



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

Prishtina, on 25 March 2021
Ref. no.:RK 1734/21

RESOLUTION ON INADMISSIBILITY

in

Case No. KI59/20

Applicant

Ramadan Sopaj

**Constitutional review of Judgment Pml.nr.319/2019 of the Supreme
Court of Kosovo, of 10 December 2019**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

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 Ramadan Sopaj (hereinafter: the Applicant), residing in Janqishtë, Municipality of Malisheva, represented by Reshat Millaku, attorney at law.

Challenged decision

2. The Applicant challenges the constitutionality of Judgment Pml.nr.319/2019 of the Supreme Court, 10 December 2019, received on 27 December 2019, in conjunction with Judgment PAKR.nr.235/2019 of the Court of Appeals, of 19 June 2019, and Judgment PM.nr.294/2019 of the Basic Court in Prishtina, of 17 January 2019.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violate the Applicant's fundamental rights and freedoms guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 of the European Convention on Human Rights (hereinafter: the ECHR).
4. The Applicant also requests that the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) "... *postpone the execution of the imprisonment sentence ..., because in this way an irreparable damage will be avoided for the defendant, because his actions do not manifest elements of the criminal offense*".

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], 27 [Interim Measures], and 47 [Individual Requests] of the Law No. 03/L-121 on 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 Court

6. On 14 April 2020, the Applicant submitted the Referral to the Court.
7. On 19 May 2020, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Artta Rama-Hajrizi (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi (members).
8. On 28 May 2020, the Court notified the Applicant about the registration of the Referral. On the same date, a copy of the Referral was sent to the Supreme Court, in accordance with the Law.
9. On 21 September 2020, the Court requested the Applicant's representative to submit the power of attorney signed by the Applicant for representation before the Court as an evidence.

10. On 29 September 2020, the representative of the Applicant submitted to the Court the valid power of attorney, which was signed by the Applicant.
11. On 3 February 2021, the Review Panel reviewed the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

12. On 8 July 2015, the Basic Prosecution in Prishtina filed indictment PP.II.nr.1149/2014 against the Applicant due to the suspicion that he, while practicing the profession of family medicine doctor, had committed the criminal offenses under Article 232, paragraph 3, point 3.10, in conjunction with paragraph 1 of the Criminal Code of the Republic of Kosovo (hereinafter: CCRK), against juveniles A.H. and F.G.
13. On 3 April 2017, the Basic Court in Prishtina, by Judgment PM.nr.123/2015, found the Applicant guilty and sentenced him to effective imprisonment for a period of 3 (three) years and 6 (six) months, calculating the time spent in detention on remand, from 30 October 2014 to 30 November 2014 and the time spent in house arrest from 30 November 2014 until 30 May 2014. The decision of the court was based on the testimony of the injured parties, the report of the expert, the report of the psychologist of the school "Qendra e Kompetencës" in Malisheva and partly on the testimonies of witnesses A.B., V.H, B.G. and N.Z.
14. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against the Judgment of the Basic Court in Prishtina, of 3 April 2017, due to incomplete determination of the factual situation, violation of the provisions of criminal and procedural law, and the decision regarding the sentence. The Basic Prosecution in Prishtina and the defense counsels of the injured parties A.H. and F.G. also filed appeals against the Judgment in question, requesting a harsher sentence against the Applicant.
15. On 11 October 2017, the Court of Appeals, by Judgment PAKR.nr.379/2017, annulled the Judgment of the Basic Court in Prishtina, of 3 April 2017, remanding the case for retrial to the court of first instance on the grounds that the court of first instance did not prove the intent to commit the criminal offense and the fact whether the undertaking of the actions by the doctor was within his profession and responsibilities as a family medicine specialist, requesting the court to engage for this case, in the retrial proceedings, an expert of the field. This court, among other things, reasoned: *"The court of first instance in the retrial proceedings, after admitting the case, should schedule the main trial and summon all parties referred to in the case files, to complete the formal and legal aspect, in the occasion of hearing of juvenile victims, to provide the best working conditions, a more relaxing environment for juveniles so that they have the opportunity to give their statements without any eventual burden, to provide relevant experts such as gynecologist, psychologist, to proceed with the other evidence, depending on the course of*

the main trial and then to also use the material evidence from the case files, to issue a judgment which will be acceptable to all parties to the proceedings”.

16. On 17 January 2019, the Basic Court in Prishtina-Juvenile Department, by Judgment PM.nr.294/2017, found the Applicant again guilty of the same criminal offenses and sentenced him again to effective imprisonment for a duration of 3 (three) years and 6 (six) months, calculating the time spent in detention on remand, from 30 October 2014 until 30 November 2014 and the time spent in house arrest, from 30 November 2014 until 30 May 2015. Further, the reasoning of the court states: *“The court, after analyzing and assessing all the evidence administered, concluded that the actions of the accused Ramadan Sopaj form all the essential objective and subjective elements of the criminal offenses of Sexual Assault under Article 232, para. 3, point 3.10, in conjunction with para. 1, of the CCRK, criminal offenses these for which the accused has been aware of his actions ... The evidence mentioned above have been administered and challenged in the main trial sessions by the litigants. The court considers that it has been proven beyond any doubt that the accused committed the criminal offenses for which he was charged with direct intent, being aware that the injured parties are juveniles”.*
17. The Applicant, within the legal time limits, filed an appeal with the Court of Appeals, against Judgment PM.nr.294/2017 of the Basic Court in Prishtina, of 17 January 2019, due to violations of the provisions of criminal and procedural law, erroneous determination of the factual situation and the decision regarding the sentence. Against the Judgment in question, the defense counsels of the injured parties A.H. and F.G. filed appeals, requesting a harsher sentence against the Applicant.
18. On 20 May 2019, the Appellate Prosecution in Prishtina, by submission PPA/I.nr.225/2019, proposed to the Court of Appeals to approve the appeals of the injured parties A.H. and F.G. and to imposed on the Applicant a higher sentence.
19. On 19 June 2019, the Court of Appeals, by Judgment PAKR.nr.235/2019, rejected the Applicant’s appeals and the defense counsels of the injured parties A.H. and F.G. as ungrounded, confirming and upholding Judgment PM.nr.294/2017 of the Basic Court in Prishtina - Juvenile Department, of 17 January 2019, reasoning that the court of first instance has fairly and correctly applied the criminal and procedural law.
20. On an unspecified date, against Judgment PAKR.nr.235/2019 of the Court of Appeals, of 19 June 2019, the Applicant filed a request for protection of legality with the Supreme Court, due to alleged substantial violations of the provisions of the procedural law, violation of criminal law and violation of the right to a fair trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.
21. On 1 November 2019, the State Prosecutor proposed to the Supreme Court that the request for protection of legality of the Applicant’s defense counsel be

rejected as ungrounded and that the judgments of the lower instances be upheld.

22. On 10 December 2019, the Supreme Court, by Judgment PML.nr.319/2019, rejected the Applicant's request for protection of legality as ungrounded, thus upholding Judgment PAKR.nr.235/2019 of the Court of Appeals, of 19 June 2019, whereby Judgment PM.nr.294/2017 of the Basic Court in Prishtina - Juvenile Department, of 17 January 2019, was upheld. Relevant part of the Judgment of the Supreme Court: *"That touchings of the convict were for sexual purposes, were confirmed by the court based on the statements of the juvenile victims F.G. and A.H.G., who described in details the actions of the convict during their check up, a fact which was also confirmed by hearing gynecologist B.K. who, in the main trial, clarified that based on the protocol of the FMC in Malisheva, regarding the injured party F.G., he has read the therapy where convict had prescribed antibiotics, physiological solution, paracetamol and a syrup for the respiratory airways. Also for the injured party A.H., the therapy for stomach pain was proscribed, and based on the therapy protocol of the FMC in Malisheva, it turns out that the therapy which was prescribed to the injured juveniles by the convict, has nothing to do with the check up that the convict had done to the juveniles"*.

Applicant's allegations

23. The Applicant alleges before the Court that the Judgment of the Supreme Court [PML.nr.319/2019], regarding the Judgment of the Court of Appeals [PAKR.nr.235/2019] and the Judgment of the Basic Court-Juveniles Department [PM.nr.294/2017], violates his rights guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 of the of the ECHR.

i. Alleged violation of Article 22 of the Constitution

24. In relation to this allegation, the Applicant states: *"Paragraph 2 of this Article provides for the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. Article 6 para. 3 point d) of this Convention provides for the right of the defendant to summon and examine witnesses in his favor, under the same conditions as the witnesses against him. However, such a right was denied to the defendant and his defense counsel – to invite the expert witness of family medicine, who would competently explain the rights and obligations of the work of the family medicine specialist doctor. They were also denied reading of evidence written by the Ministry of Medicine. (Health) To be checked even though they are official documents. Thus, the courts have committed the violation mentioned in Article 22 of the Constitution of the Republic of Kosovo"*.

ii. Alleged violation of Article 24 of the Constitution

25. In relation to this allegation, the Applicant adds: *"... everyone enjoys the right to equal legal protection, without discrimination. In this spirit of the*

Constitution is also Article 9 of the Criminal Procedure Code, which provides for equality of parties. However, this practice in the present case has not been respected, due to the reasons mentioned above. The court, instead of correctly establishing the rights and obligations of the family medicine specialist doctor, by examining a family medicine expert and reading evidence issued by state institutions, it examined incompetent gynecologist experts who in many questions stated that they are not competent to give an opinion, because they are not family medicine experts and witnesses who were not present at all during the check up of the injured”.

26. Furthermore, the Applicant alleges that he is a victim of a criminal procedure conducted in an unprofessional manner by the prosecution and the court, adding that both checkups conducted by him are in: *“compliance with his powers as a family medicine specialist, which he has clearly explained during the proceedings”.*

iii. Alleged violation of Article 31 of the Constitution

27. Regarding this allegation, the Applicant mentions that: *“Article 31 of the Constitution of the Republic of Kosovo provides for the right to fair and impartial trial. Paragraph 1 provides that everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers. Whereas paragraph 4 of this Article provides for the right of the accused to present witnesses and experts and other persons who may clarify the facts. However, the court did not provide the accused and his defense counsel such an opportunity, rejecting the proposal of the defense counsel to examine the family medicine expert. In this way, the court did not appear impartial. On the contrary, it appeared biased, which influenced the accused and his defense counsel ... to address in writing to the President of the Basic Court in Prishtina, with a request for the recusal of the presiding judge”.*
28. Finally, the Applicant proposes to the Court: to approve his request; to assign a family medicine expert who would explain the competencies and obligations of the family medicine specialist; to approve the interim measure, *“to postpone the enforcement of imprisonment”* against the Applicant; and to declare Judgment PML.nr.319/2019 of the Supreme Court, of 10 December 2019, the one of the Court of Appeals, PAKR.nr.235/2019, of 19 June 2019, and the one of the Basic Court in Prishtina, PM.nr.294/2019, of 17 January 2019, null and remand the case for retrial to the Basic Court in Prishtina-Juvenile Department.

Admissibility of the Referral

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

[...]

31. The Court also assesses whether the Applicant has met the admissibility criteria, as specified 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 [...]”.

32. With regard to the fulfillment of the above mentioned criteria, the Court finds that the Applicant is an authorized party; has exhausted available legal remedies; has clarified the act of the public authority, the constitutionality of which he challenges, namely Judgment PML.nr.137/2020 of the Supreme Court, of 10 December 2020; has specified the constitutional rights which he alleges to have been violated, and has submitted the referral within the legal time limit, in accordance with Article 49 of the Law.

33. In addition, the Court must also examine whether the Applicant has met the admissibility criteria set out in Rule 39 [Admissibility Criteria], namely in sub-rule (2), which provides:

“(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.”

34. The Court first recalls that the Applicant alleges that the challenged decisions of the regular courts (as mentioned in paragraph 2 herein) violated his rights guaranteed by Articles 22, 24 and 31 of the Constitution, and Article 6 of the ECHR.
35. Based on the allegations mentioned above, the Court notes that the essence of the allegations of the Applicant is in fact related to the “fair and impartial trial” guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, because the allegations as such are related to the manner of administration of evidence, namely the denial of the right to examine witnesses-experts of the medical field. Furthermore, the Applicant claims to have been discriminated against and adds: “... everyone enjoys the right to equal legal protection without discrimination”.

Alleged violation of Article 31 of the Constitution

36. In this context and below, the Court will address the allegations of the Applicant related to the alleged violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, according to which the courts are obliged to interpret human rights and fundamental freedoms in accordance with the decisions of the European Court of Human Rights (hereinafter: ECtHR).
37. In this regard, the Court recalls the content of paragraphs 1, 2 and 4 of Article 31 of the Constitution and paragraphs 1 and 3 (d) of Article 6 of the ECHR, which provide:

Article 31 of the Constitution

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

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

[...]

4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts

and other persons who may clarify the evidence.

[...]

Article 6 of the ECHR

1. "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

[...]

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

[...]

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

38. Referring to the Applicant's allegations of a violation of Article 31 of the Constitution, the Court will further cite relevant parts of the decisions of the regular courts regarding the allegation that the regular courts did not take into account his request to examine as expert a family medicine specialist, to describe the responsibilities of the family medicine specialist.
39. In this context, the Court initially refers to Judgment PM.nr.294/2017 of the Basic Court in Prishtina, of 17 January 2019, wherein in relation to this allegation, this court reasoned:

"The trial panel also assessed the motion of the defense counsel of the accused Ramadan Sopaj to examine the family medicine expert but the court dismissed it as ungrounded due to the fact that in this criminal case there is sufficient evidence that prove the factual situation, especially the statements of the injured who have clearly stated what were the complaints of their illness and that examining this expert would be unnecessary and would prolong the proceedings and because, based on the principle that the law provides that juvenile cases are cases of an urgent nature and their resolution needs a quick response in order to have a positive impact on the well-being of the juvenile, and considering Article 6 of the European Convention which mentions a reasonable time for a fair trial, ... Based on the Convention on the Rights of the Child namely Article 40 (2) (b) (iii) which states that every child alleged as or accused of having infringed the penal law has at least the following guarantees: To have the matter determined without delay. Based on the above, this court has considered that the examination of the family medicine expert would not be necessary, therefore it also rejected the defense counsel's motion that the Court of Appeals proposed to examine

this expert, since we did not have such a proposal. The court also assessed the allegation of the defense counsel of the defendant to administer as evidence the module - manual of integrated management for sick children of September 2000 by the World Health Organization then the Module of the Ministry of Health - Center for the Development of Family Medicine, published in 2007, but the court dismissed it as ungrounded because it was not disputed that the accused had the right to prescribe therapy according to the complaints of the injured parties.”

40. The Court further notes that the Court of Appeals responded to the repeated allegations of the Applicant to examine a family medicine specialist as an expert, of Appeals, and especially the Supreme Court, reasoning:

“That touchings of the convict were for sexual purposes, were confirmed by the court based on the statements of the juvenile victims F.G. and A.H., who described in details the actions of the convict during their check up, a fact which was also confirmed by hearing gynecologist B.K. who, in the main trial, clarified that based on the protocol of the FMC in Malisheva, regarding the injured party F.G., he has read the therapy where convict had prescribed antibiotics, physiological solution, paracetamol and a syrup for the respiratory airways. Also for the injured party A.H., the therapy for stomach pain was proscribed, and based on the therapy protocol of the FMC in Malisheva, it turns out that the therapy which was prescribed to the injured juveniles by the convict, has nothing to do with the check up that the convict had done to the juveniles”.

41. Based on the above, the Court notes that the allegation of the Applicant received reasoned responses from all court instances, and according to their reasoning the decision to find him guilty was not based only on the statements of the expert (gynecologist), but also on the statements of the injured parties A.H. and F.G. themselves and in part on the statements of four other witnesses.
42. In this regard, the Court recalls that the Constitutional Court has no jurisdiction to decide whether an Applicant has been guilty of committing a criminal offense or not. It also has no jurisdiction to assess whether the factual situation has been correctly established or to assess whether the judges of the regular courts have had sufficient evidence to establish the guilt of an applicant (see the case of the Constitutional Court KI68/17, Applicant: *Fadil Rashiti*, Resolution on Inadmissibility, of 2 June 2017, paragraph 50).
43. The Court puts emphasis on its principled position that it is not the task of the Constitutional Court to deal with errors of fact or 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: KI68/17, Applicant: *Fadil Rashiti*, Resolution on Inadmissibility, of 2 June

2017, paragraphs 51 and 52, case KI70/11, Applicant: *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011, paragraph 29).

44. 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: KI68/17, Applicant: *Fadil Rashiti*, Resolutions on Inadmissibility, of 2 June 2017, paragraph 54, and KI70/11, Applicant: *Faik Hima, Magbule Hima and Besart Hima*, Resolutions on Inadmissibility, of 16 December 2011, paragraph 30).
45. Furthermore, 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 in Prishtina, 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.*, Resolutions 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 the cases of the ECtHR, *García Ruiz v. Spain*, cited above, paragraph 26; *Helle v. Finland*, Application no. 20772/92, Judgment of 19 December 1997, paragraphs 59-60).
47. Therefore, the Court notes that the reasoning of the regular courts, referring to Applicant's allegations of violations of his rights, is clear and, after having reviewed all the proceedings, the Court has also found that the proceedings before the regular courts, viewed in their entirety, have not been unfair or arbitrary (see, *mutatis mutandis*, cases of the Constitutional Court: KI68/17, 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 mentioning of articles of the Constitution, is not sufficient to build a reasoned allegation of constitutional violations. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (See, Resolution on Inadmissibility of 10 February 2015, *Abdullah Bajqinca*, KI136/14, paragraph 33).

49. Therefore, the Court considers that the Applicant has failed to prove that the challenged decision violated his right to a fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. Consequently, the Court finds that the Referral of the Applicant regarding the allegation of violation of Article 31 of the Constitution and Article 6 of the ECHR is manifestly ill-founded on constitutional basis.

Alleged violation of Article 24 of the Constitution

50. The Court also notes that the Applicant alleges that the challenged decisions violated his right to “equality before the law”, which is guaranteed by Article 24 of the Constitution, adding that “*everyone enjoys the right to equal legal protection without discrimination.*”
51. In this regard, the Court takes into account the provisions of Article 24 [Equality Before the Law] of the Constitution, which stipulate:

“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 also refers to its case law, which points out that only differences in treatment, based on an identifiable characteristic, or status, can constitute unequal treatment within the meaning of Article 24 of the Constitution. Furthermore, in order for an issue to be raised under Article 24, there must be a difference in the treatment of persons in analogous or similar situations (see, *mutatis mutandis*, the case of the Constitutional Court, KI157/18, Applicant The Supreme Court of Kosovo, Judgment of 13 March 2019, paragraph 33, see also cases of the ECtHR *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, Judgment of 7 December 1976, paragraph 56; and *Carson and Others v. The United Kingdom*, Judgment of 16 March 2010, paragraph 61).
53. The Court notes that the Applicant did not submit any *prima facie* evidence indicating by what identifiable characteristic, or status, he was discriminated against in proceedings before the regular courts. 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 basis of this inequality.
54. Therefore, the Court considers that the Applicant has not proved and establish 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 clearly ill-founded.

Request for interim measure

55. The Court recalls that the Applicant also requested from the Court to issue a decision on the imposition of an interim measure, namely *“to postpone the execution of [his] imprisonment sentence, because in this way an [...] irreparable damage will be avoided for the defendant, because his actions do not manifest elements of the criminal offense”*.
56. The Court has concluded that the Referral of the Applicant does not meet the procedural admissibility criteria.
57. Therefore, in accordance with Article, paragraph 1 of the Law and Rule 57 paragraph (1) of the Rules of Procedure, the Applicant’s request for interim measure is to be rejected, as it cannot be subject of review when 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 a 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 proceedings whereby he was found guilty of committing a criminal offense, under Article 232, paragraph 3, item 10, in conjunction with paragraph 1 of the CCRK.
59. The Court also rejected the Applicant’s request for imposition of an interim measure, as it can no longer be subject of review while the Referral is declared inadmissible on constitutional basis.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 27.1 of the Law and Rules 39 (2), 57 (4) (a) and 59 (2) of the Rules of Procedure, on 3 February 2021, unanimously

DECIDES

- I. TO DECLARE the referral inadmissible;
- II. TO REJECT the request to impose interim measure;
- III. TO NOTIFY this Decision to the parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- V. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Selvete Gërxhaliu-Krasniqi

Arta Rama-Hajrizi

