



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

Prishtina, on 21 June 2021
Ref. no.:RK 1811/21

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case no. KI70/21

Applicant

Burhan Tusha

**Constitutional Review of the Judgment Pml.no. 293/2020 of the
Supreme Court of Kosovo, of 10 November 2020**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
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 Burhan Tusha, residing in the village of Soponica, Municipality of Kaçanik, represented by Avni Ibrahim, a lawyer from Ferizaj (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the Judgment Pml.no. 293/2020 of the Supreme Court of Kosovo (hereinafter: the Supreme Court), of 10 November 2020.
3. The Applicant had been served the challenged Judgment on 10 December 2020.

Subject matter

4. The subject matter of the Referral is the constitutional review of the challenged decision, by which the Applicant alleges to have been violated his rights guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] 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: ECHR).

Legal basis

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

Proceedings before the Constitutional Court

6. On 14 April 2021, the Court received the Applicant's Referral which he had submitted by post on 2 April 2021.
7. On 22 April 2021, the President of the Court appointed Judge Radomir Laban as Judge Rapporteur and the Review Panel composed of Judges Bekim Sejdiu (Presiding), Remzije Istrefi Peci and Nexhmi Rexhepi (members).
8. On 26 April 2021, the Court notified the Applicant's representative of the registration of the Referral and the Supreme Court of the registration of the Referral.
9. On the same day, the Court requested the Basic Court Ferizaj - Kaçanik Branch (hereinafter: the Basic Court) to submit the acknowledgment of receipt proving the date when the Applicant had received the challenged Decision.
10. On 7 May 2021, the Court received from the Basic Court the acknowledgment of receipt requested on 26 April 2021.
11. On 25 May 2021, based on point 1.1 of paragraph 1 of Article 9 (Prior termination of the mandate) of the Law and Rule 7 (Resignation of Judges) of

the Rules of Procedure, Judge Bekim Sejdiu submitted his resignation from the position of judge of the Constitutional Court.

12. On 27 May 2021, the President of the Court Arta Rama-Hajrizi, through Decision KSH70/21, appointed Judge Selvete Gërxhaliu-Krasniqi as Presiding of the Review Panel in the place of Judge Bekim Sejdiu.
13. On 2 June 2021, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

14. On 25 October 2010, in the village of Nikaj, Municipality of Kaçanik, the Applicant was involved in a traffic accident after he had hit another vehicle with his motor vehicle, in which case several persons were injured and, as a result of the injuries, one person had died.
15. On 4 December 2014, the Basic Prosecution in Ferizaj (hereinafter: the Basic Prosecution) filed an indictment [PP/I.no. 846-4/10] against the Applicant for the criminal offense under Article 297 [Endangering Public Traffic] of the Provisional Criminal Code of Kosovo (hereinafter: PCCK).
16. On an unspecified date, the Basic Prosecution issued a Decision [PP/II no. 846/10] on Initiation of Investigations against the Applicant, where it was specified that *“The investigation against the defendant according to this resolution begins on 22 August 2015.”* In the reasoning of the above Resolution it was also noted *“After reviewing the data in the criminal report and other sources collected, I consider that it is reasonable to initiate investigations against the defendant, in order to collect evidence and other data necessary to decide whether or not to file charges.”*
17. On 6 January 2021, a hearing was held on the above indictment in which the Applicant pleaded guilty to all counts of the indictment.
18. On 17 January 2021, the Basic Court, by Judgment [P.no. 406/14], found the Applicant guilty of the criminal offense for which he was charged, after the latter had pleaded guilty to the criminal offense, and sentenced him to imprisonment for a term of 6 months, which sentence with the consent of the Applicant was replaced with a fine in the amount of 1,200.00 euros.
19. Against the Judgment [P.no. 406/14] of the Basic Court, the appeal was filed by the Basic Prosecution, the representative of the injured party Sh.G. and the injured party V.G., due to the sentencing decision, requesting that an effective sentence be imposed on the Applicant. The injured party V.G., had also requested a harsher sentence of imprisonment against the Applicant.
20. The Applicant had not filed an appeal against the Judgment of the Basic Court but had filed a response to the appeal of the Basic Prosecution requesting that the appeal of the Basic Prosecution be rejected as unfounded. The Applicant, in

the response to the appeal of the Basic Prosecution, had not raised the issue of the legality of the indictment, namely whether the Prosecutor of the specific case had filed an Indictment, without conducting an investigation.

21. On 7 July 2021, the Court of Appeals of Kosovo [hereinafter: the Court of Appeals], by Judgment [PA1.no. 310/2020], approved the appeal filed by the Basic Prosecution and the injured parties as grounded in which case it amended the Judgment [P.no. 406/14] of the Basic Court, regarding the sentence by sentencing the Applicant with a sentence of effective imprisonment for a term of one (1) year.
22. On an unspecified date, the Applicant filed a request for protection of legality to the Supreme Court against the Judgment [PA1.no. 310/2020] of the Court of Appeals due to substantial violations of the provisions of criminal procedure. The Applicant alleged before the Supreme Court that:
 - a) The prosecutor of the present case had filed an indictment without conducting an investigation, contrary to Article 101 [Initiation of Criminal Proceedings by Investigative Stage, or Indictment] and 240 [Criminal Trial Only Conducted after Filing of Indictment] of the Criminal Procedure Code of the Republic of Kosovo (hereinafter: CPCRK);
 - b) The Court of Appeals did not present circumstances and reasons for the harsher sentence in regard to the one which had been imposed by the Basic Court, and did not take into account the mitigating circumstances against the Applicant when imposing the sentence.
23. On 20 October 2020, the Office of the Chief State Prosecutor by letter [KMLP.II.no. 162/2020] had proposed that the request for protection of legality be rejected as unfounded.
24. On 10 November 2020, the Supreme Court, by Judgment [Pml.no. 293/2020] rejected the Applicant's request for protection of legality as unfounded. The Supreme Court stated that the Applicant's allegations are unfounded, as the judgments against which he had filed the request do not contain the alleged substantial violations of the provisions of the criminal procedure. The Supreme Court also noted that in the present case, the convicted person pleaded guilty in the presence of his defence counsel and that the court found that the plea of guilt was in accordance with the provision of Article 248 paragraph 4 of the CPCRK. Regarding the allegation of the convicted person's defence counsel that a direct indictment was filed without conducting an investigation, the Supreme Court noted that this allegation does not stand because in the case file is the Resolution on the initiation of investigations against the Applicant with reference PP/II.no. 846-4/10.

Applicant's allegations

25. The Applicant alleges before the Court that the Judgment [Pml.no. 293/2020] of the Supreme Court, in conjunction with the Judgment [PA1.no. 310/2020] of the Court of Appeals, and the Judgment [P.no. 406/14] of the Basic Court,

violates his rights guaranteed by Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR.

26. The Applicant claims that in the present case, the Prosecutor has filed a direct indictment - without conducting an investigation which is in flagrant violation of the provision of Article 101 paragraph 2 and Article 240 paragraph 1 of the CPCRK. Whereas, in paragraph 2 of Article 101 of the CPCRK, it is provided that the indictment in no case can be filed without conducting an investigation into the criminal offense for which according to law can be imposed a sentence of imprisonment of more than 3 (three) years, regardless of what evidence and data the indictment is based on. In the present case, the criminal offense for which the indictment was filed is punishable by 1 to 8 years. He alleges that the indictment [PP/II.no. 846-410] was filed on 04 December 2014, while, with the resolution to initiate investigations, the Basic Prosecution initiated investigations against the Applicant on 12 August 2015, that is after the indictment was filed.
27. In this regard he adds that *“Such an indictment, filed without conducting an investigation, should not have been admitted by the Court, as it has no basis in the provisions of the Criminal Procedure Code, therefore the first instance judgment contains substantial violations that necessarily condition its annulment”*.
28. The Applicant, with regard to not raising this matter before the Court of Appeals, cites the reasoning of the Court of Appeals which had found that *“although the Judgment of the first instance is not challenged due to substantial violations of the provisions of the criminal procedure, nevertheless the Court of Appeals examined the same ex officio in this aspect in accordance with the provision of Article 394 of the CPC, and found that it [the Judgment of the Basic Court] does not contain substantial violations of the provisions of the criminal procedure which would have conditioned its annulment and that violation of the Criminal Law to the detriment of [the Applicant]”*. Regarding the above finding of the Court of Appeals, that in the present case the Judgment of the Basic Court was not involved in procedural violations, the Applicant alleges that this finding is erroneous, as in this present case there were procedural violations of Articles 101 and 240 of the CPCRK, given the consideration that the indictment was filed without conducting a preliminary investigation.
29. Therefore, he notes that the conclusion of the Supreme Court that in the case file there is a resolution on initiation of investigations does not stand because the indictment [PP/II.no. 846-410] was filed on 04 December 2014, while, with the resolution on initiation of investigations, the Basic Prosecution initiated investigations against the Applicant on 12 August 2015.
30. Consequently, as a result of these alleged legal violations, the Applicant alleges that the challenged Decision was issued in violation of his constitutional rights mentioned above.

Relevant legal provisions

Provisional Criminal Code of Kosovo

“Article 297 Endangering Public Traffic

(1) Whoever violates the law on public traffic and endangers public traffic, human life or property on a large scale and thereby causes light bodily injury to a person or material damage exceeding 1,000 euro shall be punished by a fine or by imprisonment of up to five years.

(2) Whoever endangers railway, water, tram, trolleybus, bus or cable car traffic and in this way endangers human life, physical safety or property on a large scale shall be punished by imprisonment of up to five years.

(3) When the offence provided for in paragraph 1 or 2 of the present article is committed by negligence, the perpetrator shall be punished by a fine or by imprisonment of up to two years.

(4) When the offence provided for in paragraph 1 or 2 of the present article results in serious bodily injury of a person or substantial material damage, the perpetrator shall be punished by imprisonment of six months to five years and when such offence results in the death of one or more persons, the perpetrator shall be punished by imprisonment of at least one year of imprisonment.

(5) When the offence provided for in paragraph 3 of the present article results in serious bodily injury or substantial material damage, the perpetrator shall be punished by imprisonment of six months to five years and when such offence results in the death of one or more persons, the perpetrator shall be punished by imprisonment of one to eight years.”

Criminal Procedure Code of the Republic of Kosovo

“Article 101 Initiation of Criminal Proceedings by Investigative Stage, or Indictment

- 1. If the police or other government agency reports to the state prosecutor a reasonable suspicion of a criminal offence, the state prosecutor may initiate the investigatory stage of a criminal proceeding under Article 102 of this Code.*
- 2. If the police or any other person reports to the state prosecutor a reasonable suspicion of a criminal offence or criminal offences, none of which are punishable by fine and/or imprisonment of more than three years, and the state prosecutor determines that a well-grounded suspicion exists to support an indictment, the state prosecutor may file an indictment under Article 241 of this Code.*
- 3. At any time, a suspect, subject to this Article, may plead guilty to an indictment in accordance with Article 233 of this Code.*

[...].

*Article 102
Initiation of Investigation*

1. *The state prosecutor may initiate an investigation on the basis of a police report or other sources, if there is a reasonable suspicion that that a criminal offence has been committed, is being committed or is likely to be committed in the near future which is prosecuted ex officio.*
2. *The investigation is initiated by a decision by the state prosecutor under Article 104 of this Code.*
[...]

*Article 233
Negotiated Pleas of Guilty*

1. *At any time prior to the filing of the indictment, the state prosecutor and the defence counsel may negotiate the terms of a written plea agreement under which the defendant and state prosecutor agree to the charges of an indictment and the defendant agrees to plead guilty in return for:*
 - 1.1. *the state prosecutor's agreement to recommend a more lenient punishment to the court, but not under one below the minimum provided for by law or the minimum set under paragraph 7 of this Article; or*
 - 1.2. *other considerations in the interest of justice, such as the waiver of the punishment as foreseen by Article 234 of the present Code.*[...]

*Article 240
Criminal Trial Only Conducted after Filing of Indictment*

1. *After the investigation has been completed and when the state prosecutor considers that the information that he has in relation to the criminal offence and the offender provide a well-grounded suspicion that the defendant has committed a criminal offence or criminal offences, proceedings before the court may be conducted only on the basis of an indictment filed by the state prosecutor.*
2. *If the investigation is completed and there is insufficient evidence to support a well-grounded suspicion that the defendant has committed a criminal offence or criminal offences, the state prosecutor shall file a ruling that terminates the investigation.*
[...]

*Article 246
Plea*

- [...]
4. *The single trial judge or presiding trial judge shall satisfy himself or herself that the defendant understands the indictment and provide the defendant the opportunity to plead guilty or not guilty. If the defendant*

has not understood the indictment, the single trial judge or presiding trial judge shall call on the state prosecutor to explain it in a way the defendant may understand without difficulty. If the defendant does not want to make any statement regarding his or her guilt, he or she shall be considered to have pleaded not guilty.

Article 384

Substantial Violation of the Provisions of Criminal Procedure

1. There is a substantial violation of the provisions of criminal procedure if:

1.1. the court was not properly constituted or the participants in the rendering of the judgment included a judge who did not attend the main trial or was excluded from adjudication under a final decision;

1.2. a judge who should be excluded from participation in the main trial participated therein;

1.3. the main trial was conducted in the absence of persons whose presence at the main trial is required by law or the accused or defence counsel was, notwithstanding his or her request, denied the right to use his or her own language in the main trial and to follow the course of the main trial in his or her language;

1.4. the public was excluded from the main trial in violation of the law;

1.5. the court violated the provisions of the criminal procedure relating to the issue of whether there exists a charge by an authorized state prosecutor, a motion of the injured party or the approval of the competent public entity;

1.6. the judgment was rendered by a court which lacked subject matter jurisdiction to hear the case.

1.7. the court in its judgment did not fully adjudicate the substance of the charge;

1.8. the judgment was based on inadmissible evidence;

1.9. the accused, when asked to enter his or her plea, pleaded not guilty on all or certain counts of the charge and was examined before the presentation of evidence was completed;

1.10. the judgment exceeded the scope of the charge;

1.11. the judgment was rendered in violation of Article 395 of the present Code; or

1.12. the judgment was not drawn up in accordance with Article 370 of the present Code.

2. Substantial violation of provisions of criminal procedure shall be considered if during the course of criminal proceedings, including pre-trial proceedings, the court, the state prosecutor or the police:

2.1. omitted to apply a provision of the present Code or applied it incorrectly; or

2.2. violated the rights of the defence; and this influenced or might have influenced the rendering of a lawful and fair judgment.”

Admissibility of the referral

31. The court initially examines whether the Applicant has met the admissibility criteria set out in the Constitution and further specified by law and provided for in the Rules of Procedure.
32. In this regard, the Court refers paragraphs 1 and 7, of Article 113 [Jurisdiction and Authorized Parties], of the Constitution, which stipulate:

“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.”

33. The Court also examines whether the Applicant has met the admissibility criteria required by Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47 (Individual Requests)

“1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”

Article 48 [Accuracy of the Referral]

“In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge.”

Article 49 [Deadlines]

“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision [...].”

34. Regarding the fulfilment of the above criteria, the Court finds that the Applicant is an authorized party; has exhausted the available legal remedies; has clarified the act of the public authority, constitutionality of which he challenges, specifically the Judgment Pml.no. 293/2020 of the Supreme Court of Kosovo, of 10 November 2020; has specified the constitutional rights which

he alleges he has been violated; as well as has submitted the referral within the legal deadline.

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

36. The Court initially notes that the above rule, based on the case law of the European Court of Human Rights (hereinafter: the ECtHR) and of the Court, enables the latter to declare the Referrals inadmissible on grounds relating to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible on the basis of and after the assessment of its merits, respectively if it considers that the content of the referral is manifestly ill-founded on constitutional grounds, as provided for in paragraph (2) of Rule 39 of the Rules of Procedure (see case KI04/21, Applicant *Nexhmije Makolli* Resolution on Inadmissibility of 12 May 2021, paragraph 26, also case KI175/21, Applicant *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 27 April 2021, paragraph 37).

37. Based on the case law of the ECtHR but also of the Court, a referral may be declared inadmissible as "manifestly ill-founded" in its entirety or only with respect to any specific allegation that a referral may contain. In this respect, it is more accurate to refer to the same as "manifestly ill-founded allegations". The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) allegations that qualify as "*fourth instance*" allegations; (ii) allegations that are categorized as "*clear or apparent absence of a violation*"; (iii) "*unsubstantiated or unsupported*" allegations; and finally, (iv) "*confused or farfetched*" allegations. (See: more precisely for the concept of inadmissibility on the basis of a referral assessed as "manifestly ill-founded", and the specifics of the above four categories of allegations qualified as "manifestly ill-founded", the ECtHR Practical Guide on Admissibility Criteria of 31 August 2019; Part III. Inadmissibility Based on Merit; A. Manifestly ill-founded applications, paragraphs 255 to 284, see also case KI04/21, cited above, paragraph 27 and case KI175/21, cited above, paragraph 38).

38. In the context of the assessment of the admissibility of the Referral, respectively the assessment of whether the Referral is manifestly ill-founded on constitutional grounds, the Court will first recall the substance of the case contained in this Referral and the respective allegations of the Applicant, in assessment of which the Court shall apply the standards of the ECtHR case law, in accordance with which, according to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution (see case KI04/21, cited above, paragraph 28 and case KI175/21, cited above, paragraph 39).

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

39. The Court notes that the Applicant's allegations of a violation of the right to a fair trial 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, relate to the way the regular courts have interpreted the CPRK in his case. In this regard, he claims that the Basic Prosecution has filed the indictment [PP/II.no. 846-410] on 4 December 2014, without the implementation of the investigation, respectively the Resolution on initiation of the investigation was issued after the indictment was filed, respectively on 12 August 2015. He claims that this is contrary to the provision of Article 101 paragraph 2 and Article 240 paragraph 1 of the CPRK, which stipulates that the indictment can in no case be filed without an investigation into the criminal offense for which according to law a sentence of imprisonment of more than 3 (three) years may be imposed, regardless of what evidence and data the indictment is based on. In this case, the criminal offense for which the indictment was filed is punishable by 1 to 8 years, which means that in this case the investigation had to be conducted.
40. In this regard, the Court initially recalls that the Constitutional Court has no jurisdiction to decide whether an Applicant was guilty of committing a criminal offense or not. It also has no jurisdiction to assess whether the factual situation has been properly established or to assess whether the judges of the regular courts have had sufficient evidence to establish the guilt of an Applicant. (See, in this context and, inter alia, the Court cases KI128/18, Applicant: *Joint Stock Company Limak Kosovo International Airport JSC, "Adem Jashari"*, Resolution of 28 June 2019, paragraph 55; KI62/19, Applicant: *Gani Gashi*, Resolution on Inadmissibility of 19 December 2019, paragraphs 56-57; KI110/19, Applicant: *Fisnik Baftijari*, Resolution on Inadmissibility of 7 November 2019, paragraph 40).
41. The Court recalls 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 court of lower instance, except and to the extent that it may have violated the rights and freedoms protected by the Constitution (constitutionality). The Court reiterates that it is not its duty, according to the Constitution, to act as a "fourth instance" court in respect to decisions taken by regular courts. Indeed, it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law. (See, in this context, the ECtHR case *García Ruiz v. Spain*, Judgment of 21 January 1999, paragraph 28 and references used therein; and see also the Court cases KI128/18, cited above, paragraph 56; and KI62/19, cited above, paragraph 58).
42. In this context, the Constitutional Court may only examine whether the proceedings in the regular courts, viewed in their entirety, were conducted in such a way that the Applicant had a fair or non-arbitrary trial (see, *inter alia*, case *Edwards v. United Kingdom*, application no. 13071/87, Report of the

European Commission of Human Rights, adopted on 10 July 1991 and see also the Court cases KI110/19, cited above, paragraph 41).

43. Next, the Court will address the Applicant's allegations, applying its case law and that of the ECtHR, in accordance with which, the Constitutional Court, pursuant to Article 53 of the Constitution [Interpretation of Human Rights Provisions], it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.
44. With respect to the Applicant's allegations, the Court initially notes that the Applicant before the Supreme Court alleged that no investigation was conducted in his case and that the indictment was filed without conducted investigation, as required by Articles 101 and 240 of the CPCRK. The Supreme Court, in this regard, had reasoned that:

“According to the assessment of the Supreme Court of Kosovo, the allegations of the convicted person's defence counsel are unfounded, because the judgments against which he has filed a request do not contain substantial violations of the provisions of the criminal procedure for which it is alleged.

It is important to note that in the present case, the convicted person, in the presence of his defence counsel, pleaded guilty and that the [Basic] court found that the plea is in accordance with the provision of Article 248 par. 4 of the CPC.

Regarding the allegation of the convicted person's defence counsel that a direct indictment was filed without implementation of investigation, this allegation does not stand because in the case file is the Resolution on initiation of investigations against (now convicted) Burhan Tusha with reference PP/II.no. 846-4/10.”

45. Consequently, the Supreme Court found that the arguments presented by the Applicant did not prove that there were procedural violations by the Basic Court and the Court of Appeals. The Court notes that in the present case, the Applicant had raised a specific allegation before the Supreme Court that no investigation had been conducted in his case. This allegation was not raised by the Applicant before the Court of Appeals. However, the Supreme Court addressed this allegation and stated that the Applicant's allegation is unfounded as in the case file there is a Resolution [PP/II.no. 846-4/10] of the Basic Prosecution on initiation of investigations. The Supreme Court also emphasized the fact that the Applicant had pleaded guilty to the criminal offense for which he was charged.
46. The Applicant, contrary to what he had alleged before the Supreme Court that in his case no investigations were conducted, before the Constitutional Court alleges that in his case no investigations were conducted, respectively that the investigations had started after the indictment was filed, respectively the indictment was filed on 4 December 2014, while the Resolution on initiation of investigations was issued on 12 August 2015.

47. In this regard, the Court refers to paragraph 3 of Article 101 of the CPCRK which stipulates that “*At any time a suspect subject to this Article may plead guilty to an indictment in accordance with Article 233 of [the CPCRK]*”. Whereas in accordance with Article 233 of the CPCRK “*At any time prior to the filing of the indictment, the state prosecutor and the defence counsel may negotiate the terms of a written plea agreement under which the defendant and state prosecutor agree to the charges of an indictment and the defendant agrees to plead guilty [...]*”.
48. The Court also refers to paragraph 4 of Article 246 [Plea] of the CPCRK “*The single trial judge or presiding trial judge shall satisfy himself or herself that the defendant understands the indictment and provide the defendant the opportunity to plead guilty or not guilty [...]*”
49. Furthermore, the Court recalls the ECtHR case law, according to which the effects of the plea agreement are that the criminal charge against the accused is settled through an expedited trial procedure, which means, in essence, that the accused waive a number of their procedural rights (see, *mutatis mutandis*, the ECtHR case, *Navalnyy and Ofitserov v. Russia*, Judgment of 4 July 2016, paragraph 100).
50. In this regard, the Court notes that the Applicant, by admitting guilt regarding the criminal offense for which he was charged, in the main trial of 6 January 2020, before the Basic Court had waived some rights guaranteed by the CPCRK, pursuant to Article 101 and 233 of the CPCRK and this is in line with the ECtHR case law. The Court also notes that the Applicant had not filed an appeal against the Judgment of the Basic Court which had ruled regarding the fulfilment of the legal conditions for admission of guilt, therefore the subsequent procedure was conducted mainly regarding the length of the sentence for the criminal offense to which he had pleaded guilty.
51. The Court consequently finds that the Applicant has benefited from the adversarial proceedings; he had the opportunity to present at the various stages of the proceedings the allegations and evidence which he considered relevant to his case; he had the opportunity to effectively challenge the allegations and evidence presented by the opposing party; the regular courts have heard and examined all his allegations, which, objectively viewed, have been relevant to the resolution of the case; the factual and legal reasons for the challenged decision are presented in detail, therefore, the proceedings, viewed in entirety, were fair (see, *mutatis mutandis*, the ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, cited above, paragraphs 29 and 30; see also the Court case KI22/19, Applicant: *Sabit Ilazi*, resolution of 7 June 2019, paragraph 42 and the Court case KI128/18, cited above, paragraph 58).
52. Therefore, the Court notes that the reasoning of the Supreme Court, referring to the allegations of the Applicant for violation of criminal legislation, is clear and, after reviewing all the proceedings, the Court also finds that the proceedings in the regular courts were not unfair or arbitrary. (See: ECtHR Judgment no. 9939/02, *Pekinel v. Turkey*, of 18 March 2008, paragraph 55; see also: in this context, inter alia, Case KI22/19, cited above, paragraph 43).

53. 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 mention of Articles of the Constitution is not sufficient to establish a claim of constitutional violation. When such violations of the Constitution are alleged, the Applicant must provide reasoned allegations and convincing arguments (see the Court cases KI128/18, cited above, paragraph 61; and KI62/19, cited above, paragraph 59).
54. Therefore, the Court finds 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.
55. Finally, the Court concludes that the Applicant's allegations of violation of the right to a fair and impartial trial, guaranteed by Article 31 of the Constitution and Article 6 of the ECHR due to erroneous determination of the factual situation and erroneous interpretation and erroneous application of applicable law are (i) claims that qualify as "*fourth instance*" allegations; and as such, these allegations of the Applicant are manifestly ill-founded on constitutional grounds as set out in paragraph (2) of Rule 39.

Regarding the alleged violations of Article 24 [Equality Before the Law] and Article 54 [Judicial Protection of Rights] of the Constitution

56. With regard to violations of the rights guaranteed by Articles 24 and Article 54 of the Constitution, the Court recalls that according to the established case law of the ECtHR, the Court declares the Referral inadmissible as manifestly ill-founded in accordance with criterion (iii) "*unsubstantiated and unsupported*" allegations when one of the two characteristic conditions is met, namely;
 - a) when the Applicant merely cites one or several provisions of the Convention or the Constitution, without explaining how they have been violated, unless this is clearly evident in the facts and circumstances of the case (see, in this regard, the ECtHR case *Trofimchuk v. Ukraine (Decision)* no. 4241/03 of 31 May 2005, see also *Baillard v. France (Decision)* no. 6032/04 of 25 September 2008);
 - b) when the Applicant does not present or refuses to present material evidence to support his/her allegations (this is especially true for decisions of courts or other domestic authorities), except when there are exceptional circumstances that are out of control and which prevent him/her from doing so (for example, when the prison authorities refuse to submit to the Court the documents from the case file of the prisoner in question) or unless the Court itself decides otherwise (see case KI166/20, Applicant, *Ministry of Labour and Social Welfare*, Resolution on Inadmissibility, 5 January 2021, paragraph 42).

57. In the present case, the Applicant only alleges a violation of Articles 24 and 54 of the Constitution, but does not justify or explain how the violation of these Articles occurred.
58. With respect to these allegations, the Court notes that the Applicant only mentions the relevant articles, but does not further elaborate on how and why these relevant articles of the Constitution were violated. The Court recalls that it has consistently stated that merely referring to Articles of the Constitution and the ECHR is not sufficient to construct a substantiated allegation of a constitutional violation. When alleging such violations of the Constitution, the Applicants must provide reasoned allegations and convincing arguments (see, in this context, the cases KI175/20, cited above, paragraph 81; KI166/20 cited above, paragraph 52; KI04/21 cited above, paragraphs 38- 39).
59. Therefore, the Court finds and concludes that with regard to the allegations of the Applicant for violation of the rights guaranteed by Article 24 and Article 54 of the Constitution, the Referral should be declared inadmissible as manifestly ill-founded, because these allegations are considered as allegations falling into category of (iii), “*unsubstantiated and unsupported*” allegations, because the Applicant merely mentions one or more provisions of the Convention or the Constitution, without explaining how they have been violated. Therefore, they are manifestly ill-founded on constitutional grounds, as stipulated in paragraph (2) of Rule 39 of the Rules of Procedure.

Conclusion

60. Therefore, the Court concludes that the Applicant’s allegations of violation of the rights guaranteed by Articles 24, 31 and 54 of the Constitution must be declared inadmissible in their entirety as manifestly ill-founded because the Applicant’s allegations qualify as allegations that fall into the category of (i) “fourth instance” allegations and the category of (iii) “*unsubstantiated and unsupported*” allegations. Consequently, the Referral in its entirety must be declared inadmissible as manifestly ill-founded on constitutional grounds, as set out in paragraph (2) of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 48 of the Law and in accordance with Rule 39 (2) of the Rules of Procedure, on 2 June 2021, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this decision to the parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Radomir Laban



Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.