



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
USTAVNI SUD
CONSTITUTIONAL COURT

Prishtina, on 23 December 2024
Ref. no.: AGJ 2590/24

This translation is unofficial and serves for informational purposes only.

JUDGMENT

in

case no. KI11/24

Applicant

Zekë Jasiqi

**Constitutional review of Decision PN. no. 1420/23 of 15 November 2023 of the
Court of Appeals of Kosovo**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

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

Applicant

1. The referral was submitted by Zekë Jasiqi from Deçani (hereinafter: the Applicant), who is represented by Artan Qerkini, a lawyer in Prishtina.

Challenged decision

2. The Applicant challenges the Decision [PN. no. 1420/23] of 15 November 2023 of the Court of Appeals, in conjunction with Decision [PKR no. 91/2023] of 1 November 2023 of the Basic Court.

Subject matter

3. The subject matter of this referral is the constitutional review of the challenged decisions, whereby, it is claimed that the Applicant's fundamental rights and freedoms guaranteed by Articles 30 [Rights of the Accused], 31 [Right to Fair and Impartial Trial] and 55 [Limitations on Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with item 3, of paragraph 3 of Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).
4. The Applicant also requests the imposition of an interim measure, claiming that: *“The implementation of the Decision of the Basic Court, upheld by the Decision of the Court of Appeals, which contains a number of violations of individual rights guaranteed by the Constitution and the European Convention, would in itself be a further violation of the rights guaranteed by the same instruments. The very fact that an implementation of this unconstitutional decision would deprive the Applicant of the right to choose the defense counsel while the criminal proceedings against him would continue, and this circumstance would cause irreparable damage to the Applicant since he would be deprived of the right to be represented by the defense counsel selected by him”*.

Legal basis

5. The referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, on 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), as well as on Rules 25 [Filing of Referrals and Replies], 44 (Request for Interim Measures) and 45 (Decision-making Regarding the Request for Interim Measure) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 11 January 2024, the representative of the Applicant submitted the referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 25 January 2024, the President of the Court, by Decisions [GJR. KI11/24] and [KSH. KI11/24] appointed Judge Enver Peci as Judge Rapporteur and the Review Panel, composed of judges: Gresa Caka-Nimani (Presiding), Bajram Ljatifi and Remzije Istrefi-Peci (members).
8. On 9 February 2024, the Court notified the Applicant's representative about the registration of the referral. On the same date, a copy of the referral was sent to the Court of Appeals.

9. On 11 March 2024, Judge Jeton Bytyqi took the oath before the President of the Republic of Kosovo, thereby commencing his mandate at the Court.
10. On 28 May 2024, the Review Panel considered the report of the Judge Rapporteur and decided that the case be postponed for review in one of the next sessions, requesting that the latter be completed with additional clarifications.
11. On 16 July 2024, the Review Panel considered the report of the Judge Rapporteur and unanimously decided that the case be postponed for review in one of the next sessions, requesting that the latter be completed with additional clarifications.
12. On 30 October 2024, the Review Panel considered the Report of the Judge Rapporteur and unanimously recommended the admissibility of the referral. On the same date, the Court unanimously, (i) declared the referral admissible; (ii) held that Decision [PN. no. 1420/23] of the Court of Appeals, of 15 November 2023, is not contrary to paragraph 5 of Article 30 [Rights of the Accused] of the Constitution, in conjunction with item (c) of paragraph 3 of Article 6 (Right to a fair trial) of the ECHR; (iii) rejected the request for an interim measure.

Summary of facts

13. On 21 May 2019, the Kosovo Police at the Basic Prosecutor's Office -Department for Serious Crimes in Prishtina (hereinafter: the Prosecutor's Office) filed a criminal report [2018-KE-262] against the Applicant and persons: I.O, I.B, A.T, m.m, R.H, E.L and S.N, on the grounded suspicion that they have committed the criminal offense "Usury" under Article 343 in conjunction with Article 31 of the Criminal Code no. 04/L-082 of the Republic of Kosovo (hereinafter: CCRK), the criminal offense "Extortion" under Article 340 of the CCRK, as well as the criminal offense "Fraud" under Article 335 of the CCRK against the injured F.D.
14. On 21 May 2019, the Prosecutor's Office rendered Decision [PP/I. No. 90/2019] on the initiation of investigations against seven (7) persons I.O, I.B, A.T, M.M, R.H, E.L and S.N. In this Decision the Applicant does not appear as a person who is the subject of investigations.
15. On 7 June 2021, the Prosecutor's Office by a new Decision to continue the investigations and to extend the investigations against the Applicant, due to the grounded suspicion that he has committed the criminal offenses "Extortion" and "Usury". The applicant appointed as a representative, the lawyer T.R.
16. On 19 November 2021, the Prosecutor's Office at the Basic Court Prishtina-Department for Serious Crimes (hereinafter: the Basic Court) filed the Indictment [PP/I. no. 90/2019] against I.O, I.B, S.N, M.M and A.T, due to the criminal offenses "Usury", "Extortion" and "Fraud".
17. On 22 November 2021, one of the suspects, A.T, against whom the Basic Prosecutor's Office rendered Decision [PP/I. no. 90/2019] on filing the indictment, authorized the lawyer A.Q as his representative in this criminal case.
18. On 7 February 2023, the Prosecutor's Office also filed the Indictment [PP.I. no. 91/2019] against the applicant on the grounds of a reasoned suspicion that he has committed the criminal offenses "Extortion" and "Usury".

19. On 14 August 2023, the applicant also authorized the lawyer A.Q, as the second defense counsel to represent him in this criminal case.
20. On 27 October 2023, the Basic Court held the initial hearing in the case under indictment [PKR. no. 91/2023] against the Applicant. During the court hearing, the State Prosecutor read the indictment and after reading the indictment stated that: *“in this criminal case, the injured F.D. was the same and the procedure was also for the other accused for whom we are now in the main hearing phase, where one of the accused is defended by the lawyer A.Q., therefore in order not to result in any violation in the further phase, I request the court to assess the issue of whether the same can be a defense counsel of both defendants”*.
21. On 1 November 2023, the Basic Court by Decision [PKR. no. 91/23] rejected the representation/defense of the Applicant by lawyer A.Q. in the criminal case related to the Indictment [PP/I. no. 90/2019] of 7 February 2023.
22. In the reasoning of its Decision, the Basic Court stated:

“The Court [...] finds that based on the provision of Article 54 par. 1 of the CPCRK it is stipulated as follows: “In criminal proceedings a defense counsel is not allowed to represent two or more defendants in the same case, regardless of whether the case has been severed or the stage of the proceedings...”. In this case, we are dealing with the same criminal case and the same injured.

Moreover, the defense counsel himself has confirmed such an argument after the state prosecutor has raised this case against other defendants, where the accused is also the defense counsel [A.Q.] [A.T.] initially by the prosecution a decision to initiate investigations was rendered on 21.05.2019 in which [Z. J.] was not involved, but on 07.06.2019 the prosecutor rendered a decision to extend the phase of investigations in which Mr. [Z.J.] was included, which according to this confirms the fact that despite the separate court proceedings that are pending we are dealing with the same criminal case and that the provision of Article 54 par. 1 of the CCRK, prohibits a defense counsel in such a situation from being able to represent two defendants.

Therefore, in order not to come to a situation where any situation of conflict of interest may be endangered against a defendant and also based on the provision of Article 54 par. 1 of the CPCRK, the court decided as in the enacting clause of this decision”.

23. On an unspecified date, against the aforementioned Decision of the Basic Court, the lawyer A.Q, in the capacity of defense counsel of the Applicant, filed an appeal with the Court of Appeals alleging that the Basic Court has erroneously interpreted paragraph 1 of Article 54 (Limits of Representation by Defense Counsel) of Code no. 08/L-032 on the Criminal Procedure (hereinafter: CPCK).
24. On 15 November 2023, the Court of Appeals by Decision [PN no. 1420/23] rejected as ungrounded the appeal of the defense counsel of the Applicant, the lawyer A.Q.
25. In the reasoning of its decision, the Court of Appeals, *inter alia*, stated that:

“The Criminal Panel of the Court of Appeals of Kosovo considers that, in the present case, what is relevant for this stage of the criminal procedure, is the fact that the first instance court, after having received the statements of the parties to the proceedings

regarding this criminal case, during the hearing has taken a procedural decision in which it is emphasized that in a criminal procedure, the defense counsel cannot defend two or more defendants in the same criminal case, regardless of whether the procedure or the procedure phase was severed [...].

Also, based on the provision of article 54 par. 1 of the CPCRK, which emphasizes [...] The Criminal Panel of the Court of Appeals of Kosovo considers that the decision of the first instance court in this criminal case is fair, which decision is fully supported by the Criminal Panel of this court, due to the fact that despite the separate court proceedings that are pending, we are dealing with the same criminal case, therefore the above-mentioned provision prohibits that the counsel, even in such a situation, can represent two defendants”.

Applicant’s allegations

26. The applicant alleges in his referral that the Basic Court and the Court of Appeals have violated (i) his right to choose his defense counsel, guaranteed by paragraph 5 of Article 30 of the Constitution; and (ii) his right to a reasoned court decision, guaranteed by Article 31 of the Constitution.
27. Regarding his allegation of violation of paragraph 5 of Article 30 of the Constitution, the Applicant claims that: *“The right to choose the defense counsel is a constitutional category, namely the right explicitly guaranteed by the Constitution (Article 30) and the ECHR (Article 6). In light of the above, we consider that the Court of Appeals and the Basic Court of Prishtina, in the interpretation of Article 54 par. 1 of the CPC, have failed to apply the principles contained in Article 55 par. 4 of the Constitution for the reasons that will be presented below in this referral. Moreover, these courts have not given strong and consistent reasons for limiting the Applicant’s right to choose the lawyer of his choice ”.*
28. In support of this, the Applicant adds that the interpretation of the legal provisions which have the character of limiting the rights, as in fact is Article 54, paragraph 1 of the CPCCK, which restricts the right of the lawyer to exercise his/her profession and the right of the defendant to choose a defense counsel, should be subject to theological/purposeful interpretation, not to mechanical grammatical interpretation.
29. Moreover, the Applicant considers that according to the constitutional principles, the restriction of a right should have a legitimate aim. In the present case, according to him, by the provision of Article 54, paragraph 1 of the CPCCK, the legitimate aim of limiting a right has been the integrity of the procedure. Therefore, in this case, the legislator has given priority to the integrity of the procedure over the right of the defendant to choose the defense counsel and the right of the defense counsel to exercise his profession. In addition, the Applicant adds that: *“However, any excess of the legitimate aim of the restriction jeopardizes the rights of the defendant in the criminal proceedings. In the present case, the restriction of the Applicant’s right to choose the defense counsel is not aimed at achieving a legitimate aim, which in the present case should be ensuring the integrity of the procedure.”*
30. The Applicant specifies that the Court should take into account the following: (i) the defense counsel of the Applicant - lawyer A.Q, in the defense of the other defendant A.T, was involved after the indictment in both cases was filed, (ii) the provisions of the indictments in both cases; and (iii) the legal qualifications.

31. Finally, the Applicant emphasizes that the denial of his right to the choice of the counsel constitutes a violation of his rights as a defendant in a criminal proceeding, rights guaranteed by paragraph 5 of Article 30, paragraph 4 of Article 55, of the Constitution, in conjunction with Article 6.3 (c) of the ECHR.
32. Secondly, the Applicant also considers that his right to a reasoned court decision, guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, has been violated by the fact that the Court of Appeals did not substantiate his appealing allegations regarding erroneous application of Article 54, paragraph 1 of the CPCK. In support of this, the Applicant alleges that: "*The Constitutional Court found a violation of the right to a fair and impartial trial on the grounds of unreasoned court decisions, in some cases when the regular courts have not addressed any important claim that the parties have filed before them (see, inter alia, cases: KI135/14, 138/15, KI22/16, KI177/19).*"
33. Finally, in relation to his request for imposition of an interim measure, the Applicant reasons that:

"From the above, it is clear that this case is typical of the circumstances when the interim measure is necessary. This request meets all the requirements to be reviewed and approved by the Court since it is in writing, is based on evidenced facts of the case, provides supporting legal arguments and indicates the irreparable consequences that the Applicant would suffer without the imposition of an interim measure.

The implementation of the Decision of the Basic Court, upheld by the Decision of the Court of Appeals, which contains a number of violations of individual rights guaranteed by the Constitution and the European Convention, would in itself be a further violation of the rights guaranteed by the same instruments. The very fact that an implementation of this unconstitutional decision would deprive the Applicant of the right to choose the defense counsel while the criminal proceedings against him would continue, and this circumstance would cause irreparable damage to the Applicant since he would be deprived of the right to be represented by the defense counsel selected by him".

34. Therefore, the Applicant requests the Court to find that Decision [PN1. no. 1420/23] of the Court of Appeals of 15 November 2023 was rendered in violation of Articles 30, 31 and 55 of the Constitution, in conjunction with Article 6. 3 (c) of the ECHR.

Relevant constitutional and legal provisions

Article 30 [Rights of the Accused]

Everyone charged with a criminal offense shall enjoy the following minimum rights:

[...]

(5) to have assistance of legal counsel of his/her choosing, to freely communicate with counsel and if she/he does not have sufficient means, to be provided free counsel;

Article 31

[Right to Fair and Impartial trial]

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

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

[...]”

Article 55

[Limitations on Fundamental Rights and Freedoms]

“1. Fundamental rights and freedoms guaranteed by this Constitution may only be limited by law.

[...]

4. In cases of limitations of human rights or the interpretation of those limitations; all public authorities, and in particular courts, shall pay special attention to the essence of the right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and the purpose to be achieved and the review of the possibility of achieving the purpose with a lesser limitation.”

European Convention on Human Rights

Article 6

(Right to a due process)

“[...]

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

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

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

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

CODE No. 08/L-032 OF CRIMINAL PROCEDURE

CHAPTER V

DEFENSE COUNSEL

Article 52 Defendant's Right to Defense Counsel

*"1. The suspect and the defendant have the right to be assisted by a defense counsel during all stages of the criminal proceedings."
[...]*

Article 54 Limits of Representation by Defense Counsel

"1. In criminal proceedings a defense counsel is not allowed to represent two or more defendants in the same case, regardless of whether the case has been severed or the stage of the proceedings. A defense counsel may not represent a legal person and a natural person in the same case, unless the natural person is the only person who owns, manages and is employed by the legal person.

2. A defendant may have up to three (3) defense counsel, and it shall be considered that the right to defense shall be considered satisfied if one of the defense counsel is participating in the proceedings.

[...]"

Admissibility of the Referral

35. The Court first examines whether the referral has met the admissibility criteria, established by the Constitution, provided by Law and further specified by the Rules of Procedure.

36. 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".

[...]

37. The Court also refers to Articles 47 (Individual Requests), 48 (Accuracy of the Referral) and 49 (Deadlines) of the Court, 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 deadline shall be counted from the day upon which the claimant has been served with a court decision...”.

38. With regard to the fulfilment of these criteria, the Court considers that the applicant is an authorized party and challenges an act of a public authority, namely Decision [PN. no. 1420/23] of the Court of Appeals, of 15 November 2023, after having exhausted all legal remedies. The Applicant has also clarified the fundamental rights and freedoms that he claims to have been violated, in accordance with Article 48 (Accuracy of the Referral) of the Law, and has submitted the Referral in accordance with the deadlines set forth in Article 49 of the Law.
39. The Court also finds that the referral meets the admissibility criteria set out in paragraph 1 of Rule 34 (Admissibility Criteria) of the Rules of Procedure. The latter may not be declared inadmissible on the basis of the requirements established by paragraph (3) of Rule 34 of the Rules of Procedure.
40. Moreover, and in the end, the Court emphasizes that the referral cannot be declared inadmissible on any other basis. Therefore, it must be declared admissible and its merits must be examined.

Merits

41. The Court initially recalls that the circumstances of the present case are related to the criminal procedure, which was initiated through the filing of a criminal report by the Kosovo Police against the Applicant and seven (7) other persons due to the grounded suspicion that they had committed the criminal offenses of “Usury”, “Extortion” and “Fraud” against the injured party F.D. foreseen by the provisions of the CCK in force. As a result, the Basic Criminal Prosecutor’s Office rendered two decisions: (i) Decision [PP/I. no. 90/2019], of 21 May 2019, which initiated the investigation against seven (7) persons, but not against the applicant, and (ii) Decision of 7 June 2021 on extension of investigations, which also included the applicant. Following the latter, the Prosecutor’s Office on 19 November 2021 filed the first Indictment [PP/I. no. 90/2019] involving five (5) persons as defendants, and one of these, namely the accused A.T., authorized the lawyer A.Q. to represent him during the conduct of the criminal proceedings, whereas, on 7

February 2023, the Prosecutor's Office also filed the second Indictment [PP.I. no. 91/2019] against the Applicant for the criminal offenses "Extortion" and "Usury". Based on the case file, it results that the Applicant during the investigation procedure was defended by a lawyer. Following this, the Applicant, on 14 August 2023, also authorized the lawyer A. Q. to represent him during the further conduct of the criminal proceedings. However, during the initial hearing procedure of 27 October 2023 regarding the Indictment [PKR. no. 91/2023] where A.Q., as the representative chosen by the Applicant, submitted to the Basic Court the authorization for representation, the case Prosecutor requested this court to establish whether the same, namely the lawyer A.Q. could be simultaneously the defense counsel of the two defendants in the same criminal proceedings. Following this request, the Basic Court by Decision [PKR. no. 91/23] of 1 November 2023 based on paragraph 1 of Article 54 of the CPCK decided that the lawyer A.Q. cannot be the defense counsel of the Applicant to this proceedings. As a result of his appeal to the Court of Appeals, the latter by Decision [PN. no. 1420/23] of 15 November 2023 rejected his appeal as ungrounded and upheld the Decision of the Basic Court.

42. The Court initially notes that the decisions challenged by the Applicant are related to the decision to reject the defense/representative during the conduct of the initial hearing procedure, while the criminal procedure against him is still pending.
43. In this regard, the Court, referring to the case-law of the ECtHR, notes that the latter has assessed that even if "*the primary purpose of Article 6 of the ECHR, as far as criminal proceedings are concerned, is to ensure a fair trial by a "tribunal" competent to determine "any criminal charge", it does not follow that the Article has no application to pre-trial proceedings. Thus, Article 6 – especially paragraph 3 thereof – may be relevant before a case is sent for trial if and in so far as the fairness of the trial is liable to be seriously prejudiced by an initial failure to comply with its provisions. As the [the ECtHR] has already held in its previous judgments, the right set out in Article 6.3 (c) of the Convention is one element, among others, of the concept of a fair trial in criminal proceedings contained in Article 6*" (see, ECtHR case [Dvorski v Croatia](#) [GC], no. 25703/11, Judgment of 20 October 2015, paragraph 76 and the other references referred to therein, cases [Imbrioscia v. Switzerland](#), no. 13972/88, Judgment of 24 November 1993, paragraph 36, and [Salduz v. Turkey](#), [GC], no. 36391/02, Judgment of 27 November 2008, paragraph 50).
44. In this respect, after rendering the last decision in this specific procedure related to the refusal of the courts that he is represented by the lawyer A.Q. during the further conduct of the criminal procedure, the Applicant challenges these two decisions, namely Decision [PKR. no. 91/23] of 1 November 2023, of the Basic Court and Decision [PN. no. 1420/23] of 15 November 2023, of the Court of Appeals claiming that they violated his right (i) to choose his defense counsel in criminal proceedings and (ii) the right to a reasoned court decision by the Court of Appeals, since according to him the latter had not fully addressed his allegations raised in the appeal before this court.
45. Based on the circumstances of the present case and the allegations of the Applicant in his referral to the Court, the latter considers that the substance of the applicant's allegations is related to his right to choose his counsel in criminal proceedings, a right guaranteed by paragraph 5 of Article 30 of the Constitution, in conjunction with Article 6.3 (c) of the ECHR. Therefore, the Applicant's claims related to the right to a reasoned court decision will be elaborated by the Court in terms of the reasoning of the regular courts and which

specifically are related to the right of a defendant to have the assistance of a defense counsel of his choice.

46. Therefore, in assessing the above allegations, the Court will elaborate (i) the general principles regarding the right to choose a counsel, guaranteed by paragraph 5 of Article 30 of the Constitution in conjunction with Article 6.3 (c) of the ECHR, insofar as they are relevant in the circumstances of the present case, to proceed with (ii) the application of these general principles in the circumstances of the present case. The Court will examine these categories of claims based on the case law of the Court and the ECtHR, in harmony with which, based on Article 53 [Interpretation of Human Rights Provisions] of the Constitution, it is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

I. Relevant constitutional and legal provisions and general principles of the ECtHR

(i) The principles of the Constitution and the ECHR

47. The Court refers to paragraph 5 of Article 30 [Rights of the Accused] of the Constitution, which stipulates that everyone charged with a *criminal offense enjoys minimal rights and “to have assistance of legal counsel of his/her choosing, to freely communicate with counsel and if she/he does not have sufficient means, to be provided free counsel;[...]”*
48. In addition, the Court notes that the right to choose a *defence counsel is also guaranteed by item c) of paragraph 3 of Article 6 of the ECHR, which stipulates that any accused of committing criminal offences has the right: “to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”*

(ii) Relevant provisions of the CPCK

49. In this regard, the Court refers to the relevant provisions of Code no. 08/L-032 of the Criminal Procedure, applicable in the circumstances of the present case, which determine the rights of the accused to have defence during the conduct of criminal proceedings against them. In this sense, the Court notes that paragraph 1 of Article 52 (Defendant’s Right to Defense Counsel) of the CPCK stipulates that: *“The suspect and the defendant have the right to be assisted by a defense counsel during allstages of the criminal proceedings.”*
50. In addition, the Court emphasizes in paragraph 1 of Article 54 (Limits of Representation by Defense Counsel) of the CPCK, which is also related to the circumstances of the present case where it is determined that: *“In criminal proceedings a defense counsel is not allowed to represent two or more defendants in the same case, regardless of whether the case has been severed or the stage of the proceedings. A defense counsel may not represent a legal person and a natural person in the same case, unless the natural person is the only person who owns, manages and is employed by the legal person.”*

(iii) Principles of the ECtHR case law

51. The Court initially notes that the ECtHR, in its case-law has emphasized that *“[...] although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of*

a fair trial.” (see, ECtHR cases, [Salduz v. Turkey \[GC\]](#), application no. 36391/02, Judgment of 27 November 2008, paragraph 51, [Demebukov v. Bulgaria](#), application no. 68020/01, Judgment of 28 February 2008, paragraph 50; and [Ibrahim and others v. United Kingdom \[GC\]](#), applications no. 50541/08, 50571/08, 50573/08 and 40351/09, Judgment, of 13 September 2016, paragraph 255).

52. According to the ECtHR, Article 6, paragraph 3, item c of the ECHR contains three different rights: (i) the right to defend himself; (ii) to defend himself through legal assistance of his own choosing and (iii) to be given legal assistance free (see, ECHR case, [Pakelli v. Germany](#), application no. 8398/78, Judgment of 25 April 1983, paragraph 31).
53. The Court, returning to the circumstances of the present case, recalls that the Applicant's claims are related to his right to choose his lawyer during the conduct of criminal proceedings against him. In this regard, the ECtHR has specified that it is considered important that from the initial stages of the proceedings the person accused of a criminal offence who does not wish to defend himself should have the opportunity to use the legal aid of his choice (see, in the case of ECtHR [Martin v. Estonia](#), no. 35985/09, Judgment of 30 May 2013, paragraphs 90 and 93). According to the ECtHR, this right derives from the very wording of Article 6, paragraph 3, item c of the ECHR, which guarantees that “*Everyone charged with a criminal offence has the following minimum right: [...] to defend himself [...] through legal assistance of his own choosing[...]*” (see, ECtHR case [Dvorski v. Croatia \[GC\]](#), no. 25703/11, Judgment of 20 November 2015, paragraph 78).
54. However, the ECtHR from the very beginning of its case-law has emphasized that “*the right of the accused to choose his own lawyer is not an absolute right*”, but is limited by the right of states to subject the submission of lawyers to court to rules which are applicable in the relevant legal system (see the case of ECtHR, [Ensslin, Baader and Raspe v. Federal Republic of Germany](#), no. 7572/ 76, 7586/76 and 7587/76, Decision of 8 July 1978).
55. Furthermore, the ECtHR has held that notwithstanding the importance of the relationship of confidence between a lawyer and his client, this right is not absolute, namely it is subject to certain limitations in the light of the particular circumstances of each individual case, and which restrictions imply the existence of relevant and sufficient reasons, establishing that the restriction of this right is in the interests of justice (see, ECtHR case [Dvorski v. Croatia](#), cited above, paragraph 79).
56. In case [Dvorski v. Croatia](#), the ECtHR stressed that a person charged with a criminal offence who does not wish to defend himself or herself should be allowed access to the defence of his/her choice from the beginning of the criminal proceedings. However, according to the ECtHR, if the right of access to a defense/lawyer of his/her choice is restricted, the ECtHR should first examine whether such restriction was based on “*relevant and sufficient*” reasoning. In the absence of such a reasoning, the ECtHR proceeded with the examination and elaboration of whether the restriction on the right to the choice of counsel had adversely affected the fair trial during the proceedings in its entirety (see, paragraphs 81 - 82 of the Judgment in case [Dvorski v. Croatia](#)).

II. Court’s assessment

57. The Court recalls that the Applicant alleges an erroneous interpretation of paragraph 1 of Article 54 of the CPCK by the regular courts, a provision referring to the limitation of the accused to representation by the counsel.

58. The Court, on the basis of the general principles elaborated above, reiterates that the right of the defendant to have a defence of his own choosing is guaranteed by paragraph 5 of Article 30 of the Constitution in conjunction with Article 6.3 (c), which, according to the ECtHR case-law and the provisions of the criminal procedure, is not absolute. In the concrete circumstances of the case, this right, namely the right to choose a second counsel who is also a counsel of another defendant in the same criminal procedure is limited by law, respectively by paragraph 1 of Article 54 of the CPCK. In this connection, the Court recalls the case-law of the ECtHR, which specifies that (i) the right of defence is not absolute; (ii) the limitations on this right, namely the choice of defence counsel, are subject to provisions which are applicable in the relevant legal system as to who may be a lawyer in the proceedings; and (iii) there must be relevant and sufficient grounds which determine that the limitation of this right is in the interest of justice.
59. The Court, returning to the circumstances of the present case, specifically referring to the case file as well as the decisions of the Basic Court and the Court of Appeals, notes that the Applicant during the investigation procedure was represented by another defense counsel. However, the Decision of the Basic Court specifies that: *“at the initial hearing in which were present the State Prosecutor A. H., the accused Zekë Jasiqi [the Applicant], with his defense counsels T. R with authorization and lawyer A.Q. which submitted the authorization to the court [...].”*
60. In this regard, the Court recalls that based on paragraph 2 of Article 54 of the CPCK, the exact number of defense counsel that a defendant can use for his defense is determined, namely *“A defendant may have up to three (3) defense counsel, and it shall be considered that the right to defense shall be considered satisfied if one of the defense counsel is participating in the proceedings”*.
61. Therefore, as it results from the Decision of the Basic Court in the present case, the Applicant from the early stage of the criminal procedure was represented by a lawyer. However, the Court notes that the Applicant at the initial hearing had not revoked the authorization for the lawyer T.R., but had chosen to have another lawyer to be his defense counsel during the further conduct of the criminal procedure, from which it results that the latter during the conduct of the procedure was not left without a representative/lawyer.
62. Returning to the substance of the Applicant's allegation, which relates to the right to choose his lawyer A.Q., the Court recalls that the Basic Court, at the request of the prosecutor, had mainly examined whether the choice of a certain lawyer, A.Q., as a second lawyer/defense counsel could constitute an offense, because the same lawyer already represented A.T. in the same criminal proceedings. The Basic Court based its decision to reject the lawyer A.Q., as the second defense counsel of the Applicant, on paragraph 1 of Article 54 of the CPCK.
63. In this regard, the Court considers that in circumstances where there are several defendants in criminal proceedings and who have chosen the same defense counsel, this limitation has been expressly established by paragraph 2 of Article 54 of the CPCK, and that the latter has been applied in this case by the Basic Court. The Court also points out the reasoning of the Court of Appeals, through which it was established that: *“[...] due to the fact that despite the separate court proceedings that are pending, we are dealing with the same criminal case, therefore the provision of Article 54, paragraph 1 of the CPC prohibits that the defense counsel, in such a situation, can represent two defendants”*.

64. The Court reiterates that the conclusion of the Basic Court refers exclusively to the impossibility for the lawyer A.Q to be the second defense counsel of the Applicant, namely that it is only a partial restriction and that the scope of the restriction by the Basic Court is based on the legal provisions, and that this restriction serves mainly the purpose of preventing the regularity of further criminal court proceedings from being jeopardized.
65. Subsequently, the Court in applying the principles and criteria established through the case-law of the ECtHR, namely those that (i) the right of defence is not absolute; (ii) the limitations on this right, namely the limitation on the choice of defense counsel, is subject to provisions which are applicable in the relevant legal system, regarding who may be a lawyer to the proceedings; and (iii) there must be relevant and sufficient reasons, such reasons that determine that the limitation of this right is in the interest of justice, notes that (i) the limitation of the choice of defence counsel for representation is, in the circumstances of the present case, limited by paragraph 1 of Article 54 of the CPCK, a restriction referring to that a defence counsel cannot represent two defendants in criminal proceedings; and (ii) the limitation on this right is in the interest of justice.
66. The Court, based on the provisions of Article 54 of the CPCK, notes that the purpose of restricting the choice of the defense counsel in circumstances where the same defense counsel is authorized to represent two defendants in the same criminal procedure, consists in maintaining the integrity of the criminal procedure throughout its development, and as such this restriction is proportionate because it serves the interest of justice, namely it applies only in the specific cases of two or more defendants in the same criminal proceedings. As such, this limitation, defined by Article 54 of the CPCK, which applies only in the specific cases defined by this provision, is intended to prevent the defense counsel from affecting the protection of each defendant, and consequently to avoid conflict between the interests of the two defendants in the course of the proceedings in the same criminal case.
67. In addition, the Court notes that the regular courts, namely the Basic Court in the context of this specific restriction set out in Article 54 of the CPCK, have sufficiently reasoned its decision, basing it on the law.
68. Furthermore, the Court notes that the challenged decisions for rejection of the Applicant's representation by a particular lawyer during the conduct of the criminal proceedings against him is not a decision which will affect the conduct of the criminal proceedings in its entirety and which is related to the determination of the merits of the criminal charge against him, because by the challenged decisions it was decided only in relation to the impossibility of representing the Applicant by a second defense counsel, chosen by him during the initial hearing of the criminal proceedings because the chosen defense counsel A.Q. represented another defendant in the same criminal proceedings.
69. In this regard, the Court again points out the position of the ECtHR, which has emphasized that a defendant's right to choose the defense counsel is not absolute and that this right (i) may be limited in the concrete circumstances of the case and in (ii) in accordance with the definition of the relevant legislation in force. In this regard, the Court reiterates that the interpretation and reasoning of the regular courts regarding their refusal for the Applicant to be represented by lawyer A.Q. is based on the provisions of the CPCK.
70. Therefore, in the light of the above elaboration, the Court notes that in the specific circumstances of the present case, the right to chose the defense counsel in criminal

proceedings guaranteed by paragraph 5 of Article 30 of the Constitution, in conjunction with Article 6. 3 (c) of the ECHR is (i) restricted by law; (ii) this restriction in this case serves the general interest of justice, namely the prevention of a conflict of interest of the defendants in criminal proceedings; and that (iii) the courts have reasoned their decision to reject the representation of the Applicant by the defense counsel A.Q., a decision based on Article 54 of the CPCK.

71. Therefore, the Court finds that the challenged Decision of the Court of Appeals, by which the defense of the Applicant by the lawyer A.Q. as the second defense counsel in the criminal proceedings was rejected, in the specific circumstances of the present case does not constitute a violation of paragraph 5 of Article 30 of the Constitution, in conjunction with Article 6. 3 (c) of the ECHR.

Request for interim measure

72. The Applicant also requests the imposition of an interim measure, claiming that: *“The implementation of the Decision of the Basic Court, upheld by the Decision of the Court of Appeals, which contains a number of violations of individual rights guaranteed by the Constitution and the European Convention, would in itself be a further violation of the rights guaranteed by the same instruments. The very fact that an implementation of this unconstitutional decision would deprive the Applicant of the right to choose the defense counsel while the criminal proceedings against him would continue, and this circumstance would cause irreparable damage to the Applicant since he would be deprived of the right to be represented by the defense counsel selected by him”.*
73. However, the Court has already found that the Applicant's referral is admissible and that the challenged Decision of the Court of Appeals is not contrary to paragraph 5 of Article 30 of the Constitution, in conjunction with item (c) of paragraph 3 of Article 6 of the ECHR, and as a result finds that the request for imposition of an interim measure should be rejected in accordance with Rules 44 (Request for Interim Measures) and 45 (Decision-making Regarding the Request for Interim Measure) of the Rules of Procedure (see, case [KI10/22](#), Applicant *Trade Union of the Institute of Forensic Medicine*, Judgment of 18 July 2022, paragraph 85).

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 27 and 47 of the Law and Rules 44, 45 and 48 (1) (a) of the Rules of Procedure, on 30 October 2024, unanimously

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that the Decision [PN. no. 1420/23] of the Court of Appeals of 15 November 2023 is not contrary to paragraph 5 of Article 30 [Rights of the Accused] of the Constitution, in conjunction with item (c) of paragraph 3 of Article 6 (Right to a fair trial) of the European Convention on Human Rights;
- III. TO REJECT the request for the imposition of interim measure;
- IV. TO NOTIFY this Judgment to the parties and, in accordance with paragraph 4 of article 20 of the Law, to publish it in the Official Gazette;
- V. TO HOLD that this Judgment is effective from the date of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 5 of Article 20 of the Law.

Judge Rapporteur

President of the Constitutional Court

Enver Peci

Gresa Caka-Nimani

This translation is unofficial and serves for informational purposes only.