basis of discrimination, guaranteed by Article 24 of the Constitution. Therefore, his allegations of violation of the right to equality before the law are manifestly ill-founded.

### **Request for interim measure**

55. The Court recalls that the Applicant also requests the Court to issue a decision imposing an interim measure, namely *“to postpone the execution of [his] imprisonment sentence, because in this way an irreparable damage [...] will be avoided, for the convict, because in his actions the elements of the criminal offense are not manifested”*.
56. The Court has just concluded that the Applicant’s Referral does not meet the admissibility procedural criteria.
57. Therefore, in accordance with Article 27, paragraph 1 of the Law, and in accordance with Rule 57, paragraph (1) of the Rules of Procedure, the Applicant’s request for an interim measure is to be rejected because it can no longer be the subject of review, as long as the Referral is declared inadmissible.

### **Conclusion**

58. In conclusion, the Court finds that the Applicant has not substantiated his allegation of violation of 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 the right to equality before the law guaranteed by Article 24 of the Constitution in the procedure which found him guilty of the criminal offense - sexual abuse of a person under the age of sixteen (16) years. The Court also rejected the Applicant’s request for interim measure because it can no longer be the subject of a review, as long as the Referral is declared inadmissible.

## 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 10 November 2020, unanimously

### DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this decision to the Parties;
- III. TO REJECT the request for interim measure;
- 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**

Remzije Istrefi-Peci



Arta Rama-Hajrizi

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