



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

Prishtina, on 19 July 2021
Ref. No.:RK1817/21

This translation is unofficial and serves for informational purposes only

RESOLUTION ON INADMISSIBILITY

in

Case No. KI77/21

Applicant

Halit Korenica

**Constitutional review of Judgment PML. No.30/2021
of the Supreme Court of 25 February 2021**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Gresa Caka-Nimani, President
Bajram Ljatifi, Deputy President
Selvete Gërxhaliu-Krasniqi, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Halit Korenica, from Rahovec (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges the constitutionality of Judgment PML. No. 30/2021, of the Supreme Court of od 25 February 2021.

Subject matter

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, which, according to the Applicant's allegations, violated his rights guaranteed by Articles 24 [Equality Before the Law] and 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).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 28 April 2021, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 May 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).
7. On 18 May 2021, the Court notified the Supreme Court of Kosovo about the registration of the Referral, notified the Applicant about the registration of the Referral, and requested the Applicant to complete the official referral form of the Court.
8. On 25 May 2021, based on item 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 resigned as a judge before the Constitutional Court.
9. On 27 May 2021, the President of the Court, Arta Rama-Hajrizi, by Decision KSH77/21, appointed Judge Safet Hoxha as Presiding of the Review Panel instead of Judge Bekim Sejdiu.
10. On 28 May 2021, the Applicant submitted to the Court the completed official referral form of the Court.
11. On 26 June 2021, pursuant to paragraph 4, of Rule 12 of the Rules of Procedure and the decision of the Court KK-SP 71-2/21, Judge Gresa Caka-

Nimani took over the duty of the President of the Court, while based on item 1.1 of paragraph 1, of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi ended the mandate of the President and Judge of the Constitutional Court.

12. On 30 June 2021, after considering the report of the Judge Rapporteur, the Review Panel unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. Based on the case law in the Referral, it follows that the Applicant and another person E.L., on 5 June 2018, about 11:30 in Rahovec, attacked a third person D.K., while unlawfully taking away his phone as and a certain amount of money.
14. On 15 August 2018, the Basic Prosecutor's Office in Gjakova, Department for Serious Crimes, filed an indictment PP/I. No. 39/2018, against the Applicant and the co-perpetrator of the person E.L., due to a well-founded suspicion that they committed a criminal offense "*robbery under Article 329, paragraph 1 in conjunction with Article 31 of the CCRC*".
15. The Basic Court in Gjakova - Department for Serious Crimes (hereinafter: the Basic Court), held 7 hearings in order to determine the criminal liability of the Applicant and co-perpetrator of the person E.L.
16. On 18 September 2020, the Basic Court, by Judgment PKR. No. 39/18, found the Applicant and the co-perpetrator E.L. guilty, "*that in co-perpetration they committed the criminal offense of robbery under Article 329, paragraph 1 in conjunction with Article 31 of the CCRC*". The Applicant was sentenced by Judgment PKR. No. 39/18 of the Basic Court, a prison sentence of 2 (two) years was imposed, as well as a fine in the amount of € 300 (three hundred), by the same judgment the co-perpetrator E.L. was sentenced to imprisonment of 3 (three) years, as well as a fine in the amount of 400 (four hundred) euro.
17. In the reasoning of the judgment, the Basic Court stated: "*[...] the court could not accept the findings of the defense counsel of the accused (Applicant) that the presented evidence did not prove the criminal liability of the accused in connection with the criminal offense charged in the indictment in conjunction with robbery Article 329, paragraph 1 in conjunction with Article 31 [...]*"
[...]
From this factual situation, the Court undoubtedly confirmed that in the proceedings of the accused E.L., and Halit Korenica (Applicant) described in the enacting clause of the judgment, there are all essential elements of the criminal offense of robbery under Article 329 para. 1 in conjunction with Article 31 of the CCRC.

The factual situation from the enacting clause of the judgment was confirmed by the evidence attached to the indictment, which was proposed to be presented as evidence during the court hearing. As to the guilt, the Court found that in the proceedings of the accused E. L. and Halit Korenica (the

Applicant) *there was an intention to commit the criminal offense of robbery under Article 329 para. 1 in conjunction with Article 31 of the CCRC.*

18. The Applicant's defense counsel filed an appeal within the legal deadline with the Court of Appeals against the Judgment PKR. No. 39/18 of the Basic Court, stating *„that the first instance judgment violates the essential provisions of the criminal procedure, that the enacting clause of the judgment is not in compliance with the reasoning, that the reasons regarding the decisive facts are not presented and what was stated in the reasoning of the judgment and the contents of the case file and minutes“*. In addition, the Applicant's defense counsel added in the appeal *„... that the situation was erroneously established, because the first instance court interpreted the evidence, but did not assess it. The defense also emphasizes the fact that, although the injured party stated that the accused threatened him, the knife is missing from the case file as evidence...“*
19. On 23 December 2020, the Court of Appeals, by Judgment PAKR. No. 381/2020, dismissed as ungrounded the appealing allegations of the Applicant's defense counsel, while upholding the judgment of the Basic Court in its entirety.
20. As to the appealing allegations of the Applicant's defense counsel, the Court of Appeals found:
 - “i) The appealing allegations made in the appeal, which have to do with the factual situation, the Court of Appeals finds that they are unfounded, because the first instance court correctly and clearly justified why the evidence used proves that the accused committed the criminal offence they are charged with. ”*
 - ii) The claim of the defense counsel for the accused (the Applicant) that the accused (the Applicant) did not have a knife is unfounded and this has never been confirmed because no knife was found with the accused, nor is there a medical report on the injured party's injury due to the fact that the knife and scratches on his left leg is testified by the injured party, and also according to the qualification of the criminal offense, it follows that the accused were not charged with committing the criminal offence with a weapon as provided in paragraph 3 of Article 329 of the CCRC, but they are accused of committing the act of robbery using force provided for in paragraph 1 of Article 329 of the CCRC. . Therefore, this claim of the defense is ungrounded”*.
21. Within the legal deadline, the Applicant's defense counsel filed a request for protection of legality with the Supreme Court against Judgment PAKR. No. 381/2020 of the Court of Appeals, alleging *„essential violations of the provisions of the criminal procedure under Article 384 para. 1 sub para. 1.12 in conjunction with Article 370 of the CPC and violation of the criminal law under Article 385 para. 1 subpara. 1.5 of the CPC, that the judgments do not contain a reasonable reasoning, that they are contradictory, that the legal criteria of Article 31 of the CCK are not met in order for the act to be considered a criminal offense in co-pepetration”*.

22. On 25 February 2021, the Supreme Court, by Judgment PML. No. 30/2021, rejected as ungrounded the request for protection of legality of the Applicant's defense counsel, while upheld in entirety Judgment PKR. No. 39/2018 of the Basic Court and Judgment PAKR. No. 381/2020 of the Court of Appeals.

23. In the reasoning of Judgment PML. No. 30/2021, the Supreme Court stated:

“i) According to the assessment of the panel of the Supreme Court of Kosovo, the allegations in the requests for protection of legality are ungrounded [...]. Both judgments, of first and second instance, are clear, understandable and based on the law. The enacting clause are in line with self-understanding and reasoning, while the decisions are based on applied and rightly assessed evidence, which means that they are clearly presented as to what facts and for what reasons were taken as proven.

ii) Regarding the convict's allegation that the necessary legal criteria have not been met, the actions to be taken, the consequences, the objective and subjective link, in order for co-perpetration to exist, claiming that none of these legal grounds are met, does not mean that these actions must be taken only before the commission of the criminal offense, or that there must be a formal agreement, the co-perpetration may occur even at the time of the commission of the criminal offense without the existence of a prior agreement or without taking any special action in this direction.

iii) it states that it is not known what happened to the telephone and the confiscated money and what is the benefit of this criminal offence, there is no medical report on the injury of the injured party, it does not exclude the existence of the criminal offence and criminal liability of the convict and that it is not disputed that in all statements of the persons involved in this case, it turns out that the phone and money were confiscated, because if there were no confiscation of phone and money, there would not be a criminal offense of robbery under Article 329 paragraph 1 of the CCRC.”

Applicant's allegations

24. The Court recalls that the Applicant alleges that his rights guaranteed by Articles 24 [Equality Before the Law] and 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR have been violated.

i) As to the alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR

25. In support of these allegations, the Applicant adds that the „judgments of the Basic Court, the Court of Appeals, as well as judgments of the Supreme Court of Kosovo are unlawful, because they were rendered in violation of Article 2 of the Criminal Procedure Code of the Republic of Kosovo, as well as in violation of Article 385 para. 1 item 1.1 of the CPOK, because in this particular case there is no evidence, it has not been proven that I have committed a criminal offense for which I was found guilty and sentenced to a fine and

imprisonment. So, in my actions, the elements of the offence of Violation of Public Order and Peace were fulfilled, and not the criminal offense for which I am accused, because it was not proven by any evidence that I used a weapon, so there is no corpus delicti and no evidence that I harmed the injured party.”

26. In addition, the Applicant claims that *“the Court of Appeals of Kosovo, deciding on the appeal and reasoning of the judgment (p. 4), para. 3 claims that the accused (the Applicant) scratched the injured party under the threat of a knife, while in the minutes of 24.07.2020. (page 8 (11)) to the prosecutor's question whether you had something with you on the critical night, I answered No, while the injured party Denis did not give any remarks (page 9 (11)), so in this case based on the injured party's answer is proven that I didn't have a knife”.*
27. The Applicant also alleges that *„the Supreme Court of Kosovo, deciding on the request in the reasoning of the judgment, page 3, paragraph 4, justifies that ... it turned out that the phone and money were taken, because if the phone and money were not taken, there would be no criminal offence of robbery, according to Article 329 paragraph 1 of the CCRK. On the occasion of the hearing as a witness, the injured party, when asked by the prosecutor which of the accused took his phone, pack of cigarettes and money in pack, he answered the accused, namely the person E.L., (minutes of 15.08.2020) (page 5 (12)) paragraph 6).”*

ii) Regarding the alleged violations of Article 24 of the Constitution

28. The Applicant also alleged a violation of Article 24 of the Constitution, however, in the referral he does not provide a more detailed reasoning of how the violation of this Article occurred, but emphasizes that *„Article 24 - Equality before the law, namely a constitutional guarantee according to which everyone is equal before the law, that everyone enjoys the right to legal protection, without discrimination“.*
29. The Applicant requests the Court to declare his Referral admissible, to find that there has been a violation of Articles 24 and 31 of the Constitution, in conjunction with Article 6 of the ECHR, to find that there has been a violation of Article 3 of the Criminal Procedure Code of the Republic of Kosovo. Accordingly, to declare Judgment PML. No. 30/2021, of the Supreme Court of Kosovo of 25 February 2021 invalid, and thus to suspend the execution of the sentence until a decision on the constitutional complaint is rendered.

Admissibility of the Referral

30. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, further specified in the Law and foreseen in the Rules of Procedure.
31. In this respect, the Court initially refers to Article 113 of the Constitution, which establishes:

“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”.

32. The Court further examines whether the Applicant has fulfilled the admissibility requirements as prescribed by the Law. In this regard, the Court refers to Articles 47 [Individual Requests] Article 48 [Accuracy of the Referral] and Article 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 [...]”.

33. As to the fulfillment of the admissibility requirements, as noted above, the Court finds that the Applicant submitted the Referral in the capacity of an authorized party, challenging an act of a public authority, namely Judgment PML. No. 30/2021 of the Supreme Court of Kosovo, of 25 February 2021, after the exhaustion of all legal remedies prescribed by law. The Applicant has also specified the fundamental rights and freedoms claimed to have been violated, in accordance with the requirements referred to in Article 48 of the Law and submitted the Referral in accordance with the deadline prescribed in Article 49 of the Law.

34. The Court refers to Rule 39 of the Rules of Procedure, which 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 ”.

35. The Court recalls that the abovementioned rule, based on the case law of the ECtHR and the case law of the Court, enables the latter to declare inadmissible referrals for reasons related to the merits of a case. More precisely, based on this rule, the Court may declare a referral inadmissible based on and after assessing its merits, namely if it deems that the content of the referral is manifestly ill-founded on constitutional basis, as defined 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; see also case KI175/20, Applicant *Privatization Agency of Kosovo*, Resolution on Inadmissibility of 27 April 2021, paragraph 37).
36. 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 claim that a referral may constitute. In this regard, it is more accurate to refer to the same as „*manifestly ill-founded claims*“. The latter, based on the case law of the ECtHR, can be categorized into four separate groups: (i) claims that qualify as claims of „*fourth instance*“; (ii) claims that are categorized as „*clear or apparent absence of a violation*“; (iii) „*unsubstantiated or unsupported*“ claims; and finally, (iv) „*confused or farfetched*“ claims (see, more precisely, the concept of inadmissibility on the basis of a referral assessed as „*manifestly ill-founded*“, and the specifics of the four above-mentioned categories of claims qualified as „*manifestly ill-founded*“, The Practical Guide to the ECtHR 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 KI175/20, cited above, paragraph 38).
37. In this context, as well as in the following text, in order to assess the admissibility of the referral, namely in the circumstances of this case, the assessment of whether the Referral is manifestly ill-founded on constitutional basis, the Court will first recall the substance of the case that this referral entails and the relevant claims of the Applicant, in the assessment of which the Court will apply the standards of the case law of the ECtHR, in accordance with which, pursuant 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).
38. The Court recalls that the Applicant essentially alleges two types of violations, namely: i) alleged violations of Article 31 of the Constitution in conjunction with Article 6 of the ECHR and ii) alleged violations of Article 24 of the Constitution. The Court will therefore consider these allegations individually.

i) Regarding alleged allegations of Article 31 of the Constitution and Article 6 of the ECHR

39. Referring to the present case, the Court recalls that the merits of the case relate to the fact that the Applicant was sentenced to 2 years' imprisonment, in the court proceedings in which the courts found that “*in cooperation he committed the criminal offense of robbery under Article 329, paragraph 1 in conjunction with Article 31 of the CCRC.*”

40. In this regard, the Court recalls, first of all, that the Constitutional Court does not have jurisdiction to decide whether the Applicant was guilty of a criminal offense or not. It also has no jurisdiction to assess whether the factual situation has been correctly determined, namely to assess whether the judges of the regular courts had sufficient evidence to establish the guilt of the Applicant. (See: in this context, *inter alia*, the cases of the Court KI128/18, Applicant: *Limak Kosovo International Airport J.S.C., "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. In this context, the Constitutional Court can only consider whether the proceedings before the regular courts, taken as a whole, were conducted in such a way that the Applicant has had a fair and impartial trial (see, *inter alia*, *Edwards v. The United Kingdom*, application no. 13071/87, Report of the European Commission of Human Rights, adopted on 10 July 1991, and see also cases of the Court KI110/19, cited above, paragraph 41).
42. In the present case, the Court finds that the Applicant considers problematic the fact that the courts violated Article 2 of the Criminal Code (hereinafter: the CC), as well as Article 385 para. 1 item 1.1 of the CPCCK, and in that they convicted him of a criminal offense without evidence. Accordingly, the Applicant considers that Article 31 of the Constitution in conjunction with Article 6 of the ECHR has been violated.
43. More specifically, the Applicant sees a violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR in the fact that in his proceedings there are all elements of the offence of "*Violation of Public Order*" and not the criminal offense for which he was charged and later convicted. Moreover, the Applicant considers that in the court proceedings it has not been proven that he used a weapon (knife) to commit the criminal offense, and, according to him, there is no crucial evidence that determines the legal qualification of the committed criminal offense. This, according to the Applicant's allegations, violates Article 2 of the CC and Article 385, paragraph 1, item 1 of the CPCCK.
44. In this respect, the Court recalls that Article 2 of the CC in relevant part reads:

"Article 2. Principle of legality

- 1. Criminal offenses, criminal sanctions and measures of mandatory treatment are defined only by law.*
- 2. No criminal sanction or measure of mandatory treatment may be imposed on a person for an act, if prior to the commission of the act, the law did not define the act as a criminal offense and did not provide a criminal sanction or measure of mandatory treatment for the act.*
- 3. The definition of a criminal offense shall be strictly construed and interpretation by analogy shall not be permitted. In case of ambiguity, the definition of a criminal offense shall be interpreted in favor of the person against whom the criminal proceedings are ongoing".*

45. Article 385 paragraph 1 item 1 CPCRK, states:

“Article 385 [Violation of the Criminal Law]

1. There is a violation of the criminal law:

*1.1. the act for which the accused is prosecuted is not a criminal offence;”
[...]*

46. The Court, linking the Applicant's allegations to the facts of the present case, finds that it is not a disputed fact for the Court whether the Applicant committed the offense, as he himself states in the Referral that he committed it. However, for the Applicant, the qualification of the act is disputable, which according to him is erroneous, that is, that only the committed act has elements of an offence and not a criminal act for which he was convicted by regular court judgments.
47. In this regard, the Court finds that the Applicant before the Basic Court, which determined the qualification of the act as well as his liability for the latter, presented arguments both regarding the legal formulation and qualification of the act and the fact that the act itself lacks crucial evidence that determines the nature of the act, which he believes, that the act itself contains elements of a minor offence and not a criminal offense.
48. The Court notes that the Basic Court, in support of these Applicant's appealing allegations, concluded, “ *that from the factual situation it has undoubtedly confirmed that in the proceedings of the accused E. L. and the Applicant described in the enacting clause of the judgment there are all the essential elements of the criminal offense of robbery under Article 329 para. 1 in conjunction with Article 31 of the CCRC. The factual situation from the enacting clause of the judgment is confirmed by the evidence attached to the indictment, which was proposed to be presented as evidence during the court hearing*”.
49. Furthermore, the Court also finds that the Applicant has raised the same appealing allegations before the Court of Appeals, highlighting the fact that there is no evidence and therefore no criminal offense for which he was convicted by the Basic Court.
50. The Court notes that the Court of Appeals, analyzing precisely this appealing allegation, concluded “*that the accused are not charged with committing the offense with a weapon as provided in paragraph 3 of Article 329 of the CCRC, but are charged with committing the act of robbery using the force provided for in paragraph 1 of Article 329 of the CCRC [...].*”
51. It follows that for the Court of Appeals, the absence of a (knife) as evidence on which the Applicant built his defense was not decisive in determining the qualification of the offense. More specifically, the lack of such evidence led to the fact that the courts concluded that the Applicant had committed a criminal “*offense referred to in Article 329, paragraph 1*” and not the criminal “*offence under Article 329 paragraph 3*”.

52. The Court recalls that the relevant provisions of Article 329 paragraphs 1 and 3 of the CCK read:

“Article 329 Robbery

1. Whoever, by the use of force or serious threat to attack the life or body of another person, appropriates the movable property of such person with the intent to obtain an unlawful material benefit for himself or herself or another person shall be punished by a fine and imprisonment of three (3) to twelve (12) years.

[...]

3. When the offense provided for in paragraph 1 of this Article is committed by the perpetrator acting as a member of a group or while in possession of a weapon or dangerous instrument, the perpetrator shall be punished by a fine and imprisonment of seven (7) to twelve (12) years.”

53. Furthermore, the Court finds that the same appealing allegations were dealt with by the Supreme Court in its request for protection of legality, and upheld all the appealing allegations already considered by the Basic Court and the Court of Appeals *“that the views of the courts that the Applicant committed the criminal offense under Article 329, paragraph 1 of the CCK, are completely correct”*.
54. Accordingly, the Court considers that the regular courts throughout the entire proceedings complied with the principles of the right to a fair and impartial trial, as provided for in Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and acted exclusively in the spirit of the relevant provisions of the CCK during the determination and qualification of the offense, from which it can also be concluded that there was no violation of Article 2 of the CCK or Article 385 paragraph 1 item 1 of the CPCRK, as stated in the Referral.
55. The Court accordingly finds that the Applicant enjoyed the benefits of the adversarial proceedings, and that he was able to present at 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 heard and examined all his allegations which, viewed objectively, were relevant to the resolution of the case; the factual and legal reasons for the challenged decision are presented in detail and the proceedings, taken as a whole, were therefore fair (see, *mutatis mutandis*, ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, no. 30544/96, paragraphs 29 and 30 see also case KI22/19, Applicant *Sabit Ilazi*, resolution of 7 June 2019, paragraph 42 as well as case KI128/18, cited above, paragraph 58).
56. Accordingly, the Court notes that the Supreme Court's reasoning, referring to the Applicant's allegations of a violation of criminal law, is clear, and, after considering all the proceedings, the Court also finds that the proceedings before the regular courts were not unfair or arbitrary (see: judgment of ECtHR, *Pekinel v. Turkey* of 18 March 2008, no. 9939/02, paragraph 55, See also: in this regard, *inter alia*, case KI22/19, cited above, para. 43).

57. Finally, the Court concludes the Applicant's allegations of violation of the right to fair and impartial trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR on the grounds of erroneous determination of factual situation and erroneous interpretation and erroneous application of applicable law when qualifying the act, are (i) qualified as „*fourth instance*“ allegations; and as such, these allegations of the Applicant are (i) manifestly ill-founded on constitutional basis, as prescribed in paragraph (2) of Rule 39 of the Rules of Procedure.

ii) Regarding alleged violations of Article 24 of the Constitution

58. Regarding the violation of the rights guaranteed by Article 24 of the Constitution, the Court recalls that according to the well established case law of the ECtHR, the Court declares the submission inadmissible as manifestly ill-founded under criterion (iii) of “*unsubstantiated or unsupported*” allegations. when one of the two characteristic requirements is met, namely:
- a) when the Applicant merely cites one or more provisions of the Convention or the Constitution, without explaining in what way they have been breached, unless this is obvious from the facts of the case (see: to that effect, case of the ECtHR *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 omits or refuses to produce documentary evidence in support of his allegations (in particular, decisions of the courts or other domestic authorities), unless there are exceptional circumstances beyond his control which prevent him from doing so (for instance, if the prison authorities refuse to forward documents from a prisoner’s case file to the Court) or unless the Court itself determines otherwise (see case KI166/20, Applicant, *Ministry of Labor and Social Welfare*, Resolution on Inadmissibility, of 5 January 2021, paragraph 43).
59. In the present case, the Applicant also alleges a violation of Article 24 of the Constitution, however, in the referral he does not provide a more detailed reasoning of how the violation of this Article occurred, but emphasizes that the judgment violated also „*Article 24 - Equality before the law, namely a constitutional guarantee according to which everyone is equal before the law, that everyone enjoys the right to legal protection, without discrimination*“.
60. Regarding these allegations, the Court notes that the Applicant merely mentions the respective articles but does not further elaborate on why and how this violation of these relevant articles of the Constitution resulted. The Court recalls that it has consistently reiterated that the mere reference to Articles of the Constitution and the ECHR and their mentioning is not sufficient to build an arguable allegation of a constitutional violation. When alleging such violations of the Constitution, the applicants must provide reasoned allegations and compelling arguments (see, in this context, cases KI175/20, cited above,

paragraph 81, KI166/20 cited above, paragraph 52, KI04/21 cited above, paragraphs 38- 39).

61. Therefore, the Court concludes that regarding the Applicant's allegations of violation of the rights guaranteed by Article 24 of the Constitution, the Court finds that the Referral should be declared inadmissible as manifestly ill-founded, because these allegations qualify as allegations falling into the category of (iii) "*unsubstantiated or unsupported*" allegations, because the Applicant merely cited one or more provisions of the Convention or the Constitution, without explaining how they have been violated. Therefore, the latter are manifestly ill-founded on constitutional basis, as established in paragraph (2) of Rule 39 of the Rules of Procedure.

Conclusion

62. Therefore, the Court finds that as regards of these Applicant's allegations of violation of the rights guaranteed by Articles 24 and 31 of the Constitution they should be declared inadmissible as manifestly ill-founded in its entirety, because these Applicant's allegations qualify as allegations falling into the category (i) of „*fourth instance*“ allegations; and category of (iii) „*unsubstantiated or unsupported*“ allegations. Therefore, the latter are manifestly ill-founded on constitutional basis, as it is established in paragraph (2) of Rule 39 of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.1 and 113.7 of the Constitution, Article 48 of the Law and Rule 39 (2) of the Rules of Procedure, in its session held on 30 June 2021, unanimously

DECIDES

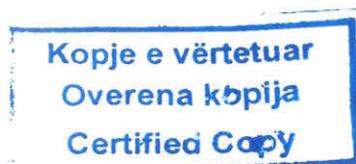
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the parties;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Radomir Laban

Gresa Caka Nimani



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