



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

Prishtina, on 2 August 2021
Ref. No: RK1821/21

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI187/20

Applicant

Lorik Salihu

**Request for constitutional review of Decision PN.no.558/2020, of the Court
of Appeals, of 18 August 2020**

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 Lorik Salihu, from Gjakova (hereinafter: the Applicant), represented by Edona Sina, lawyer from Gjakova.

Challenged decision

2. The challenged decision is the Decision [PN.no.558/2020] of 18 August 2020, of the Court of Appeals of Kosovo (hereinafter: the Court of Appeals) in conjunction with Decision [PPr.Kr.no.33/20] of 13 July 2020 of the Basic Court in Gjakova-Department for Serious Crimes (hereinafter: the Basic Court).
3. The Applicant received the Decision [PN.no.558/2020] of 18 August 2020 of the Court of Appeals, on 26 August 2020.

Subject matter

4. The subject matter the Referral is the constitutional review of the challenged Decision of the Court of Appeals, which as alleged by the Applicant has violated his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 13 (Right to an effective remedy) of the European Convention on Human Rights (hereinafter: ECHR).

Legal basis

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

Proceedings before the Court

6. On 21 December 2020, the Applicant submitted the Referral by mail service to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 30 December 2020, the President of the Court appointed Judge Selvete Gërzhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Radomir Laban (Presiding), Remzije Istrefi-Peci and Nexhmi Rexhepi.
8. On 14 January 2021, the Court notified the Applicant's representative on the registration of the Referral and requested him to submit to the Court the power of attorney for representation of the Applicant, in accordance with Article 21 of the Law and Rule 32 (2) (c) of the Rules of Procedure.
9. On 20 January 2021, the Applicant's representative submitted to the Court, the power of attorney for representation.
10. On 16 March 2021, the Court notified the Court of Appeal on the registration of the Referral.
11. On 12 April 2021, the Applicant submitted to the Court a submission, whereby he supplemented his allegations.

12. On 17 May 2021, based on paragraph 5 of Article 114 [Composition and Mandate of the Constitutional Court] of the Constitution and Rule 12 (Election of President and Deputy President) of the Rules of Procedure, Judge Gresa Caka-Nimani was elected President of the Constitutional Court. Based on paragraph 4 of Rule 12 of the Rules of Procedure and the Court Decision KK-SP 71-2/21, it was decided that Judge Gresa Caka-Nimani, shall take over the duty of the President of the Court after the end of the mandate of the current President of the Court, Arta Rama-Hajrizi, on 25 June 2021.
13. On 18 May 2021, the Court notified the Basic Court in Gjakova on the registration of the case and requested them to submit to the Court the acknowledgment of receipt proving when the Applicant has received the challenged decision.
14. On 25 May 2021, pursuant to 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 submitted his resignation from the position of judge at the Constitutional Court.
15. On 31 May 2021, the Basic Court in Gjakova, submitted the requested acknowledgment of receipt.
16. On 25 June 2021, based on 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, whilst pursuant to item 1.1 of paragraph 1 of Article 8 (Termination of mandate) of the Law, President Arta Rama-Hajrizi concluded the mandate of the President and Judge of the Constitutional Court.
17. On 30 June 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

18. Based on the case file, it results that on 8 June 2020, the Basic Prosecution in Gjakova, by the request [PP/I.no.36/20] addressed to the Basic Court, requested the issuance of an order for temporary sequestration of the vehicle “BMW 335 D” (hereinafter: the vehicle) of the Applicant, stating that there is a reasonable suspicion that the same was used by the Applicant for the purpose of committing the criminal offense of “*Unauthorized purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues*” under Article 267, paragraph 1 in conjunction with Article 31 “*Co-perpetration*” of the Criminal Code of the Republic of Kosovo (hereinafter: CCRK).
19. On 11 June 2020, the Basic Court by the Order [PPr.Kr.no.33/20] based on paragraph 1, 3 and 5 of Article 112 of the Criminal Procedure Code of the Republic of Kosovo (hereinafter: CPCRK) had ordered the temporary sequestration of the vehicle of the Applicant, stating that “*it is necessary to temporarily sequester the vehicle in order to verify the commission of criminal offense*”.

20. On 10 July 2020, the Applicant filed an appeal with the Basic Court against the aforementioned Order of the Basic Court, proposing that the same be terminated, referring to paragraph 1 of Article 116 of the CPCRK. The Applicant has further claimed that the sequestration of the vehicle in this case is no longer necessary, stating that after the necessary checks by the police officers, there is no basis for the vehicle to remain sequestered any longer.
21. On 13 July 2020, the Basic Court by Decision [PPr. Kr.no.33/20] rejected as ungrounded the Applicant's appeal, stating that "*in this case there is a grounded suspicion that the vehicle sequestered from the defendant was used to commit this criminal offense, which is also noted from the pictures that are evidence in the case*". The decision of the Basic Court was decided on the basis of Articles 112 and 417 of the CPCRK.
22. At the Legal Advice of the Decision [PPr. Kr.no. 33/20], the Applicant is instructed according to the legal remedy - the appeal against the abovementioned Decision is allowed within 3 days at the Court of Appeals.
23. On 22 July 2020, the Applicant filed an appeal with the Court of Appeals against the aforementioned Decision of the Basic Court, alleging erroneous application of the criminal provisions.
24. On 18 August 2020, the Court of Appeals by Decision [PN.no.558/2020] dismissed the Applicant's appeal as impermissible with the reasoning that "*the appeal is not permitted*" stating that the first instance court had erroneously instructed the Applicant with legal advice and that such allegations pursuant to Article 417.5 [Review by the Review Panel of the Basic Court] of the Criminal Procedure Code of the Republic of Kosovo (hereinafter: CPCRK) can be submitted only by an appeal against the final Judgment. The Court of Appeals based its Decision on Article 400 in conjunction with Article 416 paragraph 2 of the CPCRK.
25. On 23 October 2020, the Applicant by Request [PP/I.no.36/20] at the Basic Prosecution Office in Gjakova, has requested the return of the vehicle.
26. It results from the case file that so far, the Basic Prosecution in Gjakova has not responded to the abovementioned request of the Applicant for the return of the vehicle.

Applicant's allegations

27. The Applicant alleges that the Decision [PN.no.558/2020] of the Court of Appeals, of 18 August 2020, was issued in violation of his fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] Article 32 [Right to Legal Remedies] of the Constitution in conjunction with Article 13 (Right to an effective remedy) of the ECHR.
28. Regarding the allegation of violation of Article 32 of the Constitution, the Applicant states that "*the defendant through his defense counsel has filed an appeal against the decision of the Criminal Panel of the Basic Court in Gjakova, based on Article 24 para. 6 of the Criminal Procedure Code, where it is determined that: "the deadline for appeals to decisions by a pre-trial judge or review panel is five days*

from the receipt of the decision by the party, in accordance with Article 378.”, but the Court of Appeals, as the competent court to decide on this appeal has dismissed the appeal of defense as impermissible with the reasoning that the first instance court had erroneously instructed with the legal advice and that such allegations can be submitted only by an appeal against the final judgment”.

29. The Applicant further adds that “*in the present case the legal remedy was at the disposal of the Applicant, and the same has used it in accordance with the legal provisions. However, its effectiveness was non-existent, as a result of non-meritorious treatment. Consequently it led to violation of Article 31 of the Constitution [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 13 of the ECHR, since local authorities deciding on the case must consider the grounds/merits of the application under the Convention (see, mutatis mutandis, Judgment of the European Court of Human Rights, 20 September 1999, Smith and Grady v. the United Kingdom, No.33985/96 and 33986/96par,138) suppressing the facts of the Applicant under the umbrella of jurisprudence of the ECtHR as well as Article 13 of the ECHR, it can be respectively stated that: our legislation has provided for filing an appeal against the decision of the criminal/review panel, a remedy which has been legally accessible, but in practice it proved completely ineffective- due to the flagrant interpretation of legal provisions by the Court of Appeals - an interpretation which has turned out not to be issued at all on the merits of the case - and has led to the violation of the right to an effective legal remedy provided by Article 32 of the Constitution of Kosovo and Article 13 of the ECHR”.*
30. The Applicant further states that the challenged decision is contradictory due to the fact that according to him the provision of paragraph 5 of Article 417 of the CPCK, applies only with the exception of cases, and according to him not also in the present case.
31. Finally, the Applicant requests the Court to declare the challenged Decision of the Court of Appeals as null and void and to remand the case for reconsideration.

Relevant Legal Provisions

Criminal No. 04/L-123 Procedure Code

Article 24 [Orders and Decisions by the Pre-Trial Judge]

[...]

6. The deadline for appeals to decisions by a pre-trial judge or review panel is five (5) days from the receipt of the decision by the party, in accordance with Article 378 of this Code.

Article 116 [Return of Temporarily Sequestered Items]

1. Objects temporarily confiscated during criminal proceedings shall be

returned to the owner or possessor if the proceedings are suspended or terminated and there are no grounds for them to be sequestered.

Article 378

[Timing of Objection, Request for Legal Remedy and Reply]

- 1. The objection being adjudicated by the review panel must be filed within forty-eight (48) hours, unless otherwise specified under the law.*
- 2. The request being adjudicated by the court of appeals must be filed within five (5) days of the final judgment or decision, unless otherwise specified under the law.*
- 3. The request being adjudicated by the Supreme Court of Kosovo must be filed within ten (10) days, unless otherwise specified under the law.*
- 4. The reply to the objection must be filed within twenty-four (24) hours of an objection which is being adjudicated by the review panel.*
- 5. The reply to the request must be filed within five (5) days of a request which is being adjudicated by the court of appeals.*
- 6. The reply to the request must be filed within ten (10) days of a request which is being adjudicated by the Supreme Court of Kosovo.*

Article 400

[Dismissal of Impermissible Appeal]

The Court of Appeals shall dismiss an appeal as not permitted by a ruling if it is established that it was filed by a person not entitled to file an appeal or by a person who has renounced the appeal, or if withdrawal from the appeal is established or if it is established that after withdrawal the appeal was filed again or if the appeal was not permitted under the law.

Article 417

[Review by Review Panel of Basic Court]

[...]

- 5. Unless otherwise determined under the present Code, a ruling on the objection by the review panel shall be reviewed by the Court of Appeals only upon an appeal of the judgment of the Basic Court.*

Assessment of the admissibility of Referral

- 32. The Court first examines whether there have been fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and in the Rules of Procedure.*
- 33. 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.”

34. In addition, the Court also examines whether the Applicant has met the admissibility criteria as set out in the Law. In this regard, the Court first refers to Articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Law, which stipulate:

Article 47
(Individual Requests)

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

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

Article 48
(Accuracy of the Referral)

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

Article 49
(Deadlines)

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

35. With regard to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, which challenges an act of a public authority, namely the Decision [PN.no.558/2020] of the Court of Appeal, of 18 August 2020, after having exhausted all legal remedies provided by law. The Applicant has also clarified his rights and freedoms that he alleges to have been violated, in accordance with the requirements of Article 48 of the Law and has submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.
36. In addition, the Court examines whether the Applicant has met the admissibility criteria set out in paragraph (2) of Rule 39 (Admissibility Criteria) of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure sets out the criteria according to which the Court may examine the Referral, including the criterion that the Referral is not manifestly ill-founded. Rule 39 (2) provides in particular the following:

Rule 39
(Admissibility Criteria)

"(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."

37. In the context of the assessment of the admissibility of the Referral, respectively, in assessing whether the same is manifestly ill-founded on constitutional grounds, the Court will first recall the essence of the case contained in this Referral and the respective allegations of the Applicant in the assessment of which, the Court will apply the standards of case law of the ECtHR, 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.
38. The Court recalls that the circumstances of the present case relate to the sequestration of the Applicant's vehicle, which was done at the request of the Basic Prosecution in Gjakova, a request approved by the Basic Court, under the suspicion that the sequestered vehicle was used by the Applicant to commit a criminal offense, which offense he is suspected to have committed. The Applicant had filed an appeal with the Basic Court against the Order allowing the sequestration of the vehicle. The Basic Court had rejected the appeal, and in the Legal Advice of its Decision it was noted that against the same decision, the parties may file an appeal to the Court of Appeals within three (3) days. Upon the Applicant's appeal, the Court of Appeals had rejected the appeals as impermissible, with the reasoning that the first instance court had erroneously instructed the Applicant, as based on Article 417, paragraph 5 of the CPCRK, the appeal in not allowed in this specific case.
39. The Court recalls once again the Applicant's allegations of violation of Article 31 [Right to Fair and Impartial Trial] and Article 32 [Right to Legal Remedies] of the Constitution.
40. Firstly, with regard to Article 31 of the Constitution, the Applicant only mentioned but has not elaborated nor justified further on how his right to a fair and impartial trial guaranteed by this Article, has been violated.
41. With regard to the abovementioned allegation of the Applicant for violation of Article 31 of the Constitution, the Court notes that the simple fact that the Applicant is not satisfied with the outcome of the Decision of the Court of Appeals or only the mere mentioning of the Articles of the Constitution is not sufficient to construct an allegation of constitutional violation. When such violations of the Constitution are alleged, the Applicants must provide substantiated allegations and convincing arguments (see, in this context, the case of the Court KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33)
42. Secondly, with regard to the allegation of violation of Article 32 of the Constitution, the Applicant alleges that his right to a legal remedy has been violated because according to him, his appeal filed to the Court of Appeals was based on Article 24

in conjunction with Article 378 of the CPCRK, as well as based on the legal advice of the Decision [PPr. Kr.no.33/20] of the Basic Court, which provides that "*Against this Decision, an appeal is allowed within 3 days upon its receipt, to the Court of Appeals in Prishtina, through this Court*".

43. Furthermore, the Applicant alleges that the legal remedy was available to the Applicant and provided by legal provisions. The Applicant also alleges that the challenged decision is contradictory, adding that according to him the provision of paragraph 5 of Article 417 of the CPCRK applies only in exceptional cases, and according to him not also in the present case.
44. In considering these allegations, the Court notes that his allegation of violation of Article 32 of the Constitution in essence is related to a misinterpretation of the law applicable by the Court of Appeals, allegations which in accordance with its case law and that of the ECtHR, considers them as claims that fall within the scope of legality and consequently "*claims of the fourth degree*".
45. In this context, the Court recalls that in the circumstances of the present case, the Applicant's main allegations relate to the interpretation of paragraph 5 of Article 417 of the CPCRK, by the Court of Appeals, which invoking on the abovementioned Article, has dismissed the Applicant's appeal against the Decision [PPr.Kr.no.33/20] of 13 July 2020 of the Basic Court, as impermissible and thereby has violated his right to a legal remedy, denying the Applicant the use of legal remedy which according to the Applicant, existed under Article 24 in conjunction with Article 378 of the CPCRK.
46. The Court first notes that the Decision [PPr.Kr.no.33/20] of the Basic Court, of 13 July 2020, was issued by a trial panel consisting of three judges and the essence of the case was pertinent to the issue of evidence gathered in the preliminary criminal proceeding.
47. The Basic Court in this case, deciding on the Applicant's appeal filed against the Order of the Basic Court, which ordered the temporary sequestration of the Applicant's vehicle in order to verify the commission of the criminal offense, by the Decision had rejected the Applicant's appeal as unfounded.
48. The Court notes that Article 116 of the CPCRK provides that "*Objects temporarily confiscated during criminal proceedings shall be returned to the owner or possessor if the proceedings are suspended or terminated and there are no grounds for them to be sequestered*".
49. The Court notes, however, that the Court of Appeals had dealt with the Applicant's appeal against the Decision [PPr.Kr.no.33/20] of the Basic Court, of 13 July 2020, and based on Article 417.5 of the CPCRK, had dismissed the same as impermissible. The Court of Appeals by Decision [PN.no.558/2020] of 18 August 2020, in this context, had stated as follows:

"The Court of Appeals finds that the appeal filed by the defense counsel of the defendant Lorik Salihu, lawyer Edona Sina, against the decision of the review panel of the Basic Court is impermissible, as based on the provision of Article 417 para. 5 of the CPCRK, it is provided that: "Unless otherwise determined

under the present Code, a ruling on the objection by the review panel shall be reviewed by the Court of Appeals only upon an appeal of the judgment of the Basic Court", which in the respective case the Court of Appeals finds that the first instance court has erroneously instructed the defendant on the right to exercise the legal remedy. Therefore, since in the respective case the three-instance of legal remedies is not allowed, except in cases provided by law, the appeal of the defendant's defense counsel was dismissed as impermissible."

50. In addressing the abovementioned allegation, the Court first refers to the provision of Article 32 of the Constitution which provides:

Article 32 [Right to Legal Remedies]

Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law.

51. In this regard, the Court recalls that Article 417.5 of the CPCRK, on which the Court of Appeals was invoked, in the relevant part states the following:

[Review by the Review Panel of the Basic Court]

[...]

"5. Unless otherwise determined under the present Code, a ruling on the objection by the review panel shall be reviewed by the Court of Appeals only upon an appeal of the judgment of the Basic Court."

52. In addition to the foregoing, the Court notes that the very content of the legal provision of Article 417, paragraph 5 of the CPCRK is uncontested and that the appeal can be filed only against the Judgment of the Basic Court, that is, the decision issued in respect of the merits of the case.
53. The Court notes that the exercise of the right to legal remedy, including also the grounds for its use, are regulated by law. This Article is supplemented and read in conjunction with Article 13 (Right to an effective remedy) of the ECHR, as well as the relevant case law of the Court and the ECtHR.
54. Consequently, Article 13 of the ECHR requires that where an individual has an arguable claim to be a victim of violation of the rights set out in the Convention, in those circumstances he must have a legal remedy before a national "authority" in order to decide on his application; and, if appropriate, to receive compensation (see cases of the ECtHR: *Klass and Others v. Germany*, Judgment of 6 September 1978, paragraph 64; *Silver and Others v. the United Kingdom*, Judgment of 25 March 1983, para. 113; *Leander v. Sweden*, Judgment of 26 March 1987, paragraph 77 (a), see also the case of the Court, KI 62/20, Applicant *Gekos Sh.p.k*, Resolution on Inadmissibility, dated 24 February 2021, paragraph 48, KI 130/19, Applicant *Fahri Mati*, Resolution on Inadmissibility of 27 November 2019, paragraph 50).
55. However, the ECtHR has emphasized that Article 13 of the ECHR cannot be interpreted in such a way as to require a legal remedy in domestic law in respect of

any alleged complaint that an individual may have, no matter how not-meritorious his appeal may be: the appeal and the allegation must be "sustainable" as regards the ECHR (see the case of ECtHR: *Boyle and Rice v. The United Kingdom*, Judgment of 27 April 1988, paragraph 52; *Maurice v. France*, Judgment of 6 October 2005, paragraph 106).

56. Based on the above-mentioned principles, the Court finds that the Applicant's allegation is not arguable, as the CPCRK, under Article 417.5 provides, "*a ruling on the objection by the review panel shall be reviewed by the Court of Appeals only upon an appeal of the judgment of the Basic Court*".
57. In light of the above, the Court considers that the right to use legal remedies in the present case is not defined by law.
58. Returning to this case, the Court will assess whether the advice on the legal remedy in the decision of the Basic Court in any way prevented the Applicant from having his appeal allegation examined by the court of the highest instance, in the present case the Court of Appeals, where he could have exercised his rights from the statement of claim, or the denial of the use of advice for the legal remedy of the Basic Court had directly denied the Applicant's right to an effective legal remedy, and with this it directly led to the violation of Article 32 of the Constitution in conjunction with Article 13 of the ECHR.
59. In the light of the foregoing, the Court finds that notwithstanding the constitutional right to an effective legal remedy, it is important to note that not every erroneous instruction on a legal remedy will result in violation of the right to access the court.
60. Furthermore, in terms of legal remedy, the Applicant cannot refer to the fact that the first instance court has erroneously authorized (instructed) the party entitled to appeal against the decision of the Basic Court, since such an erroneous instruction in a specific legal situation cannot replace the clear legal norm which for such situations does not provide a remedy of appeal, as provided by Article 417.5 of the CPCRK.
61. Furthermore, the Court notes that the rejection of the appeal in question does not infringe the Applicant's right to a legal remedy because he can exercise this eventual right also concerning the present case with an appeal against the final judgment (see similarly the case of the Court, KI 145/13, Applicant Privatization Agency of Kosovo, Resolution on Inadmissibility of 24 March 2014, paragraph 46).
62. The Court finally recalls that the Applicant, in support of his allegations of violation of Article 32 [Right to Legal Remedies], also referred to a case of the ECtHR (referred to in paragraph 29 of this Resolution). In this regard, the Court notes that in the case referred by the Applicant, the ECtHR in assessing the merits of the Referral, differs completely from the factual and legal circumstances of the Applicant's case. The ECtHR in the case invoked by the Applicant found violation of Article 8 in conjunction with Article 13 of the ECHR.
63. However, the Court notes that apart from the fact that the Applicant referred to this case in his Referral, he did not in any way elaborate their relevance, factual or legal, to the circumstances of the present case, a task which based on the case law of the

Court, belongs to the Applicant (see, among others, and in this context, the Judgment in the case KI48/18 of 4 February 2019, with Applicant *Arban Abrashi and Lidhja Demokratike e Kosovës* (LDK), paragraph 275; and the case KI119/17, Applicant *Gentian Rexhepi*, Resolution on Inadmissibility of 3 May 2019, paragraph 80).

64. Having into account the allegations raised by the Applicant and the facts presented by him, as well as the reasoning of the regular courts set out above, the Court considers that the Applicant does not prove or sufficiently substantiate the allegation of violation of Article 32 of the Constitution. Consequently, the Court finds that this allegation is manifestly ill-founded on constitutional grounds, as set out in paragraph (2) of Rule 39 of the Rules of Procedure.
65. Therefore in these circumstances, based on the above and having into account the allegations raised by the Applicant and the facts presented by him, the Court, based also on the standards set in its case law in similar cases and the case law of the ECtHR, finds that the Applicant has not proved and has not sufficiently substantiated his allegations of violation of his fundamental rights and freedoms guaranteed by the Constitution.
66. Consequently, the Court finds that the Referral is manifestly ill-founded on constitutional grounds and that the same is declared inadmissible, pursuant to paragraph 7 of Article 113 of the Constitution and Rule 39 (2) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, in accordance with Article 113.7 of the Constitution, Article 20 of the Law and Rule 39 (2) of the Rules of Procedure, 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; and
- IV. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Selvete Gërxhaliu-Krasniqi

Gresa Caka-Nimani



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