



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 04 October 2019  
Ref. no.: RK 1438/19

*This translation is unofficial and serves for informational purposes only.*

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI36/19**

Applicant

**The Independent Commission for Mines and Minerals**

**Constitutional review of Judgment E. Rev. No. 26/2017 of the Supreme  
Court of Kosovo of 17 January 2018**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

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

### **Applicant**

1. The Referral was submitted by the Independent Commission for Mines and Minerals (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the constitutionality of Judgment E. Rev. No. 26/2017 of the Supreme Court, of 17 January 2018 (hereinafter: the challenged Judgment), which allegedly was served on it on 12 February 2018.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights guaranteed by Articles 3 and 24 [Equality Before the Law]; 31 [Right to Fair and Impartial Trial] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties], in conjunction with paragraph 4, of Article 21 [General Principles] 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 (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 1 March 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 March 2019, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Bekim Sejdiu (Presiding), Selvete Gërxhaliu -Krasniqi and Gresa Caka-Nimani (members).
7. On 15 March 2019, the Court notified the Applicant about the registration of Referral KI36/19 and sent a copy it to the Supreme Court, in accordance with the law.
8. On 11 September 2019, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

9. On an unspecified date, the company "Besi Com" sh.pk (hereinafter: the Claimant) filed a lawsuit with the Basic Court in Prishtina – Department for Commercial Matters against the Applicant for compensation of damages in the amount of € 43,775.00.
10. On 28 March 2017, the Basic Court in Prishtina, by Judgment IC. No. 207/2015, approved the claimant's claim and obliged the Applicant to pay the

claimant a total amount of € 66,316.39, in the name of material damage, including legal interest and costs of contested procedure.

11. On an unspecified date, the Applicant filed an appeal with the Court of Appeals on the grounds of essential violations of the provisions of the contested procedure, erroneous determination of factual situation and erroneous application of substantive law.
12. On 25 October 2016, the Court of Appeals by Judgment Ae. No. 128/2017, rejected as ungrounded the Applicant's appeal and upheld Judgment IC. No. 207/2015 of the first instance court of 28 March 2017.
13. The Applicant, within the legal deadline, filed a request for revision with the Supreme Court, on the grounds of essential violations of the provisions of the contested procedure and erroneous application of substantive law, proposing that the two lower instance court judgments be modified and the claim of the claimant be rejected as ungrounded.
14. On 17 January 2018, the Supreme Court, by challenged Judgment E. Rev. No. 26/2017, rejected as ungrounded the request for revision filed by the Applicant against the Judgment of the Court of Appeals and partially approved the Applicant's request with regard to item I) under letter a) of the enacting clause, regarding the legal interest.

### **Applicant's allegations**

15. The Applicant alleges that the challenged Judgment violated the rights guaranteed by Articles 3 and 24 of the Constitution: *"As a consequence of the procedural violation of Article 19 of Law No. 03/L-006 on Contested Procedure, where each court throughout the first instance proceedings ex officio takes care of its own subject matter competence, in relation to filed submissions and appeals ..."*.
16. In addition, the Applicant alleges violations of Articles 31 and 54 of the Constitution, because: *"In the present case, the Courts of the Republic of Kosovo have consistently committed procedural violations and violations of the substantial provisions"*.
17. Finally, the Applicant requests the Court to: *"Annul as ungrounded Judgment E. Rev. No. 26/2017 of the Supreme Court of Kosovo-Department for Commercial Matters, of 17.01.2018, protoc. no. 1079, of 12.02.2018, Judgment Ae. No. 128/2017 of the Court of Appeals-Department for Commercial Matters, of 25.10.2017, Judgment IC. No. 207/2015 of the Basic Court in Prishtina-Department for Commercial Matters, of 28.03.2017, as they are not in compliance with the Constitution of the Republic of Kosovo, deciding that this matter is remanded for reconsideration and decided ex officio to be sent to the subject matter jurisdiction, that this challenged case be considered in the Department for Administrative Matters and then to consider that the claimant had a legal basis for a claim for damage"*.

## Admissibility of the Referral

18. The Court first examines whether the Referral has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and foreseen in the Rules of Procedure.
19. In this respect, the Court refers to paragraphs (1) and (7) of Article 113 [Jurisdiction and Authorized Parties], in conjunction with paragraph (4) of Article 21 [General Principles] 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.*

*[...]*

*4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.”*

20. The Court also examines whether the Applicant has met the admissibility requirements as further defined by the Law. In this regard, the Court first refers to Articles 47 [Individual Requests] and 48 [Accuracy of the Referral] of the Law, which stipulate:

### Article 47 of the Law [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 of the Law [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”.*

21. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party; it has exhausted the legal remedies provided by law, specified the challenged act of public authority and also clarified the rights and freedoms which were allegedly violated by the acts of public authorities.

22. However, the Court also examines whether the criteria established in Article 49 [Deadlines] of the Law and Rule 39 [Admissibility Criteria], paragraph (1) (c) of the Rules of Procedure, are met, the provisions which foresee as follows:

Article 49 of the Law  
[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...”*

Rule 39 of the Rules of Procedure  
[Admissibility Criteria]

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

*[...]*

*c) referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, and [...].”*

23. The Court notes that the Applicant challenges Judgment E. Rev. No. 26/2017 of the Supreme Court of 17 January 2018, which allegedly was served on it on 12 February 2018, while it filed the Referral with the Court on 1 March 2019, which means that the Referral was filed after the legal deadline of 4 (four) months.
24. The Court recalls that the rationale of the four-month legal deadline under Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedures, is to promote legal certainty by ensuring that cases raising constitutional matters are dealt with within a reasonable time and to prevent the parties and other persons involved from being in a state of uncertainty for a long period of time (see, *mutatis mutandis*, case *Sabri Güneş v. Turkey*, application no. 27396/06, Judgment of 29 June 2012, paragraph 39; and, case of the Constitutional Court no. KI140/13, *Ramadan Cakici*, Resolution on Inadmissibility of 17 March 2014, paragraph 24).
25. Based on the foregoing, the Applicant’s Referral was submitted out of the time limit set by Article 49 of the Law and Rule 39 (1) (c) of the Rules of Procedure, and as such, is inadmissible.

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 49 of the Law and in accordance with Rule 39 (1) (c) of the Rules of Procedure, on 11 September 2019, unanimously

## **DECIDES**

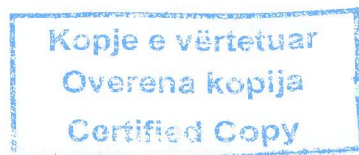
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Bajram Ljatifi

Arta Rama-Hajrizi



*This translation is unofficial and serves for informational purposes only.*