



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

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Prishtina, on 11 June 2018  
Ref. No.: RK 1264/18

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI138/17**

Applicant

**The Government of the Republic of Kosovo - Ministry of Education,  
Science and Technology**

**Constitutional review of Judgment IV. EK. No. 500/15 of the Basic Court  
in Prishtina, of 21 April 2017, and Notification KMLC. No. 73/2017 of the  
Chief State Prosecutor of 24 September 2017**

### THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërzhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

#### **Applicant**

1. The Applicant is the Government of the Republic of Kosovo - Ministry of Education, Science and Technology, which according to the power of attorney of the Ministry of Justice, is represented by Shefqet Hasimi, the state attorney at law at the State Advocacy Office of the Republic of Kosovo (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges Judgment IV. EK. No. 500/15 of the Basic Court in Prishtina-Department for Commercial Matters, of 21 April 2017 and Notification KMLC. No. 73/2017 of Chief State Prosecutor of 24 September 2017.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Judgment and the Notification of the State Prosecutor which the Applicant considers not to be in accordance with the Constitution of the Republic of Kosovo (hereinafter: the Constitution). The Applicant does not specify what article of the Constitution has allegedly been violated.

## **Legal basis**

4. The Referral is based on Articles 21.4 and 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 29 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 23 November 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 1 December 2017, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 14 December 2017, the Court notified the Applicant about registration of the Referral and sent a copy of the Referral to the Basic Court in Prishtina - Department for Commercial Matters (hereinafter: the Basic Court) and College AAB as an interested party.
8. On 24 May 2018, 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**

9. On 6 January 2009, the Ministry of Education, Science and Technology (hereinafter: MEST) issued the Administrative Instruction No. 2/2009 regarding the accreditation of higher education institutions in the Republic of Kosovo. Article 25 item 8 of this Instruction provides that "*Accredited private higher education institutions shall pay to KAA the amount of 5 (five) Euros per year per student as the accreditation tax rate (MEST)*".

10. In 2013, this Administrative Instruction was followed by the Administrative Instruction No/ 02.2013 on Accreditation of Higher Education Institutions in the Republic of Kosovo and again Article 23 paragraph 10 foresees the same obligation for the Higher Education Institutions of the Republic of Kosovo, the payment of the amount of 5 (five) Euros.
11. On 17 June 2015, AAB College requested the MEST to annul Article 23 item 10 of Administrative Instruction No. 02/2013.
12. On 24 June 2015, MEST rendered Decision Ref. 245/01 B, and suspended the application of Article 23 paragraph 10 of Administrative Instruction No. 02/2013, until the amendment of the administrative act according to the legal procedures, and obliged the Secretary of General of MEST to notify the Kosovo Accreditation Agency as well as all private providers of higher education.
13. On 9 November 2015, AAB College filed a statement of claim with the Basic Court in Prishtina - Department for Commercial Matters, against MEST due to unfounded enrichment, with a total amount of € 206,820.00.
14. On 9 March 2016, MEST filed a response to the claim, challenging the latter.
15. On 21 April 2017, the Basic Court, Department for Commercial Matters, by Judgment IV. EK. No. 500/15 fully approved the statement of claim of AAB College and obliged MEST, on behalf of the unfounded enrichment, to pay to AAB College the amount of € 206,820.00. The Judgment reads that *"The Court found that given the fact that the abovementioned administrative instructions were not in accordance with the law [...] and that the latter were discriminatory only to private colleges and not to other institutions accredited by the same body, we conclude that the respondent, namely the Ministry of Education, Science and Technology, has made a groundless enrichment against the claimant -AAB College."*
16. On 14 July 2017, the Applicant filed a request for protection of legality with the Office of the Chief State Prosecutor, against Judgment IV. EK. No. 500/15 of the Basic Court of 21 April 2017.
17. On 24 July 2017, the Office of the Chief State Prosecutor (Notification KMLC. No. 73/2017) rejected the request, stating that the Applicant did not present any appeal against the first instance decision and that there was insufficient grounds to file a request for protection of legality.

### **Applicant's allegations**

18. The Court notes that the Applicant did not specify what constitutional rights or provisions have allegedly been violated.
19. The Applicant alleges that *"against Decision IV. EK. 500/15 did not file its regular legal remedy, based on the fact that the decision of the Minister Ref 245/013 of 24.06.2015, has executive title, since it has suspended the Administrative Instruction No. 02/2015 Article 23 paragraph 10"*.

20. The Applicant requests the Court to declare unconstitutional Judgment IV. EK. No. 500/15 of the Basic Court, of 21 April 2017.

### **Admissibility of the Referral**

21. The Court should first examine whether the Applicant has fulfilled the admissibility requirements, established in the Constitution, as further specified in the Law and the Rules of Procedure.
22. 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.”*

23. The Court also refers to Article 47 [Individual Requests] of the Law, which provides that:

*“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.”*

24. In addition, the Court takes into account 36 (1) (b) of the Rules of Procedure, which provides:

*“(1) The Court may consider a referral if:*

*(b) if all effective remedies that are available under the law against the judgment or decision challenged have been exhausted”.*

25. The Court notes that the Applicant challenges the constitutionality of Judgment IV. EK. no. 500/15 of the Basic Court, of 21 April 2017, which decided on the merits of the case and Notification KMLC. No. 73/2017 of the Prosecutor of 24 July 2017, which rejected the Applicant's request because all legal remedies provided by law have not been exhausted.
26. Regarding the constitutional requirement for the exhaustion of all legal remedies provided by law, the Court notes that the Applicant did not address the Court of Appeals in respect of the alleged violations of his rights provided in the legal advice of Judgment IV. EK. No. 500/15 of the Court of Appeals, of 21 April 2017.

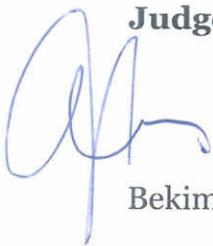
27. Judgment IV. EK. No. 500/15 of the Basic Court, of 21 April 2017 explicitly advises “Against this Judgment the unsatisfied party has the right to file appeal within 7 days after the receipt of the latter, with the Court of Appeals in Prishtina, through this court “
28. Consequently, from the submitted documents it follows that the Applicant did not use this legal opportunity and therefore did not exhaust available legal remedies.
29. Regarding the Applicant's reasoning that he “*did not exercise regular legal remedy on the ground that the Minister's Decision [...] has an executive title after having suspended the administrative instruction [...]*”, the Court considers that the Applicant does not argue why this circumstance exempts him from the obligation to exhaust effective legal remedies, before addressing the Constitutional Court.
30. Based on the foregoing, the Court considers that the Applicant's failure to exhaust legal remedies available to the regular courts, would be understood as waiving the right to continue with the proceedings in the regular courts.
31. Therefore, the Applicant has not exhausted all legal remedies given to him under the applicable law (see, *mutatis mutandis*, the ECtHR case, *Selmouni v. France*, No. 25803/94, Decision of 25 November 1996, case of Constitutional Court KI 07/09, *Demë dhe Besnik Kurbogaj*, Resolution on Inadmissibility of 19 May 2010, paras 28-29).
32. The Court emphasizes that the principle of subsidiarity, as one of the fundamental principles of the constitutional judiciary, requires that, before submitting a referral to the Constitutional Court, the Applicants must have exhausted all procedural possibilities before the regular courts or other competent authorities. In this way, the regular courts are provided with the possibility of preventing or correcting constitutional violations (See *mutatis mutandis*, ECtHR case *Selmouni v. France*, No. 25803/94, Decision of 25 November 1996, see Constitutional Court cases KI120/11, *Ministry of Health*, Resolution on Inadmissibility of 4 December 2012, para. 32, KI118/15, *Dragiša Stojković*, Resolution on Inadmissibility of 17 May 2016, para. 34).
33. Therefore, having in mind that the Applicant has not exhausted all legal remedies in the proceedings before the regular courts before addressing the Constitutional Court, the Court finds that the Applicant's Referral does not meet the admissibility requirements established in Article 113.7 Constitution, Article 47 of the Law and Rule 36 (1) (b) and is to be declared inadmissible.

## FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure, on 24 May 2018, 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.

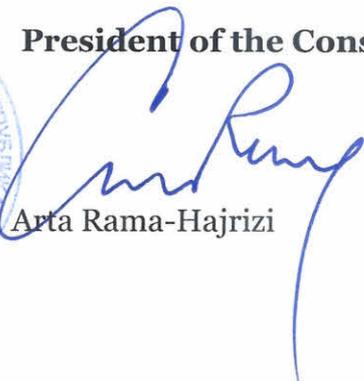


**Judge Rapporteur**

Bekim Sejdiu



**President of the Constitutional Court**



Arta Rama-Hajrizi