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

Prishtina, 3 December 2020
Ref.No.:RK 1650/20

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI42/19

Applicant

Muhamet Prapashtica

Constitutional review of Judgment PML. No. 243/2018 of the Supreme Court of Kosovo of 12 November 2018

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 Muhamet Prapashtica, residing in the Municipality of Prishtina (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of the Judgment [PML. No. 243/2017] of 12 November 2018 of the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court) in conjunction with the Judgment [PAKR. No. 453/2017] of 9 March 2018 of the Court of Appeals of the Republic of Kosovo (hereinafter: the Court of Appeals) and Judgment [PKR. No. 624/2008] of 15 June 2017 of the Serious Crimes Department of the Basic Court in Prishtina (hereinafter: the Basic Court).

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Article 23 [Human Dignity] and Article 31 [Right to Fair Trial and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

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

Proceedings before the Constitutional Court

5. On 12 March 2019, the Applicant submitted the Referral to the Court by mail service. The Court received the Applicant's Referral on 14 March 2019.

6. On 18 March 2019, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.

7. On 12 April 2019, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.

8. 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

9. On 15 March 2008, based on the case file, during the supply with gas through a tanker of the company „P-Gas", at the point of sale on the street "Rrustem Hyseni" in Prishtina, the company „M-Gas Petroll", owned by the Applicant, the gas was ignited and as a result B.M and I.S died; N.D, M.D and A.A, received serious bodily injuries, while material damage was also caused.

10. On 17 September 2008, the Serious Crimes Department of the Basic Prosecution in Prishtina (hereinafter: the Basic Prosecution) filed the Indictment [PP.I. no. 218-7/08] against the Applicant and others due to a reasonable suspicion that they have committed the criminal offense of causing general danger provided by Article 291 (Causing general danger) of the Provisional Criminal Code of Kosovo (hereinafter: the PCCK).

11. On 15 June 2017, the Basic Court by Judgment [PKR. No. 624/2008] found the Applicant guilty of committing the criminal offense which he was charged with and sentenced him to four (4) years and ten (10) months imprisonment. The Basic Court initially (i) re-qualified the criminal offense which the Applicant was charged with from that established under Article 291 of the PCCK to that set forth in paragraph 1 in conjunction with paragraphs 6 and 9 of Article 365 (Causing general danger) of Criminal Code of the Republic of Kosovo No. 04 L-082 (hereinafter: the CCRK); and (ii) after examining the witnesses and examining the relevant evidence and as accurately elaborated in the abovementioned Judgment, found the Applicant guilty of the aforementioned criminal offense considering that the latter (i) *„had no valid permit for the „M-Gas Petroll" gas station; (ii) had „disregarded the legal criteria for construction, without an urban plan, building permit, environmental permit etc",;* and *(iii) „consequently posed a great danger to people's lives and property of considerable value, because after the gas was ignited, it resulted in death of B.M and I.S., while N.D., M.D. and A.A. suffered severe bodily injuries, as well as material damage was caused to vehicles and buildings".*

12. On 3 August 2017, against the aforementioned Judgment, the Applicant and his defense counsel filed an appeal with the Court of Appeals, alleging essential violations of the criminal procedure, erroneous and incomplete determination of factual situation, violation of the criminal law. and the decision on punishment, proposing that the appeals be approved as grounded, the challenged Judgment be annulled and the case be remanded for retrial or the relevant Judgment be modified and the Applicant be acquitted of the charge. On the other hand, the Prosecutor of the Basic Prosecution also filed an appeal against the decision on punishment, proposing that the appeal be upheld and that the challenged Judgment be modified so that the accused be imposed more severe imprisonment sentence.

13. On 9 March 2018, the Court of Appeals by Judgment [PAKR. No. 453/2017] (i) partially upheld the Applicant's appeal, and modified the Judgment of the Basic Court only as regards the part relating to the decision on punishment, imposing on him a more lenient punishment, namely imprisonment of two (2) years, counting the time spent in detention on remand; while (ii) rejected as ungrounded the Applicant's other allegations and those of the State Prosecutor, including all allegations related to the violation of the provisions of criminal procedure, erroneous and incomplete determination of factual situation and violation of the criminal law.

14. On an unspecified date, against the abovementioned Judgment of the Court of Appeals, the Applicant and his defense counsel filed a request for protection of legality with the Supreme Court, alleging essential violation of the provisions of criminal procedure and violation of criminal law.

15. Regarding the former, namely the violation of the provisions of the criminal procedure, the Applicant alleged a violation of (i) subparagraph 1.5 of paragraph 1 of Article 385 (Violation of the Criminal Law) of the Criminal Procedure Code No. 04/L-123 of the Republic of Kosovo (hereinafter: the CPCRK) regarding the imposition of a sentence with the claim that in determining the imprisonment sentence, the lower courts had *„exceeded legal competencies"*; and (ii) subparagraphs 10 and 12 of paragraph 1 of Article 384 (Substantial Violation of the Provisions of Criminal Procedure) of the CPCK, alleging that the charge was exceeded and the Judgment was not drafted in accordance with the Procedure Code. Regarding the second, namely the violation of the criminal law, the Applicant alleged that the existence of elements of the criminal offense for which he was charged and convicted has not been established, because *„at the time of the commission of this offense I was not present at the scene, and that the offense was committed by the negligence of the supplier, not by me, so at no point in my actions were manifested elements of the offense, which I was charged with"*.

16. On 24 September 2018, the State Prosecutor also submitted the request for protection of legality, by the letter [KMLP. II. No. 167/18], proposing that the Applicant's allegations be rejected as ungrounded.

17. On 12 November 2018, the Supreme Court by the Judgment [PML. No. 243/2018] rejected as ungrounded the request for protection of legality of the Applicant and upheld in entirety the Judgment of the Court of Appeals.

Applicant's allegations

18. The Applicant alleges that the challenged Judgment of the Supreme Court was rendered in violation of his fundamental rights and freedoms guaranteed by Articles 23 [Human Dignity] and 31 [Right to Fair and Impartial Trial] of the Constitution.

19. With regard to the alleged violations of Article 31 of the Constitution, the Applicant, in essence, alleges that the challenged Judgments were rendered in violation of the provisions of (i) the CPCRK, namely Article 7 (General Duty to Establish a Full and Accurate Record) thereof, because in the circumstances of his case, the facts relevant to rendering a lawful decision have not been established; and (ii) the CCRK, namely Article 20 (Causal link) because in the circumstances of his case, no link was made between his action or inaction in relation to the consequences created.

20. Finally, the Applicant requests the Court (i) *„to annul the Judgment of the Court of Appeals, as well as the Judgment of the Basic Court in Prishtina"*; and *(ii) „to find violations in the direction of a fair assessment of criminal liability in connection with my actions"*.

Relevant Constitutional and Legal Provisions

Constitution of the Republic of Kosovo

Chapter II
Fundamental Rights and Freedoms

[...]

Article 31
(Right to Fair and Impartial Trial)

1. *Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

Code No. 04/L-082 Criminal Code of the Republic of Kosovo

Article 20
Causal link

A person is not criminally liable if there is no causal connection between the action or omission and the consequences.

CHAPTER XXIX

CRIMINAL OFFENSES AGAINST THE GENERAL SECURITY OF PEOPLE AND PROPERTY

Article 365
Causing general danger

1. Whoever, by using fire, flood, weapons, explosives, poison or poisonous gas, ionizing radiation, mechanical power, electrical power or any other kind of energy or with any other similar dangerous action or dangerous means causes great danger to human life or considerable damage to property, shall be punished by imprisonment of six (6) months to five (5) years.
(...)
6. When the offense provided for in paragraph 1 or 2 of this Article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to three (3) years.
(...)
9. When the offense provided for in paragraph 6 of this Article results in the death of one (1) or more persons, the perpetrator shall be punished by imprisonment of one (1) to eight (8) years.

Criminal No. 04/L-123 Procedure Code of the Republic of Kosovo

Article 7
General Duty to Establish a Full and Accurate Record

1 The court, the state prosecutor and the police participating in criminal proceedings must truthfully and completely establish the facts which are important to rendering a lawful decision.
2. Subject to the provisions contained in the present Code, the court, the state prosecutor and the police participating in the criminal proceedings have a duty to examine carefully and with maximum professional devotion and to establish with equal attention the facts against the defendant as well as those in his or her favor, and to make available to the defense all the facts and pieces of evidence, which are in favor of the defendant, before the beginning of and during the proceedings.

Admissibility of the Referral

21. 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.

22. 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*".

23. In addition, the Court also examines whether the Applicant has fulfilled the admissibility requirements as further specified in the Law. In this respect, the Court first refers to Article 47 (Individual Requests), 48 (Accuracy of the Referral) and (Deadlines), which provide:

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...".

24. Regarding the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, challenging an act of a public authority, namely Judgment [PML. No. 243/2017] of 12 November 2018 of the Supreme Court, after exhaustion of all legal remedies provided by law. The Applicant has also clarified the rights and freedoms he claims to have been violated in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the deadlines of Article 49 of the Law.

25. In addition, the Court 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 sets out the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2), states that:

"The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim".

26. In this regard, the Court recalls that the circumstances of this case are related to an accident that occurred in 2008, in one of the points of sale of the company „M-Gas Petroll", in the point located on the street "Rrustem Hyseni" near Velluesha in Prishtina, a point for which, based on the case file, the Applicant, as the owner of the company „M-Gas Petroll", did not possess the appropriate documentation. The accident had resulted in death, injury and material damage.

27. The Basic Court found the Applicant guilty of the criminal offense of causing general danger, also finding that this offense was committed through negligence, but taking into account that it resulted in the death of one or more persons, sentenced the Applicant to four (4) years and ten (10) months imprisonment. The guilt of the accused, namely the Applicant was also established by (i) the Judgment of the Court of Appeals, which rejected as ungrounded all allegations regarding violations of the provisions of criminal procedure and criminal law and erroneous and incomplete determination of factual situation, by modifying the Judgment of the lower court only in relation to the decision on the sentence, namely reducing the latter to only two (2) years of imprisonment; and (ii) the Judgment of the Supreme Court and which also rejected the allegations regarding violations

of the provisions of criminal procedure and criminal law, upholding the Judgment of the lower court.

28. The regular courts, based on the case file, based their decisions on the statements of witnesses, injured parties and other evidence, determining the Applicant's liability regarding the criminal offense of causing general danger, in relation to his ownership in the company „M-Gas Petroll" and one of the points of sale, which was not equipped with the necessary permits for work, the accident occurred and consequently caused the relevant risk and damage.

29. The Applicant challenged the findings of the regular courts regarding his guilt, alleging violation of the provisions of criminal procedure, erroneous and incomplete determination of factual situation and violation of criminal law. All allegations were rejected as ungrounded by the Court of Appeals and the Supreme Court. The latter did not challenge the fact that the Applicant was not present at the scene at the time of the accident, moreover, by finding him guilty under paragraph 6 of Article 365 of the CCRK, they determined that the criminal offense was caused by negligence, but based on paragraphs 1, 6 and 9 of this Article, and taking into account the risk and damages, including deaths, the Applicant, in the capacity of the owner of the respective company, assigned to him the responsibility for the relevant criminal offense, considering that, as mentioned above, the point of sale at which the accident took place lacked the relevant work permits.

30. In this respect, despite the allegations of the Applicant that the premise in which the accident occurred *„was a mounting object and was not a permanent object"* and that the urban permit could not be issued due to lack of environmental consent, but that despite this *"no one from the Municipality has stopped its work"*, based on the case file, it results that the respective point of sale lacked (i) the environmental and ecological permit, the conditions and procedures for obtaining of which were defined in the applicable law on environmental protection; and (ii) urban planning and construction permits, the issuance of which was the responsibility of the Municipality of Prishtina. On the other hand, based on the latter, it turns out that the relevant point of sale (i) was equipped with a finding no. 3-1 of 7 June 2007 issued by *„fire prevention and investigation inspection by the Directorate of Civil and Emergency Protection"* of the Municipal Assembly in Prishtina, in which the Applicant had also *"filed a request for the issuance of a work permit"*; but that (ii) based on the case file and the explanations provided by the Judgment of the Court of Appeals *„the finding regarding the implementation of fire protection measures refers to the substation of the point of sale of liquid petroleum gas (propane-butane) in Prishtina in the street "Bajram Kelmendi" - former Vellusha in which the point of sale by the decision of the Market Inspection of the Inspection Directorate of the Municipality of Prishtina llr.09.34-14174 of 8.06.2007, this company has been banned from operating"*.

31. Before the Court, the Applicant continues to challenge his liability with regard to the criminal offense for which he was convicted, alleging a

violation of Article 31 of the Constitution as a result of erroneous application and interpretation of the criminal code and the criminal procedure code, in essence, for issues related to the determination of facts and their relationship to his criminal liability.

32. The Applicant's allegations of erroneous interpretation and application of law and erroneous determination of facts will be dealt with by the Court by applying the case law of the European Court of Human Rights (hereinafter: the ECtHR), on the basis of which the Court, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution. In this regard, the Court will clarify that (i) based on the case law of the ECtHR and the already consolidated case law of the Court, the allegations relating to the interpretation of the law and the determination of facts are not, in principle, the issues which fall within the jurisdiction of the Court and that consequently, the latter cannot review them; and (ii) the Applicant's specific allegations regarding the alleged violations of Articles 7 and 20 of the CPCRK and the CCRK, are manifestly ill-founded on constitutional basis.

33. More specifically, the Court reiterates that the Applicant's allegations relate to the interpretation of law and determination of facts, and as such, based on the case law of the Court but also the case law of the ECtHR, constitute and qualify as issues of "legality". As such, they do not fall under the jurisdiction of the Court, and therefore, in principle, cannot be examined by the Court. (See, *inter alia*, the case of Court KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 35).

34. The Court has consistently reiterated that it is not its duty to deals with errors of fact or law allegedly committed by the regular courts (*legality*), unless and insofar as they may have violated the fundamental rights and freedoms protected by the Constitution (*constitutionality*). It may not itself assess the law which has led a regular court to adopt one decision rather than another. Otherwise, the Court would be acting as a court of "*fourth instance*", which would result in exceeding the limits set by its jurisdiction. In fact, it is the role of the regular courts to interpret and apply the pertinent rules of procedural and substantive law (See, ECtHR case *Garcia Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28; and see, also cases of the Court: KI06/17, Applicant: *L.G. and five others*, Resolution on Inadmissibility of 20 December 2017, paragraph 37; and KI122/16, Applicant *Riza Dembogaj*, Resolution on Inadmissibility of 19 June 2018, paragraph 57).

35. The Court has consistently held this view based on the ECtHR case law, which clearly states that it is not the role of this Court to review the findings of the regular courts as to the factual situation and the application of substantive law (see ECtHR case *Pronina v. Russia*, Judgment of 30 June 2005, paragraph 24; and the Court cases KI06/17, Applicant: *L.G. and five others*, cited above, paragraph 38; and KI122/16, cited above, paragraph 58).

36. Having said that, the Court, also emphasized the case law of the ECtHR and of the Court, which also provides for the circumstances under which exceptions from this principle can be made. The ECtHR reiterated that while it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of legislation, the role of the Court is to ensure or verify whether the effects of such interpretation are compatible with the Constitution and the European Court of Human Rights (hereinafter: the ECtHR) (See the ECtHR case, *Miragall Escolano and Others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

37. Therefore, even though the role of the Court is limited in terms of assessing the interpretation of law, it must ensure and take measures where it observes that a court has "*applied the law manifestly erroneously*" in a particular case or so as to reach "*arbitrary conclusions*" or "*manifestly unreasoned*" for the Applicant (regarding the basic principles on the manifestly erroneous interpretation and application of the law, see, *inter alia*, the case of the Court KI154/17 and KI05/18, Applicant, *Basri Deva, Afërdita Deva and Limited liability company "Barbas"*, Resolution on Inadmissibility of 28 August 2019, paragraphs 60 - 65 and the references used therein).

38. However, and as explained above, the Court considers that the Applicant's allegations related to the erroneous interpretation of law, namely Articles 7 and 20 of the CPCRK and the CCRK, are manifestly ill-founded on constitutional basis , because the Applicant has not proved and has not sufficiently substantiated his allegations, insofar as it is relevant in the circumstances of the present case, that the abovementioned provisions have been interpreted and applied in a manifestly erroneous manner, resulting in "*arbitrary conclusions*" or "*manifestly unreasonable*" to the Applicant.

39. In the context of this finding, the Court notes that despite the fact that the Applicant alleges allegations under Article 20 of the CCRK regarding the establishment of criminal liability in relation to the causal link between his action and omission and the relevant consequence, has never specifically brought before the regular courts, in essence this allegation links to the determination of his criminal liability, and this issue has been dealt with in detail by the regular courts.

40. The Court first recalls that in this respect the Basic Court reasoned, *inter alia*, as follows:

> *"Defendant Muhamet Prapashtica, as owner of the company "M-Gas Petroll" based on the street "Vëllezërit Fazliu" in Prishtina in 2007 as a responsible person, has acted against the law, without a valid permit built the gas station "M-Gas Petroll" , in the street "Rrustem Hyseni" in Prishtina, in which case he endangered the lives of people and property in large values, ignoring the legal criteria on construction, without urban permit, construction permit, ecological permit, etc., so that on 15.03.2008, during the gas supply from a tank of the company "p_Gas" from Peja has caused great danger to human life and*

property of essential importance so that it has come to the ignition of gas in which case from the injuries received B.M, and I.S died, while the injured sustained serious bodily injuries: N.D, M.D and A.A, as well as material damage was caused to vehicles and buildings".

41. Further, the Court of Appeals rejected all the allegations of the Applicant regarding essential violations of the criminal procedure, the determination of factual situation and violation of the criminal law, stating as follows:

> *"Taking into account this factual situation, this Court finds that the allegations of the defense counsels of the accused Muhamet Prapashtica and Besnik Sadiku that from the presented evidence did not prove that their actions meet the elements of the criminal offense for which they were found guilty, are ungrounded. According to the assessment of this Court, from the evidence presented it was proved without a doubt that the accused acted in violation of the provisions for their work obligations, so that the accused, disregarding the legal criteria for construction, urban permit, environmental permit and technical conditions, built a gas station on Rustem Hyseni Street in a dangerous 60 cm distance from the building of a private house, while the accused Besnik Sadiku, without a license to transport dangerous goods, hired the driver of a tanker Faton Canolli without adequate training (without possession of ADR) to transport dangerous goods from the Ministry of Transport and thus during the supply of petroleum from tank-truck (tanker) driven by the driver of the accused Besnik, as a result of gas leak was created an explosive mass, which broke into a fire explosion that caused general danger with serious consequences for the lives of people (two dead and several injured) and significant property damage".*

42. The same court changed the sanction imposed by the Basic Court, reducing the latter from four (4) years and ten (10) months to two (2) years of effective imprisonment, reasoning as follows:

> *"taking into account the mitigating circumstances which the Court found and assessed in relation to the accused Muhamet and the fact that a long time (10 years) has elapsed since the commission of the crime and that based on the case file it does not appear that the accused has violated the law, this Court finds that the sentence of imprisonment against the accused Muhamet was very harsh and that the purpose of the punishment can be achieved with a more lenient sentence, therefore it imposed on him the sentence as in the enacting clause of this judgment with conviction that this sentence is adequate in terms of the social danger of the criminal offense and his criminal liability and that this in itself may affect the accused to prevent future criminal offenses and his rehabilitation".*

43. On the other hand, and finally, the Supreme Court also examined the Applicant's allegations regarding his criminal liability and the decision on punishment, concluding its Judgment, as follows:

"The Supreme Court does not approve the allegations of the convict Muhamet Prapashtica regarding the length of the imposed sentence. The Court of Appeals has modified the judgment of the first instance regarding this convict, taking into account, in addition to the mitigating circumstances assessed by the court of first instance, also the circumstances that a long time of 10 (ten) years from the time of the commission of the criminal offense has passed, imposing on the convict a sentence of imprisonment of 2 (two) years. This Court also considers that the lower instance courts have correctly applied the criminal law when in the actions of the convict found that all elements of the criminal offense of causing general danger under Article 365 par.9 in conjunction with par 6 and par. I of the CCRK have been met and also with regard to the evidence administered, by assessing them separately; and all together, giving sufficient reasons regarding the evidence, their reliability and value".

44. In this regard, the Court notes that the three regular courts had in fact accurately determined the grounds on the basis of which the Applicant was criminally liable for the criminal offense of causing general danger, because based on the relevant Judgments and the aforementioned reasoning, the regular courts found that the relevant action or failure to act was related to the observance of legal provisions regarding the necessary work permits, while the consequence was the causing of general danger and that in the circumstances of the present case, resulted in several deaths and serious injuries, in addition to other material damage. The Court recalls that Article 365 of the CCRK stipulates that whoever causes great danger to human life or considerable damage to property, even if he has done so through negligence, as defined in paragraph 6 of this Article and applicable according to the regular courts in the circumstances of the present case, but which has resulted in death of one or more persons, is punishable by imprisonment of up to eight (8) years, as defined in paragraph 9 of the same article. In the circumstances of the present case, two (2) persons have died, three (3) persons have received serious bodily injuries and material damage was caused. Despite these circumstances, and as the regular courts had taken into account the aggravating and mitigating circumstances in the present case, the Applicant was sentenced to only two (2) years of imprisonment, counting the time spent in detention on remand.

45. The Court also notes that the Applicant's allegations regarding Article 20 of the CCRK are also related to Article 7 of the CPCRK, the erroneous interpretation of which is also alleged by the Applicant and which sets out the general obligation for the courts regarding complete and correct determination of facts. Such an obligation also derives from Article 31 of the Constitution in conjunction with Article 6 of the ECHR, both in terms of the obligation to completely and correctly determine the facts but also in terms of the obligation of the regular courts to duly assess the submissions, arguments and evidence submitted by the parties. (Regarding the latter, see the case of Court KI07/18, Applicant *„Celiku Rollers"*, Judgment of 20 January 2020, which elaborates the general principles of case law of the ECtHR applicable in this context).

46. However, the Court emphasizes the fact that the abovementioned provision, and moreover, the obligation it entails, cannot be interpreted as isolated from other provisions of the criminal code and of criminal procedure code. More precisely, such an obligation is regulated and conditioned by the procedural rules, and in the circumstances of the present case, by those of the criminal procedural code. More specifically, and in the context of issues related to the correct determination of facts, based on paragraph 1.3 of Article 383 (Grounds for exercising an appeal against the judgment), constitute one of the grounds for filing an appeal against a Judgment of the Basic Court with the Court of Appeals, in addition to the allegations of essential violations of the provisions of the criminal procedure, violation of the criminal law and the decision regarding the criminal sanctions, defined in paragraphs 1.1, 1.2 and 1.4 of this Article. Erroneous or incomplete determination of the factual situation is further specified in Article 386 (Erroneous or incomplete determination of the factual situation) of the CPCRK, and based on it, the latter exists when the court (i) has erroneously determined any important fact, or when the content of the document, the minutes on the examined evidence or the technical recording question the accuracy or validity of the determination of the important facts; or (ii) has not established any significant facts. On the other hand, based on paragraph 2 of Article 432 (Grounds for fling a request for protection of legality) of the CPCRK, the request for protection of legality (i) cannot be filed on the grounds of an erroneous or incomplete determination of factual situation in the Supreme Court and (ii) nor against its decision in which the request for protection of legality was decided upon.

47. In this context, the Court recalls that based on the abovementioned procedural provisions, the allegations related to correct determination of facts may, in principle, be submitted only to the Court of Appeals. In further proceedings, and initially those in the Supreme Court, the relevant appeals may relate only to allegations regarding violations of criminal law, essential violations of criminal procedure, or other violations that may have affected the legality of the court decision, as stipulated in Article 432 of the CPCRK. Moreover, in the circumstances of the present case, the Court of Appeals had examined all Applicant's allegations of erroneous determination of facts and which were related to the testimony of the accused F.C, and who was the driver of the company's tanker „P-Gas" and which at the time of the accident made the gas supply of the Applicant's company at its point of sale, claiming that criminal liability falls on the supplier.

48. The Court notes that the Court of Appeals examined these allegations of the Applicant regarding the facts of the case and found, *inter alia*, the following:

> *"Taking into account this factual situation, this Court finds that the allegations of the defense counsels of the accused Muhamet Prapashtica and Besnik Sadiku that the administered evidence did not prove that their actions meet the elements of the criminal offense for which they were found guilty are ungrounded.*

According to the assessment of this court, from the evidence administered it has been proven undoubtedly that the accused have acted contrary to the provisions of their work so that the accused Muhamet ignoring the legal criteria for urban permit, ecological permit, technical conditions, has built the gas station on "Rrustem Hyseni" street in a dangerous proximity of 60 m from the private house, while the accused Besnik Sadiku, not having a license for transport of dangerous goods, employed Faton Canolli as a driver of the tanker without adequate training (without possession of ADR) for the transport of hazardous materials by the Ministry of Transport and with this during the supply of the gas station from the tanker driven by the employee of the accused Besnik as a result of the gas leak an explosive mass was formed which resulted in a fire explosion that caused general danger with serious consequences for human lives (two dead persons and several injured) and considerable material damage."

49. In addition, the Court notes that in the circumstances of the present case, the owner of the company „P-Gas", namely B.S was also convicted, while towards the driver F.C, based on the reasoning of the Judgment of the Court of Appeals, the criminal proceedings was separated.

50. Consequently and based on the explanations above, the Court notes that (i) the Applicant's allegations regarding the incomplete and erroneous determination of factual situation were presented to the Court of Appeals and the latter dealt with and reasoned them, by rejecting them as ungrounded; (ii) the Applicant's allegations regarding essential violations of the provisions of the criminal procedure and violation of the criminal law were also submitted to the Supreme Court and it dealt with and reasoned them, rejecting them as ungrounded; and (iii) the Applicant's allegations before the Court relating to the interpretation of the abovementioned provisions, which in essence include the obligation to determine the factual situation, as explained above, are manifestly ill-founded on constitutional basis. Based on the Court's assessment, the regular courts did not "*apply the law in manifestly erroneous manner*" and consequently their findings did not result in "*arbitrary conclusions*" or "*manifestly unreasonable*" for the Applicant, and consequently, the proceedings as a whole were fair and non-arbitrary.

50. Moreover, and in this respect, the Court reiterates that the "*fairness*'" required by Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, is not "*substantive*" fairness, but "*procedural*" fairness. This translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (see, in this regard, cases of the Court No. KI42/16 Applicant *Valdet Sutaj*, Resolution on Inadmissibility of 7 November, paragraph 41 and other references therein; and KI119/17, Applicant *Gentian Rexhepi,* Resolution on Inadmissibility of 3 April 2019, paragraph 85).

51. In this regard and in principle, the allegations of a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR, based on the case law of the ECtHR and that of the Court, may relate to the impossibility of adversarial proceedings; the impossibility that at different stages of the proceedings, the party brings the arguments and evidence that he/she considers relevant to his/her case; and/or the impossibility of effectively challenging the arguments and evidence presented by the opposing party. On the contrary, and if all the arguments of the party which, objectively viewed, were relevant to the resolution of the respective case, were heard and duly examined by the regular courts, then, in principle, the proceedings as a whole, should be considered as fair. (See, *inter alia*, the case of the Court, KI119/17, cited above, paragraph 86).

52. The Court reiterates that the Applicant's allegations in the circumstances of the present case are not related to procedural injustice, and moreover, they do not support the possibility that the proceedings before the regular courts were in any way unfair or arbitrary. (See, in this context, *inter alia*, the case of the ECtHR, *Shub v. Lithuania*, no. 17064/06, Judgment of 30 June 2009).

53. The Court finally notes that the Applicant's dissatisfaction with the outcome of the proceedings before the regular courts cannot in itself raise an arguable claim of violation of the right to fair and impartial trial or the violation of their rights to judicial protection (See, case of the ECtHR *Mezotur-Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005, paragraph 21; and see also case of the Court KI119/17, cited above, paragraph 88).

54. Therefore, in these circumstances, based on the above and taking into account the allegations raised by the Applicant and the facts presented by him, the Court also based on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not proved and has not sufficiently substantiated his allegation of violation of his fundamental rights and freedoms guaranteed by the Article 31 of the Constitution.

55. Finally, the Court also recalls that the Applicant also alleges a violation of Article 23 of the Constitution. Regarding this allegation, the Court recalls its case law according to which only the mention of an article of the Constitution, without clear and adequate reasoning as to how that right has been violated, is not sufficient as an argument to activate the machinery of protection provided by the Constitution and the Court, as an institution that cares for the respect of human rights and freedoms. (See, in this context, the cases of the Court KI02/18, Applicant *Government of the Republic of Kosovo [Ministry of Environment and Spatial Planning],* Resolution on Inadmissibility of 20 June 2019, paragraph 36; KI95/19, Applicant *Ruzhdi Bejta,* Resolution on Inadmissibility of 8 October 2019, paragraphs 30-31).

56. Such a position of the Court is based on the case law of the ECtHR, based on which, the unsubstantiated allegations or complaints, which are not

substantiated with arguments and evidence are declared inadmissible as manifestly ill-founded on constitutional basis. (See ECtHR Guide of 30 April 2019 on Admissibility Criteria; part I. Procedural Grounds for Inadmissibility; A. Manifestly ill-founded applications; 4. Unreasoned complaints: lack of evidence, paragraphs 280 to 283). Furthermore, such allegations, which do not adequately clarify the alleged violations, are also inadmissible under Article 48 of the Law in conjunction with item d) of paragraph 1 of Rule 39 of the Rules of Procedure, on the basis of which the Applicants are obliged to clarify their referrals accurately and to adequately present the facts and allegations regarding the fundamental rights and freedoms which are allegedly violated.

57. In the circumstances of the present case, the Court considers that the Applicant has not accurately clarified the facts and allegations of violation of Article 23 of the Constitution and, therefore, these allegations, in continuation of the other allegations in relation to Article 31 of the Constitution in conjunction with Article 6 of the ECHR and which were elaborated and clarified above, are to be declared inadmissible as manifestly ill-founded on constitutional basis, as established in paragraph 2 of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rules 39 (2) and 59 (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 PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Gresa Caka-Nimani Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.