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

Prishtina, 25 February 2021
Ref. no.:RK 1715/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case no. KI128/19

Applicant:

Artan Mala

Constitutional review of Judgment Pml. no. 44/2019 of the Supreme Court of 4 March 2019

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge.

Applicant

1. The Referral was submitted by Artan Mala (hereinafter: the Applicant) from Gjakova, who is currently serving a prison sentence in Dubrava Prison in Istog, represented by lawyer Korab Bokshi from Gjakova.

Challenged decision

2. The Applicant challenges the Judgment PML. no. 44/2019 of the Supreme Court of 04 March 2019, by which was rejected his request for protection of legality against the Resolution PA. 1. No. 800/18 of the Court of Appeal of 18 October 2018.

3. The challenged Judgment of the Supreme Court was served on the Applicant on 18 April 2019.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violates the Applicant's fundamental rights and freedoms guaranteed by Article 22 [Direct Applicability of International Agreements and Instruments], Article 30 [Rights of the Accused], Article 31 [Right to Fair and Impartial Trial] and Article 53 [Interpretation of Human Rights Provisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as the rights guaranteed by Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

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

Proceedings before the Constitutional Court

6. On 8 August 2019, the Applicant submitted the Referral by mail to the Constitutional Court of the Republic Kosovo (hereinafter: the Court).

7. On 20 August 2019, the President of the Court assigned Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel, composed of Judges: Gresa Caka Nimani (Presiding), Bajram Ljatifi and Safet Hoxha.

8. On 28 August 2019, the Court notified the Applicant of the registration of the Referral and on the same day, the Court sent a copy of the Referral to the Supreme Court and requested from it a copy of the return receipt with the date when the Applicant received the Judgment PML. no. 44/2019 of 4 March 2019.

9. On 12 September 2019, the Supreme Court submitted to the Court the confirmation that the Applicant had been served the Judgment PML. no. 44/2019 of the Supreme Court on 18 April 2019.

10. On 20 January 2021, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of the facts

11. While serving his prison sentence, on 2 May 2014, the Applicant physically assaulted the person K.I., also in custody of the aforementioned prison, and caused him grievous bodily injuries.

12. On 27 October 2014, the Basic Prosecutor's Office – the Serious Crimes Department in Peja (hereinafter: the Prosecutor's Office) filed the Indictment PP/II no. 981/14 against the Applicant, due to a founded suspicion that he committed a criminal offense of *"grievous bodily injury"*.

13. On 13 June 2018, the Serious Crimes Department of the Basic Court in Peja (hereinafter: the Basic Court) held a preparatory hearing attended by the Prosecutor and the Applicant, respectively the Accused, on which occasion the Applicant voluntarily admitted guilt.

14. During the preparatory hearing of the Basic Court, a guilty plea agreement was reached.

15. On the same day, the Basic Court rendered Judgment P. no. 285/14, by which it found the Applicant guilty of committing the criminal offenses for which he was charged based on the plea agreement, and sentenced him to a single term of imprisonment of 6 (six) months.

16. In the reasoning of the Judgment, the Basic Court stated: *"The court found that the defendant pleaded guilty voluntarily, without any pressure. The defendant is aware of the consequences and advantages of a guilty plea and that all the requirements of Article 248, paragraph 1 of the CPCRK have been met. Thus, the court, by a resolution in the minutes, approves the guilt admitting statement by the defendant."*

17. On an unspecified date, the Applicant's representative filed an appeal with the Court of Appeals against the Judgment of the Basic Court, for substantial violations of the provisions of the criminal procedure, proposing that the Court of Appeals approve the appeal as grounded and reverse the appealed Judgment and his client be released from the sentence, in which appeal the Applicant's representative stated: *"that his client's right to defence was violated because he was not assigned a defence counsel, even though he was serving his sentence, and in this way his fundamental right, the right to defence, respectively the right to effective defence in a criminal matter was violated and the sentence measure in the appealed Judgment was erroneous."*

18. On 18 October 2018, the Court of Appeals rendered the Judgment PA. 1, no. 800/2018, by which it rejected the Applicant's appeal as unfounded, stating:

"The allegations of the defence counsel of the accused that his client's rights on defence were violated do not stand because the criminal offense for which the accused was found criminally responsible and guilty does not constitute a mandatory defence as provided by the provision from Article 53 of CCRK. During the court hearing, the accused was informed of his rights, as a defendant he was also informed of his right to hire a defence counsel and that he was warned that in case there is no economic possibility to hire a defence counsel then he can be assigned a defence counsel ex officio, a right which is stipulated by the provision from Article 58, paragraph 1 of CCRK. After this notification, the accused stated that he would present his defence himself and did not want a defence counsel, and during the court hearing, after being informed about the legal possibility of pleading guilty, he pleaded guilty and the court approved the guilty plea of the accused by a separate judgment after the legal conditions from the provision of Article 248 of CCRK were met.

[...]

The defence counsel for the accused states in his appeal that the measurement of the sentence by the appealed judgment was erroneous. The court had information that the Accused was convicted by the Judgment P. no. 80/06 of the District Court in Peja of 23 June 2016, partially upheld and partially amended by the Judgment AP. no. 582/2006 of the Supreme Court of Kosovo of 19 April 2017 and that the unification of sentences had not been done and that in this case the court of first instance has acted in contradiction with Article 82 in conjunction with Article 80, paragraph 2. 2 of CCRK.

The above allegations of the defence counsel of the accused are assessed by this court as unfounded. According to the case file and the reasoning of the decision, it does not appear that the first instance court had a copy of the judgments by which the defence counsel states his client was convicted, and it is also not clear from the court hearing minutes that the accused requested the unification of sentences as required by Article 82 and 80 of CCRK. In the absence of these judgments and the defendant's own request at the court hearing, the first instance court did not have the legal possibility of unification of sentences. Such a request should be made by the accused at the first instance court, where the last sentence was imposed on him as provided by the provision of Article 82 of CCRK."

19. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court against the Resolution of the Court of Appeals.

20. On 4 March 2019, the Supreme Court rendered Judgment PML. no. 44/2019, by which it rejected the Applicant's request for protection of legality as unfounded. In its Judgment, the Supreme Court emphasized that:

"It is important to emphasize the fact that in this present case the convicted person admitted guilt during the initial hearing and after the instructions given at this session, so that on the second page of the minutes of the initial hearing it was established that the convicted person stated that he would present the defence himself and did not want defence

counsel. Moreover, although the legal qualification of the criminal offense in the indictment, in this case, did not meet the requirements for mandatory defence, the convicted person was instructed by the judge of the first instance court regarding the right to appoint counsel at public expense at his request, and in this present case, the convicted person did not make such a request. In the present case, the first instance court, based on the convicted person's statement during the initial hearing, held a fair and lawful trial and the convicted person was given sufficient legal opportunities to choose a defence counsel, but the convicted person stated that he did not want to hire defence counsel and since the legal requirements for mandatory defence as stipulated by the provision of Article 57 of CCRK have not been met, he was not assigned a defence ex officio, moreover, the convicted person did not submit a request for defence at public expense, as stipulated by Article 58 of CCRK, although he was informed of such possibility.

[...].

The first instance court fairly applied the criminal law and did not commit the violations alleged for the imposition of a unified sentence, respectively the imposition of a unified sentence on the convicted person for the criminal offense of aggravated murder (for which he is serving a sentence) and the criminal offense of grievous bodily injury for which he was tried, since in the present case the judgment of the first instance court regarding the criminal offense of grievous bodily injury has not yet taken final form, so that a unified sentence cannot be imposed in cases where both judgments have not taken final form, as it is the result in this case."

Applicant's allegations

21. The Applicant considers that in general, the court proceedings before the Basic, Appellate and Supreme Courts, in procedural and material aspects, were unfair, because his right to defence was violated, respectively he was not assigned a defence counsel in the first instance proceedings, which led to violation of the principle of equality of arms.

22. The Applicant further considers that the challenged resolution imposed a prison sentence on him erroneously because the unification of the sentence was not made with the one from the previous criminal proceedings against him.

23. The Applicant alleges that, as a result of the above, his constitutional rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 30 [Rights of the Accused], 31 [Right to Fair and Impartial Trial] and 53 [Interpretation of Human Rights Provisions] of the Constitution as well as Article 6 (Right to a fair trial) of the ECHR have been violated.

24. The Applicant requests from the Court to establish that the trial without a lawyer in the first instance procedure as well as the erroneous imposition of imprisonment sentence constitute a violation of constitutional rights and freedoms, as well as the rights and freedoms guaranteed by the ECHR.

25. The Applicant requests from the Court to quash all judgments and remand the case for retrial.

Relevant legal provisions

CRIMINAL PROCEDURE CODE
From the December 13, 2012

CHAPTER V
Defence Counsel

Article 53

Defendant's Right to Defence Counsel
[...]

3. The right to the assistance of a defence counsel may be waived, except in cases of mandatory defence, if such waiver is made following clear and complete information on his right to defence being provided. A waiver must be in writing and signed by the suspect or the defendant and the witnessing competent authority conducting the proceedings, or made orally on video- or audiotape, which is determined to be authentic by the court.

[...]

Article 57
Defence Counsel in Cases of Mandatory Defence

[...]

1.3 from the filing of an indictment, if the indictment has been brought against him or her for a criminal offence punishable by imprisonment of at least ten (10) years;

[...]

Article 58

Defence Counsel at Public Expense When There is Not Mandatory Defence

1. If the conditions are not met for mandatory defence, a defence counsel shall be assigned at public expense for the defendant at his or her request, if: 1.1 there exists no conditions for mandatory defence and the criminal proceedings are being conducted for a criminal offence punishable by imprisonment of eight (8) or more years;

CRIMINAL CODE OF THE REPUBLIC OF KOSOVO

No. 04/L-082
of 20 April 2012
CALCULATION OF PUNISHMENT
[...]
Article 80
Punishment of concurrent criminal offenses

1. If a perpetrator, by one or more acts, commits several criminal offenses for which he or she is tried at the same time, the court shall first pronounce the punishment for each act and then impose an aggregate punishment for all of these acts.

2. The court shall impose an aggregate punishment in accordance with these rules:
2.1. if the court has imposed a punishment of life long imprisonment for one of the criminal offenses, it shall impose this punishment only;
2.2. if the court has imposed a punishment of imprisonment for each criminal offense, the aggregate punishment must be higher than each individual punishment but the aggregate punishment may not be as high as the sum of all prescribed punishments nor may it exceed a period of twenty five (25) years;
2.3. if the court has imposed a punishment of imprisonment of up to three (3) years for each criminal offense, the aggregate punishment of imprisonment may not exceed eight (8) years;
2.4. if the court has imposed a punishment of a fine for each criminal offense, the aggregate punishment of a fine is the total sum of all fines but it may not exceed the amount of twenty-five thousand (25,000) EUR or, when one or more criminal offenses are committed with the intent to obtain a material benefit, the amount of five hundred thousand (500,000) EUR;
2.5. if the court has imposed a punishment of imprisonment for some criminal offenses, while for others it has pronounced a punishment of a fine, the court will impose an aggregate punishment of a fine and imprisonment, in accordance with sub-paragraphs 2.1 to 2.4 of this paragraph.

3. The court shall impose an accessory punishment if it has been pronounced for at least one of the criminal offenses, in accordance with sub-paragraph 2.4 of paragraph 2 of this Article.

[...]
Article 82
Calculating punishment of convicted persons

1. If a convicted person is tried for a criminal offense he or she committed before serving a punishment imposed under an earlier conviction, or for a criminal offense committed while serving a punishment of imprisonment, the court shall impose an aggregate punishment (Article 80 of this Code), taking into consideration the previously imposed punishment. The punishment or part of the punishment which the convicted person has already served shall be included in the aggregate punishment.

2. For a criminal offense committed while serving a punishment of imprisonment, the court shall determine the punishment of the perpetrator independently of the previously imposed punishment if the application of the provisions of Article 80 of this Code would lead to a failure to achieve the aims of punishment considering the duration of the unserved portion of the previously imposed punishment.

Assessment of the admissibility of the Referral

26. The Court initially examines whether the Referral has met the admissibility conditions which are set out in the Constitution, specified by the Law and further provided by the Rules of Procedure.

27. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which prescribe:

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."

28. Moreover, the Court also refers to the conditions of admissibility, which are provided by law. In this regard, the Court 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..."

29. The Court finds that the Applicant is an authorized party, who challenges an act of public authority, namely the Judgment of the Supreme Court [Pml. no. 44/2019] of 4 March 2019, after the exhaustion of all legal remedies provided by law.

30. The Applicant also stated the fundamental rights and freedoms which are allegedly violated in accordance with the conditions of Article 48 of the Law and filed the Referral in accordance with the deadline set out in Article 49 of the Law.

31. However, in addition, the Court considers whether the Applicant has fulfilled admissibility requirements set out in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Paragraph 2 of Rule 39 of the Rules of Procedure sets out the conditions under which the Court may consider a Referral, including the condition that the Referral is not manifestly ill-founded. Rule 39 (2) specifically provides:

"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."

32. The Applicant, as stated above, alleges before the Court that Articles 22, 30, 31 and 53 of the Constitution in conjunction with Article 6 of the ECHR have been violated.

33. As to the Applicant's allegations of violation of Articles 22 and 53 of the Constitution, the Court, having in mind the content and meaning of Articles 22 and 53 of the Constitution, states that it will take into account all mechanisms and instruments of human rights protection when establishing the merits of these violations, and accordingly apply all general and special guarantees, principles as well as principles provided for in Articles 22 and 53 of the Constitution, which are applicable in the present case.

34. The Court first recalls that the Basic Court in Peja with Judgment [P. no. 285/14], based on a guilty plea agreement, found the Applicant guilty of committing a criminal offense. Following the Applicant's appeal, the Court of

Appeals rejected the Applicant's appeal, upholding the above Judgment of the Basic Court. The Supreme Court rejected the Applicant's request for protection of legality as unfounded.

35. The Court recalls that the Applicant alleges that the challenged decision was rendered in violation of his rights and fundamental freedoms guaranteed by Article 30 [Rights of the Accused] and Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 of the ECHR.

36. In this regard, the Court notes that, in essence, the Applicant complains that in his case there has been a violation of Articles 30 and 31 of the Constitution in conjunction with Article 6 of the ECHR, due to erroneous application of the Criminal Procedure Code of the Republic of Kosovo (hereinafter: CPCRK) and the Criminal Code of the Republic of Kosovo (hereinafter: CCRK) by regular courts. The Applicant claims that due to the fact that he was not assigned a legal representative ex officio in the first instance proceedings and the fact that the total sentence was not calculated for him during the sentencing, the law was not adequately applied which led to the above violations of the Constitution and the ECHR.

37. The Court notes that the Applicant made the same allegations before the regular courts.

38. In this regard, the Court first notes that in the context of the assessment of the conformity of court proceedings with Article 31 of the Constitution in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: ECHR), the case law of the Court and the ECtHR, establish that the fairness of the proceedings is assessed on the basis of the proceedings as a whole *Barbera, Messeque and Jabardo v. Spain,* Judgment of 6 December 1988, paragraph 68). Accordingly, in assessing the Applicant's allegations, the Court will also adhere to this principle (See Court cases, KI104/16, Applicant *Miodrag Pavić*, Judgment of 4 August 2017, paragraph 38; and KI143/16, Applicant *Muharrem Blaku and others,* Resolution on Inadmissibility, of 13 June 2018, paragraph 31).

39. In addition, in the context of the Applicant's allegations of violation of Articles 30 and 31 of the Constitution, the Court recalls that the essence of the allegation is related to the allegation of erroneous interpretation of the CPCRK and CCRK, which interpretation, according to the Applicant, has resulted in the denial of the right to defence and erroneous determination of the sentence imposed.

40. In the context of the allegations concerning the erroneous interpretation of the applicable law, the Court first of all emphasizes that, as a general rule, the allegations of erroneous interpretation of the law allegedly made by regular courts relate to legality and as such are not within the jurisdiction of the Court, and therefore, in principle, the Court cannot review them (see Court cases: no. KI06/17, Applicant *LG and five others,* Resolution on Inadmissibility of 25

October 2016, paragraph 36; KI122/16, Applicant *Riza Dembogaj*, Judgment of 30 May 2018, paragraph 56; and Court case KI154/17 and 05/18, Applicants *Basri Deva, Afërdita Deva and Barbas Limited Liability Company*, Resolution on Inadmissibility of 28 August 2019, paragraph 60).

41. The Court has consistently reiterated that it is not its duty to deal with errors of fact or law allegedly committed by the regular courts (*legality*), except and to the extent that they may have violated the rights and freedoms protected by the Constitution (*constitutionality*). The Court itself cannot assess the law that led the regular court to make one decision instead of the other. Otherwise, the Court would act as a court of "*fourth instance*", which would result in exceeding the limits set in its jurisdiction. In fact, it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law (see ECtHR case *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28, and see also, inter alia, the Court cases KI06/17, cited above, paragraph 37; KI122/16, cited above, paragraph 57 and KI154/17 and 05/18, cited above, paragraph 61).

42. The Court has consistently held this position based on the case law of the ECtHR, which clearly states that it is not the role of this Court to review the findings of regular courts as to the facts and application of substantive law (see ECtHR cases). *Pronina v. Russia,* Judgment of 30 June 2005, paragraph 24, and Court cases KI06/17, cited above, paragraph 38; KI122/16, cited above, paragraph 58 and KI154/17 and 05/18, cited above, paragraph 62).

43. The Court emphasizes, however, that the case law of the ECtHR and the Court also determine the circumstances under which exceptions to this position should be made. The ECtHR emphasized that while it is primarily up to the domestic authorities, respectively the courts, to resolve problems with the interpretation of legislation, the Court's role is to satisfy or verify that the effects of this interpretation are compatible with the ECHR (See ECtHR case *Miragall Escolano and Others v. Spain*, Judgment of 25 May 2000, paragraphs 33-39).

44. Therefore, although the role of the Court is limited in terms of assessing the interpretation of the law, it must be satisfied and take action when it notices that the court has "*applied the law in an apparently arbitrary manner*" in the present case, which could have resulted in *"arbitrary"* or *"apparently unreasonable"* conclusions for the Applicant (as to the basic principles regarding the erroneous interpretation and application of the law, see, inter alia, the Court case KI154/17 and 05/18, cited above, paragraphs 60 to 65 and use of the reference thereto).

45. In this regard, the Court must emphasize that the Applicant has not argued before the Court (i) the reasons that could support the claim that in the circumstances of the present case, the regular courts interpreted the CPCRK and the CCRK in an "*apparently erroneous manner*"; and (ii) how such an

interpretation resulted in *"arbitrary"* or *"apparently unreasonable"* conclusions for the Applicant.

46. The Court notes, however, that in the context of his allegations of erroneous interpretation of the CPCRK, the Applicant claims that he should have been assigned an ex-officio representative in the first instance proceedings, and that the regular courts erroneously interpreted the CCRK and therefore did not calculate a unified sentence for him when sentencing him with imprisonment.

47. In this regard, the Court first notes that the Applicant's allegations concerning the interpretation of the CPCRK and the CCRK have been examined and reasoned by the regular courts, first by the Basic Court in the Judgment [P. no. 285/14] of 13 January 2018, as follows:

> *"... The court found that the defendant pleaded guilty voluntarily, without any pressure. The defendant is aware of the consequences and advantages of a guilty plea and that all the requirements of Article 248, paragraph 1 of the CPCRK have been met. Thus, the court, by a resolution in the minutes, approves the guilt admitting statement by the defendant."*

48. The Court also notes that in the appellate proceedings the Applicant was represented by a lawyer on whose allegations regarding the violation of *rights of defence* due to the failure to hire a defence counsel ex officio, the Court of Appeals replied, *"The allegations of the defence counsel of the accused that his client's rights on defence were violated do not stand because the criminal offense for which the accused was found criminally responsible and guilty does not constitute a mandatory defence as provided by the provision from Article 53 of CCRK. During the court hearing, the accused was informed of his rights, as a defendant he was also informed of his right to hire a defence counsel and that he was warned that in case there is no economic possibility to hire a defence counsel then he can be assigned a defence counsel ex officio, a right which is stipulated by the provision from Article 58, paragraph 1 of CCRK. After this notification, the accused stated that he would present his defence himself and did not want a defence counsel."*

49. Regarding the application of the CCRK, respectively the reasons why the first instance court did not calculate the unified sentence in accordance with Articles 80 and 82 of CCRK, the Court of Appeals responded, *"According to the case file and the reasoning of the decision, it does not appear that the first instance court had a copy of the judgments by which the defence counsel states his client was convicted, and it is also not clear from the court hearing minutes that the accused requested the unification of sentences as required by Article 82 and 80 of CCRK. In the absence of these judgments and the defendant's own request at the court hearing, the first instance court did not have the legal possibility of unification of sentences. Such a request should be made by the accused at the first instance court, where the last sentence was imposed on him as provided by the provision of Article 82 of CCRK".*

50. In addition, the Supreme Court by Judgment (Pml. no. 44/2019 of 4 March 2019), confirmed and upheld the Judgments of the Basic and Appellate Courts and rejected, as unfounded, the request for protection of legality, responding in detail to the Applicant's allegations by explaining, *"In the present case, the first instance court, based on the convicted person's statement during the initial hearing, held a fair and lawful trial and the convicted person was given sufficient legal opportunities to choose a defence counsel, but the convicted person stated that he did not want to hire defence counsel and since the legal requirements for mandatory defence as stipulated by the provision of Article 57 of CCRK have not been met, he was not assigned a defence ex officio, moreover, the convicted person did not submit a request for defence at public expense, as stipulated by Article 58 of CCRK, although he was informed of such possibility. [...] The first instance court fairly applied the criminal law and did not commit the violations alleged for the imposition of a unified sentence, respectively the imposition of a unified sentence on the convicted person for the criminal offense of aggravated murder (for which he is serving a sentence) and the criminal offense of grievous bodily injury for which he was tried, since in the present case the judgment of the first instance court regarding the criminal offense of grievous bodily injury has not yet taken final form, so that a unified sentence cannot be imposed in cases where both judgments have not taken final form, as it is the result in this case".*

51. For the above reasons, the Court notes that the regular courts responded to the Applicant's allegation regarding his allegation of erroneous application of the law, respectively regarding the procedure for assigning ex officio representatives and calculating the unified sentence. The regular courts assessed these allegations as unfounded and found that the substantive law was correctly applied, and explained that *"since the legal requirements for mandatory defence as stipulated by the provision of Article 57 of CCRK have not been met, he was not assigned a defence ex officio, moreover, the convicted person did not submit a request for defence at public expense, as stipulated by Article 58 of CCRK, although he was informed of such possibility. [...] The first instance court fairly applied the criminal law and did not commit the violations alleged for the imposition of a unified sentence, respectively the imposition of a unified sentence on the convicted person for the criminal offense of aggravated murder (for which he is serving a sentence) and the criminal offense of grievous bodily injury for which he was tried, since in the present case the judgment of the first instance court regarding the criminal offense of grievous bodily injury has not yet taken final form".*

52. In that sense, the Court finds that there is nothing to indicate that the regular courts *"applied the law in an apparently arbitrary manner"*, and which application could result in *"arbitrary"* or *"apparently unreasonable"* conclusions for the Applicant.

53. Therefore, taking into account the above explanations, the Court emphasizes that the Applicant's allegations regarding the erroneous application of the CPCRK and the CCRK have been examined and clarified by the regular courts

and that from the proceedings as a whole, it does not appear that the courts have acted or interpreted arbitrarily the applicable laws (see, in this context, the Court case KI99/19, *Persa Raičević,* Resolution on Inadmissibility of 7 November 2019, paragraph 46).

54. The Court also recalls that the Applicant, in addition to the claims related to the erroneous interpretation of the law, before the Court also alleges a violation of the principle of equality of arms.

55. With regard to this allegation, the Court emphasizes that the Applicant merely invokes this principle without presenting to the Court any argument in support of this allegation. As a consequence, based on its case law, the Court will not further consider this allegation (see, in this context, the Court cases KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33; and KI187/18 and 11/19, Applicant *Muhamet Idrizi,* Judgment of 29 July 2019, paragraph 73).

56. Therefore, in these circumstances, and based on the above and taking into account the allegations made by the Applicant and the facts presented by him, the Court, relying also on the standards established in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not sufficiently proved and substantiated his allegation of a violation of fundamental rights and freedoms with regard to Article 30 and Article 31 of the Constitution in conjunction with Article 6 of the ECHR.

57. Accordingly, the Court finds that the Referral is manifestly ill-founded on constitutional grounds and declares it inadmissible pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (2) 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 20 January 2021, unanimously

DECIDES:

I. TO DECLARE the Referral inadmissible.

II. TO NOTIFY this Resolution to the parties;

III. TO PUBLISH this Resolution in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Resolution is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Nexhmi Rexhepi	Arta Rama-Hajrizi

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