



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

Prishtina, on 21 May 2021  
Ref.No:RK1777/21

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI31/21**

Applicant

**Albert Krasniqi**

**Constitutional review of Judgment PML.no.224/2020 of the Supreme  
Court of Kosovo, of 17 September 2020**

### **THE 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 Albert Krasniqi, residing in the village of Napolë, Municipality of Peja, represented by Fisnik Mërlaku, a lawyer from Klina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the Judgment PML.no.224/2020 of the Supreme Court of Kosovo (hereinafter: the Supreme Court) of 17 September 2020. The challenged decision was received by the Applicant on 13 October 2020.

## **Subject matter**

3. The subject matter the Referral is the constitutional review of the challenged decision, which as alleged by the Applicant has violated his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).
4. The Applicant also proposes to the Court to hold a hearing in respect of his case.

## **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 the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 9 February 2021, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) received the Applicant's Referral.
7. On 11 February 2021, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi (members).
8. On 15 February 2021, the Court received the power of attorney signed by the Applicant from the Applicant's representative.
9. On 18 February 2021, the Court notified the Applicant and the Supreme Court about the registration of the Referral.
10. On the same date, the Court requested from the Basic Court in Peja-General Department (hereinafter: the Basic Court) to inform the Court about the time/date when the Applicant had received the challenged decision.

11. On 3 March 2021, the Basic Court submitted to the Court the acknowledgment of receipt proving that the Applicant had received the challenged decision on 13 October 2020.
12. On 5 May 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

13. On 21 May 2019, the Basic Prosecution in Peja (hereinafter: the Basic Prosecution) had filed the Indictment [PP/II.no.946/2019] against the Applicant, in relation to the criminal offence from paragraph 2 of Article 403 [Legalization of false content] of the Criminal Code of the Republic of Kosovo, No.04/L-082 (hereinafter: the CCRK). The Applicant was suspected that on 9 February 2017, in the Ministry of Labour and Social Welfare - Department of Families of Martyrs, War Invalids and Civilian Victims - Office in Peja (hereinafter: the MLSW), in order to benefit the salary of the status of a veteran, had presented the falsified document (Certificate no.31982/2016, of 15 June 2016), that he was allegedly a KLA veteran, on which occasion he had caused material damage of 3740.00 euros to the MLSW.
14. On 4 November 2019, the Basic Court, after the Applicant had pleaded guilty to the criminal offence which he was charged with by Judgment [P. no.467/2019], pronounced him guilty, and sentenced him to 6 (six) months of imprisonment, a sentence that was converted to a fine of 1200.00 euros, by pronouncing on him also an accessory punishment for compensating the MLSW in the amount of 3740.00 euros due to the damage caused as a result of the commission of the criminal offence.
15. On 25 November 2019, the Applicant had filed an appeal with the Court of Appeals against the Judgment [P.no.467/2019] of the Basic Court, due to the decision on the punishment. The Applicant alleged that the sentencing decision was extremely difficult to cope with for the Applicant due to his difficult financial situation.
16. On 10 February 2020, the Appellate Prosecution of Kosovo (hereinafter: the Appellate Prosecution), by submission [PPA/II.no.1567/2019], had proposed that the Applicant's appeal be rejected as ungrounded.
17. On 13 February 2020, the Applicant supplemented the above appeal filed against the Judgment [P.no. 467/2019] of the Basic Court, requesting from the Court of Appeals take into consideration the fact that the Applicant, since April 2017, has possessed proper documentation to receive the veteran's pension, and asking from the Court of Appeals to remand the case to the Basic Court for reconsideration purposes.

18. On 15 April 2020, the Court of Appeals of Kosovo [hereinafter: the Court of Appeals], through Judgment [PA1.no.1555/2019], rejected the Applicant's appeal as ungrounded and confirmed the Judgment of the Basic Court [P.no. 467/2019]. In relation to the sentence imposed on the Applicant, the Court of Appeals stated that the Basic Court had taken into consideration the mitigating circumstances when deciding on the punishment against him. In this respect, the Court of Appeals referred, *inter alia*, to the fact of the guilty plea by the Applicant, his financial situation, as well as other circumstances of the case.
19. On an unspecified date, the Applicant filed a request for protection of legality with the Supreme Court against the Judgment of the Basic Court [P.no. 467/2019] and Judgment of the Court of Appeals [PA1.no.1555/2019], due to essential violations of the provisions of the criminal procedure and erroneous application of the criminal law. The Applicant had alleged, *inter alia*, before the Supreme Court that: a) even though the certificate submitted to the MLSW was falsified, he did not falsify the documents, but has only used the documents issued to him by the competent authority; b) The judgment of the Basic Court is incomprehensible and self-contradictory; and c) The Basic Court and the Court of Appeals according to the provisions of the CCRK should have not imposed on the Applicant the accessory punishment of restitution of 3740.00 Euros to the MLSW, but to instruct the MLSW to a civil dispute.
20. On 17 September 2020, the Supreme Court by Judgment [PML. no. 224/2020] rejected the Applicant's request for protection of legality as ungrounded. The Supreme Court reasoned that the Applicant has pleaded guilty to the criminal offence which he was charged with, an accessory punishment was imposed on him pursuant to Article 62 (Accessory punishments) and 64 (Order of restitution or compensation) of the CCRK, and that the challenged judgments before the Supreme Court were clear and were not self-contradictory.

### **Applicant's allegations**

21. The Applicant alleges before the Court that the Judgment of the Supreme Court [PML.no.224/2020], violates his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR.
22. The Applicant alleges that he was not guaranteed equal protection of rights, on which occasion the Supreme Court finds that *"the court of the lower instance, alongside the main sentence imposed, has also imposed on him an accessory punishment, envisaged by Article 62 paragraph 2, sub-paragraph 2.2 [...] of the CCRK, respectively the order for compensation of loss or damage and the order for publication of the judgment."* He also disputes the findings of the Supreme Court that *"the court of the first instance has acted correctly when it imposed the accessory punishment by an order for compensation of loss or damage as provided for by Article 64, paragraph 1 of the CCRK and when it finally states that the courts are not bound by the legal property claim by the injured party because the imposition of an accessory punishment is an obligation in conformity with Article 62 of the CCRK."*

23. The Applicant further adds that an accessory punishment was imposed on him for the restitution of 3740.00 euros to MLSW, without relevant evidence and facts and without performing expertise on the damage. He also alleges that the issue of the Applicant's guilty plea has not been convincingly assessed. Moreover, the Supreme Court did not take into consideration the proven fact that the Applicant *"had appropriated only one salary of 170.00 euros by the falsified certificate and not a single cent more, a fact that is proven by the certificate of MLSW issued on 27.03.2017 whilst all other salaries have been continuously received based on the original certificate."* He further adds that *"realistically and objectively the [Basic] court with no convincing evidence has managed to argue the value of the damage caused, thus violating the criminal law."*
24. Therefore, in the present case he maintains the position that, *"the accessory punishments should have not been imposed without founded evidence and in such cases the Basic Court could have instructed the MLSW to a civil dispute for pursuing its legal property claim, when it finds no certain basis to decide on such a thing."* He also alleges that the challenged decision is incomprehensible, self-contradictory and contrary to the procedural provisions of Article 365, paragraph 1 in conjunction with Article 463, paragraph 2 of the Code No.04/L-123 of the Criminal Procedure of the Republic of Kosovo. (hereinafter: the CPCRK), since on the one hand it was not found that the Applicant has appropriated the amount of 3740.00 euros, while on the other hand it imposes an accessory punishment to compensate the amount of 3740.00 euros to MLSW, even though the MLSW had not filed a claim for compensation of damages.
25. Finally, *"seeing the legal violations of the criminal law and the provisions of criminal procedure by the courts of the lower instance"*, the Applicant proposes to the Court to: a) hold a hearing in respect of his case; b) declare the Referral admissible; c) find violations of the right to a fair and impartial trial as guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR by the courts of the lower instances; and d) declare the challenged decision invalid and remand the case for reconsideration to the Supreme Court.

## **Relevant Constitutional and Legal Provisions**

### **Constitution of the Republic of Kosovo**

#### **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.*
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.*  
*[...]"*

## **European Convention on Human Rights**

### **Article 6**

#### **(Right to a fair trial)**

*1. 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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

*[...]"*

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

### **Article 62**

#### **Accessory punishments**

*1. An accessory punishment may be imposed together with a principal or alternative punishment.*

*2. The accessory punishments are:*

*[...]*

*2.2. order to pay compensation for loss or damage;*

*[...]*

*2.7. order to publish a judgment; and*

*[...]*

### **Article 64**

#### **Order of restitution or compensation**

*1. The court, when sentencing a person who has been convicted of any offense involving the theft, loss, damage or destruction of property shall order that the perpetrator make restitution to the victim of the offense.*

*2. Restitution includes the costs equal to the value of any property stolen, lost, damaged or destroyed. Restitution shall also be ordered for any loss of income the victim experiences as a result of the offense and the related investigative and court proceedings.*

*[...]*

### **Article 403**



### ***Legalization of false content***

- 1. Whoever misleads a competent authority into certifying any untrue matter designed to serve as evidence of a legal matter in a public document, register or book shall be punished by imprisonment of three (3) months to five (5) years.*
- 2. Whoever uses such a document, register or book even though he or she knows it to be false shall be punished as provided for in paragraph 1 of this Article”.*

### **Assessment of the admissibility of Referral**

26. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.
27. 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.”*
28. The Court also examines whether the Applicant has fulfilled the admissibility criteria as provided by Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

#### **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. As to the fulfillment of the above criteria, the Court finds that the Applicant is an authorized party; who has clarified the act of the public authority the constitutionality of which he is challenging, namely the Judgment PML. no. 224/2020 of the Supreme Court of Kosovo, of 17 September 2020; has exhausted the available legal remedies; has specified the constitutional rights for which he claims to have been violated; as well as, has submitted the Referral within the legal deadline.

30. In addition, the Court must also examine whether the Applicant has fulfilled the admissibility criteria established in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure stipulates that:

*“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim.”*

31. In this context, the Court notes that the Applicant's allegations for violation of his constitutional rights, namely a violation of the right to a fair trial, concern the way the regular courts have interpreted the CCRK and CPCRK, and the way they assessed the evidence during the examination of his case, specifically in relation to the allegations that: a) the regular courts should have not imposed an accessory punishment on the Applicant - the restitution of the amount of 3740.00 euros to the injured party MLSW, instead they should have instructed the MLSW to a civil litigation; b) The challenged decision is incomprehensible, self-contradictory and contrary to the procedural provisions of the CPCRK.

32. In relation to the Applicant's allegations, the Court notes that the Supreme Court, by Judgment [PML.no. 224/2020] reasoned that the Applicant in the main trial has pleaded guilty to the criminal offence which he was charged with and that the Basic Court has pronounced the sentence on the Applicant after having been convinced that the legal conditions for such a thing have been met and once the Applicant has understood the consequences of the guilty plea. Also, according to the Supreme Court, the accessory punishment for restitution of the amount of 3740.00 euros to MLSW, was imposed in conformity with Article 62 (accessory punishments) and 64 (Order of restitution or compensation) of the CCRK, because when the court sentences a person who has been found guilty of any criminal offence involving theft, loss, damage or destruction of property, the court shall order that the perpetrator make restitution to the victim of the criminal offence. In such cases, the court is not bound by the legal property claim of the injured party because in conformity with Article 64 of the CCRK the imposition of the accessory punishment is mandatory. The Supreme Court also found that the judgments challenged before the Supreme Court were clear and not self- contradictory.



33. Therefore, the Court notes that following the Applicant's appeal filed against the Judgment of the Basic Court and of the Court of Appeals, respectively the request for protection of legality before the Supreme Court, the regular courts had dismissed his allegations for violation of the criminal and criminal procedure legislation by fully upholding the Judgment of the Basic Court, respectively of the Court of Appeals. The Supreme Court had responded to the allegations for essential legal violations raised by the Applicant.
34. The Applicant repeats before the Court the same allegations which he had presented before the regular courts, specifically in respect of the damage caused by the Applicant as a result of the criminal offence, and the legality of the accessory punishment imposed on the Applicant.
35. In this connection, the Court, initially, recalls that the Constitutional Court has no jurisdiction to decide whether an Applicant was guilty of committing a criminal offence or not. Nor does it have jurisdiction to assess whether the factual situation has been properly determined or to assess whether the judges of the regular courts have had sufficient evidence to establish the guilt of an Applicant. (See, the cases of the Constitutional Court: KI128/20, Applicant: *Ramadan Sopaj*, Resolution on Inadmissibility, of 10 November 2020, paragraph 41, and KI68/17, Applicant: *Fadil Rashiti*, Resolution on Inadmissibility, of 2 June 2017, paragraph 50).
36. The Court places the emphasis on its principled position that it is not the duty 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 duty 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*, the cases of the Constitutional Court: KI128/20, cited above, paragraph 42, KI68/17, cited above, paragraphs 51 and 52, case KI70/11, Applicants: *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011, paragraph 29).
37. In this context, the Constitutional Court can only consider whether the proceedings before 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*, the cases of the Constitutional Court: KI128/20, cited above, paragraph 43, KI68/17, Applicant: *Fadil Rashiti*, cited above, paragraph 54, and KI70/11, Applicant: *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011, paragraph 30).
38. With regard to the present case, as explained above, the Supreme Court found that the arguments presented by the Applicant did not prove that the accessory punishment was imposed in unlawful manner. The Court also notes that the Supreme Court and the Court of Appeals had assessed the legal provisions when deciding on the guilt of the Applicant in relation to the criminal offence

which he was charged with, as well as the sentence imposed on him, including the accessory punishment.

39. In addition, the Court emphasizes that in cases when a court of third instance, as in the case of the Applicant, the Supreme Court, which confirms the decisions taken by the lower courts - its obligation to reason the decision-making differs from cases where a court modifies the decision-making of the lower courts. In the present case, the Supreme Court has not modified the decision of the Court of Appeals or that of the Basic Court- whereby the Applicant was found guilty but has only confirmed their legality, given that, according to the Supreme Court, there were no essential violations of the criminal procedure and the criminal law (see, the cases of the Constitutional Court: KI128/20, cited above, paragraph 45; KI122/19, Applicant: *F.M.*, Resolution on Inadmissibility, of 9 July 2020, paragraph 100, and KI194/18, Applicants *Kadri Muriqi and Zenun Muriqi*, Resolution on Inadmissibility of 5 February 2020, paragraph 106).
40. 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 case of the Court, KI128/20, cited above, paragraph 46; see also 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).
41. Therefore, the Court notes that the reasoning of the regular courts, referring to the Applicant's allegations for violation of the criminal legislation, is clear and, after having reviewed all the proceedings, the Court also finds that the proceedings before the regular courts have not been unfair or arbitrary (see, *mutatis mutandis*, the cases of the Constitutional Court: KI128/20, cited above, paragraph 47; KI68/17, cited above, paragraph 55, and KI70/11, Applicants: *Faik Hima, Magbule Hima and Besart Hima*, Resolution on Inadmissibility, of 16 December 2011, paragraph 32).
42. The Court recalls that the mere fact that the Applicant is not satisfied with the outcome of the decisions of the regular courts, or the mere mention of articles of the Constitution is not sufficient to build an allegation for constitutional violation. When alleging such violations of the Constitution, the Applicant must present reasoned allegations and compelling arguments (see, *mutatis mutandis*, the cases of the Constitutional Court: KI128/20, cited above, paragraph 48 and KI136/14, Applicant: *Abdullah Bajqinca*, Resolution on Inadmissibility, of 10 February 2015, paragraph 33).
43. Therefore, the Court considers that the Applicant has failed to prove that the challenged decision has violated his right to fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. Consequently, the Court finds that the Applicant's Referral as regards the allegation for violation of Article 31 of the Constitution and Article 6 of the ECHR is manifestly ill-founded on constitutional basis.

### **Request for holding a hearing session**

44. The Court recalls that the Applicant has also requested from the Court to hold a hearing session.
45. In this respect, the Court recalls that pursuant to paragraph (1) of Rule 42 of the Rules of Procedure, *“Only referrals determined to be admissible may be granted a hearing before the Court, unless the Court by majority vote decides otherwise for good cause shown”*, while according to paragraph (2) of the same rule, *“the court may order a hearing if it believes a hearing is necessary to clarify issues of fact or of law.”*
46. The Court states that the aforementioned rule of the Rules of Procedure is of a discretionary character. Moreover, the Court states that, based on the above rule, only the cases which are declared admissible and the respective merits of which are examined can be heard before the Court through a hearing session. The Rules of Procedure enable the Court to exceptionally do so even in cases where a Referral is inadmissible, as is the case in the circumstances of the present case. However, the Court recalls that pursuant to paragraph (2) of Rule 42 of the Rules of Procedure, the Court may order a hearing in cases where it believes a hearing is necessary to clarify issues of fact or of law. In the circumstances of the present case, this is not the case because the Court does not consider that there is any ambiguity about the issues of *“fact or of law”* and therefore does not deem it necessary to hold a hearing. The documents contained in the Referral are sufficient to decide this case.
47. Consequently, the Applicant's request for holding a hearing is rejected as ungrounded.

## **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20 and 47 of the Law and in accordance with Rules 39 (2) and 42 of the Rules of Procedure, on 5 May 2021, unanimously

## **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT the request for hearing session;
- 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**

Nexhmi Rexhepi

Arta Rama-Hajrizi



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