



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

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Prishtina, on 30 April 2018  
Ref. No.: AGJ 1226/18

## **JUDGMENT**

In

**Case No. KI122/17**

Applicant

**Česká Exportní Banka A.S.**

**Constitutional review of  
Decision Ae. No. 185/2017 of the Court of Appeals, of 11 August 2017, and  
Decision IV. EK. C. No. 273/2016 of the Basic Court in Prishtina,  
of 14 June 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 Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

#### **Applicant**

1. The Referral was filed by Česká Exportní Banka A.S, with seat in Prague, the Czech Republic (hereinafter, the Applicant), represented by Dastid Pallaska, a lawyer in Prishtina.

## **Challenged Decisions**

2. The Applicant challenges Decision Ae. No. 185/2017 of the Court of Appeals, of 11 August 2017, and Decision IV. EK. C. No. 273/2016 of the Basic Court in Prishtina - Department for Commercial Matters, of 14 June 2017.
3. The Challenged Decisions concern the Applicant's request for injunctive relief against the Compact Group LL.C. pending the outcome of its main claim in contested proceedings.

## **Subject Matter**

4. The subject matter of the Referral is the constitutional review of the Challenged Decisions, which allegedly violated the Applicant's rights 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 6 (Right to a Fair Trial) and Article 13 (Right to an Effective Remedy) of the European Convention on Human Rights (hereinafter, the ECHR).

## **Legal Basis**

5. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 47 [Individual Requests] and 48 [Accuracy of the Referral] of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter, the Law) and paragraph (1) of Rule 29 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

## **Proceedings before the Constitutional Court**

6. On 11 October 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 12 October 2017, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges Almiro Rodrigues (Presiding), Ivan Čukalović and Gresa Caka Nimani.
8. On 13 October 2017, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeals and the Basic Court.
9. On 18 October 2017, the Applicant submitted a translation of the Referral form in the English and Serbian languages.
10. On 2 November 2017, the Court sent a copy of the Referral to the Compact Group LL.C., in its capacity of an interested party, and invited it to submit comments, if any, no later than 13 November 2017. Within the set deadline, the Compact Group LL.C. submitted their comments.



11. On 15 November 2017, the Court sent a copy of the comments submitted by the Compact Group LL.C. to the Applicant.
12. On 12 March 2018, the Review Panel considered the Report of the Judge Rapporteur and recommended to the Court the admissibility of the Referral.
13. On 18 April 2018, the Court by majority declared the referral admissible, and decided by majority to hold that there has been a violation.

### **Summary of facts**

14. In 2010, the Applicant entered into a contractual agreement with the Compact Group LL.C., a company based in Kosovo. The subject of the “Contract on Work” was “[...] *production, supply, assembly and putting into operation of the technology for expansion of the plant for production and filling of mineral, table and flavoured water* [...].”
15. The above-mentioned contractual parties agreed that any dispute emerging between them, if not resolved amicably within 30 days, may be submitted to arbitration before the Arbitration Court attached to the Economic Chamber of the Czech Republic (hereinafter, the Arbitration Court).

#### **A. Arbitration Proceedings**

16. On 12 June 2012, in accordance with the contractual rules on disputes, the Applicant submitted a claim against the Compact Group LL.C. to the Arbitration Court.
17. On 30 January 2013, the Arbitration Court rendered an Arbitration Award in favor of the Applicant which reads as follows:

*I. The Defendant [Compact Group LL.C.] is obliged to pay the Claimant [the Applicant] the amount of EUR 1,364,527.00 (one million three hundred and sixty four thousand, and five hundred and twenty seven Euros) and the default interest [...].*

*II. The Defendant is obliged to pay a contractual penalty in the amount of [...] within 3 (three) days from legal force of this arbitration award.*

*III. The Defendant is obliged to pay costs of the proceedings comprising of the arbitration fee in the amount of [...].*

18. On 13 March 2014, the Arbitration Court corrected its Arbitration Award, but only pertaining to some technical and numerical errors which were considered to have been rightfully pointed out by the Compact Group LL.C..

#### **B. Proceedings to recognize the Arbitration Award in Kosovo**

19. On 18 June 2014, the Applicant filed a request for the recognition of the above-mentioned Arbitration Award before the Basic Court in Prishtina – Department for Commercial Matters (hereinafter, the Basic Court).

20. On 5 December 2014, the Basic Court [Decision I.C. No. 355/2014] recognized the Arbitration Award and declared it as an executable document that can be enforced in the Republic of Kosovo.
21. On 15 December 2014, the Compact Group LL.C. submitted an appeal to the Court of Appeals against the above-mentioned Decision of the Basic Court.
22. On 9 February 2015, the Court of Appeals [Decision Ae. Nr. 13/2015] rejected the appeal of the Compact Group LL.C. and confirmed the Decision [I.C. No. 355/2014] of the Basic Court.
23. On 20 March 2015, the Decision on recognition of the Arbitration Award was certified as a final, binding and enforceable decision in the Republic of Kosovo.

### **C. Proceedings after the recognition of the Arbitration Award**

#### ***Decision on voluntary dissolution of Compact Group LL.C..***

24. On 21 March 2015, following the recognition of the Arbitration Award, the shareholders of the Compact Group LL.C., issued a Decision on Voluntary Dissolution of their company which reads as follows:

*“From the date of approval of this Decision the Corporation [Compact Group LL.C.] cannot undertake any working action besides the actions that are related to the application of the voluntary dissolution procedure [...].*

*The Corporation does not have unpaid obligations towards third persons; however, all the natural persons and legal entities, which have credit claims against the Corporation, are informed that they shall address to the liquidator in the main office of the Corporation [...] within a time limit of 30 days from the date when the notice is declared. [...].”*

#### ***Enforcement Order of the Arbitration Award***

25. On 26 March 2015, the Applicant submitted a proposal for the enforcement of the certified Arbitration Award before a Private Enforcement Agent.
26. On the same day, the Private Enforcement Agent [Order P. No. 246/15] approved the Applicant's enforcement proposal against the Compact Group LL.C. (hereinafter, the Enforcement Order).
27. On 7 April 2015, the Compact Group LL.C. submitted an objection against the Enforcement Order before the Basic Court.
28. On 7 July 2015, the Basic Court [Decision CPK. No. 40/15] approved the objection filled by the Compact Group LL.C. thus repealing the Enforcement Order.
29. On 24 July 2015, the Applicant, through the Basic Court, submitted an appeal to the Court of Appeals against the above-mentioned Decision of the Basic Court.



30. On 13 October 2015, considering that the appeal of the Applicant had not been forwarded to the Court of Appeals for three months, the Applicant submitted an urgent request to the Basic Court to forward its appeal to the Court of Appeals so that the latter could decide on the matter.
31. On 1 March 2016, the Court of Appeals [Decision Ac. No. 3865/15] approved the appeal of the Applicant as grounded and amended the Decision [CPK. No. 40/15, of 7 July 2015] of the Basic Court. Through this Decision, the Court of Appeals rejected the objection filed by the Compact Group LL.C. as ungrounded.
32. Consequently, the Enforcement Order issued by the Private Enforcement Agent became final and binding (hereinafter, the Final Enforcement Order).

***Contested proceedings against the Decision on Voluntary Dissolution of Compact Group LL.C..***

33. On 30 May 2016, the Applicant requested to the Basic Court the annulment of the Decision on Voluntary Dissolution of the Compact Group LL.C. and compensation for material damage.
34. The Applicant claimed that the Decision on Voluntary Dissolution was unlawful considering that: i) it was issued based on a false declaration/statement of the Compact Group LL.C. that it did not have any financial obligations towards third parties; ii) the procedure for voluntary dissolution was not carried out in accordance with the applicable law; iii) the shareholders of the Compact Group LL.C. rendered the Decision on Voluntary Dissolution one day after the Arbitration Award was certified as a final court decision with the sole intention to impede and avoid the lawful enforcement of the Arbitration Award; and iv) the shareholders of the Compact Group LL.C. sought to impede the execution of the Arbitration Award by transferring all movable and immovable property of the Compact Group LL.C. to another Corporation, namely Adea Group LL.C..
35. Based on these allegations, the Applicant, through its claim, requested from the Basic Court the following:
  - i) to annul the Decision on Voluntary Dissolution as unlawful and invalid;
  - ii) to annul all decisions and notifications of the Compact Group LL.C.. taken following the Decision on Voluntary Dissolution;
  - iii) to oblige, on solidary basis, the Compact Group LL.C. and its shareholders as well as Adea Group LL.C. to pay the debt and material damage in the amount of EUR 1,364,527.00 as well as procedural costs.
36. Together with its claim requesting the annulment of the Decision on Voluntary Dissolution, the Applicant also requested the courts to provide it with injunctive relief (see below under item D).
37. To date, the regular courts have not decided on the claim of the Applicant requesting the annulment of the Decision on Voluntary Dissolution. All regular courts proceedings are related to the injunctive relief.

**D. Regular courts proceedings regarding the Applicant's request for Injunctive Relief filed against Compact Group LL.C., the shareholders of Compact Group LL.C. and Adea Group LL.C.**

38. As indicated above, together with its claim requesting the annulment of the Decision on Voluntary Dissolution, the Applicant also filed a request for injunctive relief against the Compact Group LL.C., against the shareholders of the Compact Group LL.C., and against the newly established Adea Group LL.C..
39. Through its request for injunctive relief, the Applicant requested the Basic Court to:
- i) block/freeze the bank accounts of the Compact Group LL.C.;
  - ii) block/freeze the bank accounts of the shareholders of Compact Group LL.C.;
  - iii) prohibit the alienation, concealment, charge with - and/or disposal of immovable and movable property of the Compact Group LL.C. and its shareholders;
  - iv) prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C.; and
  - v) block/freeze the bank accounts of the newly established Adea Group LL.C.; prohibit the alienation, concealment, charge with- and/or disposal of immovable and movable property of the Adea LL.C.; and prohibit any legal statutory changes made by Adea Group LL.C..
40. With respect to the Applicant's request for injunctive relief the regular courts rendered eight decisions in total. There were four sets of first instance and appeal decisions, respectively four Basic Court decisions and four Court of Appeals decisions. Before the Constitutional Court, the fourth set of decisions is being challenged. The Applicant alleges that the fourth set of Decisions violated its right to a fair trial because they overturned previous decisions which the Applicant considered to be final and binding, and, as such, res judicata. The details of each set of decisions will follow hereunder.

***First set of decisions on Injunctive Relief***

41. On 30 June 2016, the Basic Court rendered its First Decision on Injunctive Relief [I.C. No. 273/2016], by which it partly approved the Applicant's request for injunctive relief and declared null the whole proceedings regarding the voluntary dissolution of the Compact Group LL.C..
42. More specifically, the Basic Court approved the Applicant's request to:
- i) block/freeze the bank accounts of the Compact Group LL.C.;
  - ii) block/freeze the bank accounts of the shareholders of the Compact Group LL.C.;



- iii) prohibit the alienation, concealment, charge with - and/or disposal of immovable and movable property of the Compact Group LL.C. and its shareholders;
  - iv) prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C.. Due to the partial approval of the Applicant's request, the Basic Court rejected all of the Applicant's requests related to Adea Group LL.C..
- 43. Against the First Decision on Injunctive Relief of the Basic Court, both the Applicant and the Compact Group LL.C. filed appeals before the Court of Appeals. The Compact Group LL.C. requested to remand the matter for retrial to the first instance court due to substantial violations of the contested procedure law. The Applicant requested that, in addition to the Basic Court's approval of four out of its five requests, its fifth request, namely regarding Adea Group LL.C., be reconsidered and approved by the Court of Appeals.
- 44. On 16 August 2016, the Court of Appeals rendered its Decision Ae. No. 167/2016 (hereinafter, the First Decision of the Court of Appeals on Injunctive Relief), quashing entirely the First Decision on Injunctive Relief of the Basic Court and remanding the matter for retrial.
- 45. Therefore, the Court of Appeals rejected the Applicant's appeal entirely, while it approved the appeal of the Compact Group LL.C. as grounded. With its Decision, the Court of Appeals remanded the matter for retrial to the Basic Court because of substantial violations of the provisions of the contested procedure.
- 46. The Court of Appeals considered that the Basic Court failed to: i) clarify the issue of subject-matter jurisdiction relating to the annulment of the Decision on Voluntary Dissolution of the Compact Group LL.C.; ii) clarify the legitimacy of the shareholders of the Compact Group LL.C., as parties to the proceedings; iii) assess the admissibility of the Applicant's claim. According to the Court of Appeals, the Basic Court can decide on the Applicant's request on injunctive relief only after it has responded and clarified the points requested by the Court of Appeals.
- 47. Consequently, the Court of Appeals obliged the Basic Court to undertake the following actions in retrial:
  - a) to assess the court's subject-matter jurisdiction;
  - b) to assess the admissibility of the Applicant's claim; and
  - c) to assess the legitimacy of the shareholders of the Compact Group LL.C., as parties to the proceedings.

### ***Second set of decisions on Injunctive Relief***

- 48. On 29 September 2016, the Basic Court rendered its Second Decision on Injunctive Relief [I.C. No. 273/2016], following the Court of Appeals request for retrial. The Applicant's request for injunctive relief was again partly approved.
- 49. Identical to its First Decision on Injunctive Relief, the Basic Court approved the Applicant's request to:



- i) block/freeze the bank accounts of the Compact Group LL.C.;
  - ii) block/freeze the bank accounts of the shareholders of the Compact Group LL.C.;
  - iii) prohibit the alienation, concealment, charge with - and/or disposal of immovable and movable property of the Compact Group LL.C. and its shareholders;
  - iv) prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C..
50. The Basic Court, through its Second Decision on Injunctive Relief, once again, rejected the Applicant's requests' related to Adea Group LL.C.
51. The Basic Court assessed all three issues for which the case was remanded for retrial by the Court of Appeals in its First Decision on Injunctive Relief.
52. Firstly, in respect of (a) the court's subject-matter jurisdiction, the Basic Court considered the arguments submitted by the Applicant and the Compact Group LL.C. in the hearing of 16 September 2016 and decided that *"the subject-matter jurisdiction to decide regarding the claim of the Applicant belongs precisely to the [Basic Court] Department for Commercial Matters."*
53. Secondly, in respect of (b) the admissibility of the Applicant's claim, the Basic Court assessed such admissibility and concluded that the Applicant has made its claim credible and the legal conditions foreseen by Article 297.1 of the Law on Contested Procedure for the imposition of the injunctive relief have been met. More specifically, the Basic Court reasoned as follows:
- "[The Applicant] made credible the circumstance that Compact Group LL.C. remained in debt to [the Applicant] in the amount of EUR 1.364.527.00 defined by a Decision of foreign Arbitration, which passed the judicial procedure of recognition and declaration as executable and it won the title of executive document in enforcement procedure. Therefore, the Applicant made reliable the circumstance that the objectors of the injunctive relief, Compact Group LL.C., continuously avoided the voluntarily execution of the Arbitration Decision, it even conducted transactions with the purpose of preventing the execution [of the Arbitration Award] in the enforcement procedure. [...]"*
54. Thirdly, in respect of (c) the legitimacy of the shareholders of the Compact Group LL.C., as parties to the proceedings, the Basic Court reasoned as follows:
- "Therefore, there is a risk that without imposing such measures, the realization of the request of [the Applicant] could become difficult or impossible. This happens due to the fact that the case files confirm that all the actions undertaken until now by the objector of the injunctive relief "Compact Group" and its shareholders created a state of insolvency at the objectors of the injunctive relief and to avoid the execution of the Decision of the arbitration. Therefore, if no limiting measures are undertaken at this stage of the procedure against the objectors of the injunctive relief, the risk of realization of the request of the proposer of the insurance will become*



*greater, of course if the request results to be grounded. [...] [The Applicant] made also reliable the circumstance that if the injunctive relief measures are not imposed, Compact Group [LL.C.] and its shareholders may continue with similar actions and transactions with the purpose of avoiding the obligations towards the [Applicant] or even to create the final situation wherein it will be impossible to execute the debt. Therefore, the Court concluded that under such situation, it is necessary to impose the injunctive relief measures, as specified in the enacting clause of this Decision."*

55. Against the Second Decision on Injunctive Relief of the Basic Court, the Compact Group LL.C. filed an appeal to the Court of Appeals proposing that the Court of Appeals reject the Applicant's request for injunctive relief as impermissible or ungrounded. The Applicant submitted a reply to the appeal of the Compact Group LL.C. requesting the confirmation of the Second Decision on Injunctive Relief of the Basic Court.
56. On 16 December 2016, the Court of Appeals rendered its Decision Ae. No. 241/2016, (hereinafter, the Second Decision of the Court of Appeals on Injunctive Relief).
57. The Court of Appeals partly approved the appeal of the Compact Group LL.C.. The Court of Appeals remanded the matter for retrial to the Basic Court in respect of only one point, namely item (ii) blocking/freezing of the bank accounts of the shareholders of Compact Group LL.C., because the Court of Appeals considered that the Basic Court had not sufficiently reasoned why the shareholders of a Limited Liability Company should be held personally liable in this case.
58. The Court of Appeals rejected the appeal of the Compact Group LL.C. regarding the other items that were approved by the Basic Court, and upheld the following points:
  - i) to block/freeze the bank accounts of the Compact Group LL.C.;
  - iii) to prohibit the alienation, concealment, charge with - and/or disposal of- immovable and movable property of the Compact Group LL.C. and its shareholders;
  - iv) to prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C..
59. The Court of Appeals reasoned its Decision as follows:

*"The Court of Appeals approves the legal assessment of the first instance court as regular and lawful due to the reason that the challenged Decision [I.C. No. 273/2016 of 29 September 2016 i.e. the Second Decision on Injunctive Relief of the Basic Court] is not rendered with substantial violations of the provisions of the contested procedure [...] and also the substantive law has been correctly applied, the appealed allegations are reviewed by the Court of the second instance pursuant to the official duty and based on Article 194 of the LCP [Law on Contested Procedure], except in item I, paragraph 2.*



*The Court of Appeals took this legal assessment because according to Article 297.1, item a) and b) of the LCP defines that: measures for injunction can be determined: a) if the proposer of the injunction makes the existence of the request believable or of the existence of his subjective right, and b) in case there is a danger that without determining an injunction of the kind the opposing party will make it impossible or make it difficult the implementation of the request, especially with alienating of its estate, hiding it, or other way through which it will change the existing situation of goods, or in another way will negatively impact on the rights of the insurance party that proposed.*

*Based on the above mentioned provisions on imposing the injunctive relief, the legal conditions pursuant to which the proposer shall make reliable the existence of the claim, namely to prove that the failure to impose such measure would make impossible or make significantly difficult for the opposing party to realize the request, especially the alienation of the property and this would make impossible to realize his request, should be met. In the present case the proposer of the injunctive relief made reliable his request due to the fact that “Compact Group” LL.C. remained in debt to the proposer of the security in the amount of EUR 1.364.527.00, determined by the Decision of the foreign arbitration, which went through the Court procedure of recognition and declaration as executable and it won the title of the executive document in execution procedure. Further on, the claimant – proposer [the Applicant] made reliable the existence of the request and the risk that the failure to impose the injunctive relief would make difficult or impossible the realization of his request because “Compact Group” LL.C. continuously avoided the voluntarily execution of the Decision of the arbitration, it even conducted transaction with the purpose of avoiding the execution in the execution procedure and it can continue to undertake similar actions and transaction with the purpose of avoiding the obligations towards the proposer of the insurance or even to create the final situation wherein it will be impossible to execute the debt.*

*Therefore, the Court of Appeals considers that the conditions defined under Article 297.1, under item a) and b) of the LCP, for imposing the injunctive relief have been met because in the present case, the proposer made reliable the existence of the request or its subjective right and it exists the risk that if such measure is not imposed, it would cause considerable damage to the [Applicant], which could be hardly repaired.”*

### ***Third set of decisions on Injunctive Relief***

60. On 24 February 2017, the Basic Court rendered its Third Decision on Injunctive Relief [I.C. No. 273/2016], following the Court of Appeals’ request for a retrial on a specific point. The Basic Court clarified that its previous decision has been annulled in relation only to the (ii) blocking/freezing of bank accounts of the shareholders of the Compact Group LL.C..
61. The Basic Court confirmed that the other measures for injunctive relief approved by the Basic Court in its Second Decision on Injunctive Relief [I.C. No. 273/2016] have been upheld by the Court of Appeals and that the rest of the decision remained unexamined.



62. The Basic Court stated that, as a result, the subject of review of this retrial procedure was only the request of the Applicant to (ii) block/freeze the bank accounts of the shareholders of the Compact Group LL.C.. It further stipulated that all the legal conditions to impose this additional injunctive relief measure existed and that, as a result, the Applicant's request is to be approved.
63. In other words, the Basic Court through its Third Decision on Injunctive Relief, in addition to re-confirming the findings of the Second Decision on Injunctive Relief of the Basic Court and those of the Second Decision on Injunctive Relief of the Court of Appeals, also approved the Applicant's request to (ii) block/freeze the bank accounts of the shareholders of the Compact Group LL.C..
64. Against the Third Decision on Injunctive Relief of the Basic Court, the Compact Group LL.C. filed an appeal with the Court of Appeals, proposing that the Court of Appeals reject the Applicant's request for injunctive relief.
65. Specifically, the Compact Group LL.C.. submitted two grounds for appeal, namely that:
- (1) the Basic Court had not correctly ascertained whether the shareholders of the Compact Group LL.C. could be held personally liable under the law;
  - (2) the Applicant's claim in contested proceedings was not admissible because, before submitting a claim in contested proceedings, the Applicant was required to contest the lawfulness of the Decision on Voluntary Dissolution before the Kosovo Business Registration Agency (hereinafter, KBRA), for which the Applicant had missed the deadline.
66. The Applicant submitted a reply to the appeal of the Compact Group LL.C. requesting the confirmation of the Third Decision on Injunctive Relief of the Basic Court.
67. On 30 March 2017, the Court of Appeals [Decision Ae. No. 91/2017] approved the appeal of the Compact Group LL.C. (hereinafter, the Third Decision of the Court of Appeals on Injunctive Relief) and remanded the whole matter for retrial at the Basic Court. In the words of the Court of Appeals, *"the case is returned to the court of first instance for review and reconsideration"*.
68. The Court of Appeals ordered that the adjudication at the Basic Court be conducted by another judge considering that *"despite instructions provided to the Basic Court"*, the latter had again persisted with the same position by imposing the injunctive relief against the shareholders of the Compact Group LL.C.. The Court of Appeals considered that the Third Decision on Injunctive Relief of the Basic Court contained substantial violations of the provisions of the contested procedure and as a result obliged the Basic Court to avoid the shortcomings, namely: to evaluate the facts; to evaluate its competence to decide on the matter and the legitimacy of all parties involved; to assess the admissibility of the claim; and to decide correctly and according to the law.



#### ***Fourth set of decisions on Injunctive Relief [the Challenged Decisions]***

69. On 11 May 2017, the Basic Court held a public hearing at which the Applicant and the Compact Group LL.C. were represented.
70. The Applicant submitted that the Court of Appeals had violated Article 2 of the Law on Contested Procedure, which foresees that the court must decide within the scope of the requests of the parties to the proceedings. The Court of Appeals had also exceeded the scope of its competence, because it had found violations of the law for issues that it had already decided in final instance. More specifically, the Applicant claimed that the Court of Appeals in its Second Decision on Injunctive Relief had confirmed the admissibility of the Applicant's claim and had confirmed the issue of the subject-matter jurisdiction. Furthermore, the Applicant maintained that the Court of Appeals had confirmed the injunctive relief regarding three points, which had therefore become final and binding and no longer subject to appeal.
71. According to the Applicant, the following points had been confirmed:
  - i) to block/freeze the bank accounts of the Compact Group LL.C.;
  - iii) to prohibit the alienation, concealment, charge with - and/or disposal of immovable and movable property of the Compact Group LL.C. and its shareholders;
  - iv) to prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C..
72. The Compact Group LL.C. submitted that the Court of Appeals has treated its complaint "*within the allegations contained in the appeal, and that this matter [as raised by the Applicant] is not the subject matter of this public hearing.*" More specifically, the Compact Group LL.C. submitted that the first instance court had not respected the instructions of the second instance court according to which the shareholders of a limited liability company cannot be held personally responsible for the dissolution of a company. In case it considered that the voluntary dissolution of the company was not done in conformity with the law, the Applicant should have directed its claims to the KBRA in accordance with Article 17 of the Law on Business Organizations. If the Applicant was not satisfied with the decisions of the KBRA, then it could pursue judicial proceedings.
73. The Applicant responded stating that Article 17 of the Law on Business Organizations did not provide for any remedy against the Decision on Voluntary Dissolution, but merely allowed for appeals against the "*registration*" of the Decision on Voluntary Dissolution, and not for appeals against the Decision itself.
74. On 14 June 2017, following the conclusion of the public hearing, the Basic Court rendered its Fourth Decision on Injunctive Relief [IV. EK. C. no. 273/2016]. Through this Decision, the Basic Court rejected as premature the Applicant's request for injunctive relief because the Applicant should have first pursued administrative remedies at the KBRA challenging the actions of this Agency.



75. The Basic Court reasoned:

*“[...] The Court acting in accordance with the instructions of the Court of Appeals, rendered the Decision as provided for in the enacting clause [...] because:*

*- [...] [the Applicant] did not use all legal remedies from the moment when it was informed of the dissolution of the Compact Group LL.C. as a legal entity, respectively did not comply with Article 17 of the Law no. 02 / L-123 on Business Organizations [...]. Based on the provisions of Article 17, [the Applicant] should have first used the legal remedies, to challenge the decision on the dissolution of the legal entity with the administrative authorities [...] when they noticed that its dissolution was done illegally, or as stated by hiding its well-known obligations towards the creditors [Compact Group LL.C.] [...]. The proposer [the Applicant], after having exhausted all administrative appeal procedures before the administrative authorities, should have approached the Court in order to assess the illegality of the decision on the voluntary dissolution of the legal entity issued by the Kosovo Business Registration Agency. If such a procedure had been respected, the Court could have made a decision to invalidate or confirm entirely or partially the decision of the Kosovo Business Registration Agency, but as the claimant [the Applicant] did not act as authorized by Article 17 of the Law on Business Organizations, the Court considers that for the time being, the conditions for applying Article 17.5 of the that Law have not been met, therefore according to this article the claim proves to be premature. [...]*

*Analyzing all the above-mentioned issues, the Court finds that:*

*-The proposer of the injunctive relief [the Applicant] has not met the basic condition for imposing the injunctive relief, which is the credibility of the claim. [...] The Court also considers that there are no legal requirements for the imposition of the injunctive relief i.e. to freeze of bank accounts of the shareholders [...]. Such a measure would be in full violation of the provision of Article 80 of the Law on Business Organizations. [...].”*

76. Against the Fourth Decision on Injunctive Relief of the Basic Court, the Applicant filed an appeal [Fourth Appeal and last appeal] with the Court of Appeals alleging essential violations of the provisions of contested procedure, incomplete and incorrect determination of the factual situation and erroneous application of the substantive law. Mainly, the Applicant alleged that the Basic Court through its Fourth Decision on Injunctive Relief “*quashed a final court decision*” [Second Decision on Injunctive Relief of the Basic Court (I.C. No. 273/2016, of 26 September 2016)] and it decided beyond “*the requests submitted by the litigants*”.

77. In particular, the Applicant alleged that the Basic Court required the Applicant to pursue a non-existent remedy, because the KBRA does not make decisions itself, but merely registers decisions taken by businesses/companies. Furthermore, the Applicant alleges that, by its Fourth Decision on Injunctive Relief, the Basic Court prejudiced the outcome of the Applicant’s main claim by deciding that he “*has not met the basic condition for imposing the injunctive relief, which is the credibility of the claim.*”



78. The Compact Group LL.C. filed a reply to the Applicant's appeal regarding the Fourth Decision on Injunctive Relief of the Basic Court requesting from the Court of Appeals to reject the Applicant's appeal as ungrounded and to confirm the Fourth Decision on Injunctive Relief of the Basic Court.
79. On 11 August 2017, the Court of Appeals [Decision Ae. No. 185/2017] rejected the appeal of the Applicant as ungrounded (hereinafter, the Fourth Decision of the Court of Appeals on Injunctive Relief) and confirmed the Fourth Decision on Injunctive Relief of the Basic Court.
80. The Court of Appeals reasoned that the Applicant was seeking to prejudice the outcome of its main claim by means of injunctive relief. The Court of Appeals considered that the Applicant had failed to substantiate its request for injunctive relief, because there was no evidence that either the Compact Group LL.C. or its shareholders would *"hamper or make it difficult fulfillment of its claim, respectively that they are taking action that would change the existing state of affairs or otherwise would negatively affect the rights."*
81. Furthermore, the Court of Appeals reasoned that *"at this stage of the procedure, there is no final outcome regarding the execution of the claim to the debtor "Compact Group" LL.C., therefore imposing of any injunctive measure against the shareholders would prejudice the main issue and would contradict the Article 80 of the Law on Business Organizations."*
82. Finally, the Court of Appeals considered the other appealing allegations of the Applicant, *"but found that the same were linked with the main issue and not with the reliability of the request for injunctive relief, which is the subject of review at this stage of procedure. Although the [Applicant] during the proceedings in the first instance and in its entire appeal, beyond its competencies, deals with the evaluation of the previous decisions of the Basic Court and of the Court of Appeals, in some instances using expressions which exceed the professional language and challenge the authority of the court, however the appeal allegations refer to the main issue and not to the legal requirements for imposing the injunctive relief. [...]"*

### **Applicant's allegations**

83. The Applicant requests the constitutional review of two Decisions, namely the Fourth Decision on Injunctive Relief of the Basic Court [IV. EK. C. No. 273/2016, of 14 June 2017] and the Fourth Decision on Injunctive Relief of the Court of Appeals [Ae. No. 185/2017, of 11 August 2017].
84. The Applicant also requests that the Second Decision on Injunctive Relief of the Basic Court [I.C. No. 273/2016, of 29 September 2016] and the Second Decision on Injunctive Relief of the Court of Appeals [Ae. No. 241/2016, of 16 December 2016] be confirmed as final and binding decisions and, as such, *res judicata*.
85. In this regard, the Applicant alleges that the Court of Appeals has violated its rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a Fair Trial) of the ECHR as



well as Article 32 [Right to Legal Remedies] of the Constitution in conjunction with Article 13 (Right to an Effective Remedy) of the ECHR.

86. The Applicant also alleges that the Court of Appeals “*quashed in an unprecedented manner Decision I.C. No. 273/2016 of the Basic Court in Prishtina, Department for Commercial Matters, dated 29 September 2016 [Second Decision on Injunctive Relief of the Basic Court], which with respect to, inter alia, the right of the Applicant to submit a claim before the Basic Court [...] has been confirmed by Decision Ae. No. 241/2016 of the Court of Appeals, Department for Commercial Matters, dated 16 December 2016 and – as such – represents a final court decision.*”
87. With respect to the admissibility of the Referral, the Applicant states that its Referral fulfils all of the admissibility criteria and that the Court should accept this case for review on the merits pursuant to the criteria established by the Judgment of the European Court of Human Rights [hereinafter, the ECtHR] in the case of *Micallef v. Malta* (Application no. 17056/06). The Applicant argues that the Challenged Decisions affect its civil rights and, considering that that is so, the safeguards of Article 6 of the ECHR and Article 31 of the Constitution apply to this case.
88. More specifically with respect to the merits of the Referral, the Applicant claims a violation of its rights to:
  - i) legal certainty and respect for a final court decision;
  - ii) be heard and to a reasoned court decision;
  - iii) access to court;
  - iv) impartial court; and
  - v) a legal remedy.

***i) The right to legal certainty and respect for a final court decision***

89. The Applicant claims that the Court of Appeals has overturned a final court decision on its own motion.
90. In this respect, the Applicant argues that the Second Decision on Injunctive Relief of the Basic Court was approved by the Second Decision on Injunctive Relief of the Court of Appeals.
91. By the Second Decision on Injunctive Relief, the Court of Appeals recognized the exclusive competence and subject-matter jurisdiction of the Basic Court in Prishtina – Department for Commercial Matters to review the claim and decide upon it.
92. Furthermore, the Applicant alleges that the Second Decision on Injunctive Relief of the Court of Appeals confirmed the following actions:
  - i) to block/freeze the bank accounts of the Compact Group LL.C.;
  - iii) to prohibit the alienation, concealment, charge with - and/or disposal of immovable and movable property of the Compact Group LL.C. and its shareholders;



iv) to prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C.;

93. The Applicant argues that the afore-mentioned issues were decided by the Second Decision on Injunctive Relief which, following the confirmation of these specific points by the Second Decision of the Court of Appeals on Injunctive Relief, had obtained *“the title of a final court decision.”*
94. In relation to this, the Applicant states that *“the overturning of a final court decision in this case occurred despite the fact that the respondents [Compact Group LL.C.] in their appeal against the Third Decision on Injunctive Relief did not raise at all the review of the above-mentioned issues that were decided upon by the Second Decision on Injunctive Relief and confirmed by the Second Decision of the Court of Appeals on Injunctive Relief.”*
95. In respect of the right to legal certainty and respect for final court decisions, the Applicant refers to the following cases of the ECtHR: case of *Brumărescu v. Romania* (Application No. 28342/95) arguing that *“a final court decision cannot be reopened and/or reconsidered again;”* cases of *Okyay and others v. Turkey* (Application No. 36220/97), *Agrokompleks v. Ukraine* (Application No. 23465/03) and *Tregubenko v. Ukraine* (Application No. 61333/00) arguing that *“the principle of legal certainty represents one of the most important aspects of the rule of law”* and that the *“prohibition to reopen a final court decision extends upon courts and/or judges.”*

***ii) The right to be heard and right to a reasoned decision***

96. The Applicant claims a violation of the right to be heard and to a reasoned decision based on the fact that *“the Challenged Decisions do not mention – much less address – the key claim of the Applicant that the Second Decision on Injunctive Relief, after being confirmed by the Second Decision of the Court of Appeals on Injunctive Relief, represented a final court decision”* with respect to the points that were decided already.
97. The Applicant argues that this essential point of appeal was clearly stipulated in the appeal that the Applicant submitted as well as is present in the Procès-Verbal of the regular court proceedings. Despite its specific appeal on the violation of the *res judicata* principle by overturning an already final decision, the Applicant claims that the Court of Appeals completely disregarded that argument and did not address it at all in any part of its reasoning.
98. The Applicant further argues that instead of providing reasons to its appeal, the Court of Appeals through its Fourth Decision on Injunctive Relief *“reprimanded the Applicant for raising this claim stating that the Applicant does not have the “competence” to raise claims related to court decisions and stating that such claims attack the “authority of the court”.*
99. In this aspect, the Applicant argues that the *“constitutional right to a decision that is coherently reasoned represents the main procedural guarantee that protects the individuals against the arbitrariness of public authorities, including courts.”* To support the allegation that its right to be heard and its right



to a reasoned decision have been violated, the Applicant refers to the case-law of the ECtHR, namely the cases of *Garcia Ruiz v. Spain* (Application No. 30544/96); *Pronina v. Ukraine* (Application No. 63566/00); *Nechiporuk and Yonkalo v. Ukraine* (Application No. 42310/04); *Mala v. Ukraine* (Application No. 4436/07); *Hirvisaari v. Finland* (Application No. 49684/99); *Hadjianastassiou v. Greece* (Application No. 12945/87) as well as to the case-law of the Constitutional Court, namely cases KI72/12 and KI132/10.

100. Based on this case-law the Applicant argues, *inter alia*, that “the principle of justice enshrined in Article 6, paragraph 1, of the ECHR, is also affected if the domestic courts ignore a specific and important point made by a party to the case”; that the courts are called upon to give detailed and convincing reasons “for their refusal to take evidence proposed by an applicant”; that another function of the right to a reasoned decision is to demonstrate to the parties that they have been heard; and that the courts “must give such reasons as to enable the parties to make effective use of any existing right of appeal.”

### **iii) The right of access to court**

101. The Applicant claims that, according to the case-law of the ECtHR as established in the case *Le Compte, Van Leuven and De Meyere v. Belgium* (Applications Nos. 6878/75 and 7238/75), the right to access to court implies also the right to submit a claim to a competent court as well as receive a decision on the merits regarding a claim.
102. In connection with this, the Applicant claims that through the Challenged Decisions its right to receive a court decision on the merits of the claim has been effectively denied by declaring the Applicant’s request for injunctive relief as premature and thus asking the Applicant to “pursue unidentified administrative procedures” before the KBRA.
103. Furthermore on this point, the Applicant claims that the suggestion of the regular courts in the Challenged Decisions that it should file a claim against the decisions of KBRA is incomprehensible considering that such Agency does not have the legal authority to issue a decision for the voluntary dissolution of the Compact Group LL.C..
104. Lastly on this point, the Applicant argues that “the denial of the right of access to court by the Challenged Decisions not only lacks legal support but – what is worse – it is in full contradiction with a final court decision which rejected as unfounded the claims/allegations of the opposing party [Compact Group LL.C. LL.C.] on the lack of exclusive subject-matter jurisdiction of the Basic Court in Prishtina [...]”

### **iv) The right to an impartial court**

105. In relation to the right to an impartial court, the Applicant raises two claims.
106. Firstly, the Applicant claims that the Basic Court did not have the necessary procedural guarantees for preserving its impartiality due to Court of Appeals’ pressure to decide the matter, in substance, as the Court of Appeals thought it



was fit and right. The Applicant considers that it was “*precisely for this reason*” that the Basic Court “*surrendered itself to the afore-mentioned pressure and issued the Fourth Decision on Injunctive Relief, which was identical with the Third Decision of the Court of Appeals on Injunctive Relief and which – under the optical illusion of two-tier judicial review – was confirmed by the Fourth Decision of the Court of Appeals on Injunctive Relief.*”

107. To support this argument the Applicant argues that the Court of Appeals, with its Third Decision on Injunctive Relief, provided specific decision-making instructions to the Basic Court which led to it effectively exercising the function of the Basic Court. Further on this point, the Applicant argues that “*while the Court of Appeals has hierarchical supremacy over the lower courts and on this basis it could amend the decisions of the lower courts – the Court of Appeals of Kosovo does not have the right to compel the lower courts to decide on the assessment of facts and/or application of material law pursuant to the convictions of the Court of Appeals of Kosovo.*”
108. The second claim of the Applicant has to do with the alleged reprimanding language that the Court of Appeals used to describe the Applicant’s specific appeal point that a final court decision had been overturned by the Court of Appeals.
109. The Applicant claims that the Fourth Decision on Injunctive Relief of the Court of Appeals expressed “*clear indignation*” towards the Applicant only because the Applicant “*revealed the unprecedented violation*” of the Third Decision of the Court of Appeals on Injunctive Relief “*by which a final court decision was overturned.*”
110. The Applicant argues that according to the case-law of the ECtHR, namely *Kyprianou v. Cyprus* (Application No. 73797/02) the ECtHR “*found that courts violate the impartiality principle every time the court decisions express personal feelings towards the actions undertaken by the parties to the case*” because reflecting feelings of indignation goes contrary to the neutral and impartial nature that a court decision should be characterized with.

#### ***v) The right to a legal remedy***

111. The Applicant claims a violation of its right to an effective legal remedy considering that the absence of reasoning on the Fourth Decision on Injunctive Relief of the Basic Court prevented the Applicant from effectively exercising its right to a legal remedy.

#### **Applicant’s request to the Court**

112. In the end, the Applicant requests from the Court the following:

“*I. To declare the application for the review of constitutionality of Decision IV. EK. C No. 273/2016 of the Basic Court in Prishtina, Department for Commercial Matters, dated 14 June 2017 and Decision Ae. No. 185/2017 of the Court of Appeals of Kosovo, Department for Commercial Matters, dated 11 August 2017, as admissible.*



II. To find that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo, in conjunction with Article 6, paragraph 1, (Right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 32 [Right to Legal Remedies] of the Constitution of the Republic of Kosovo.

III. To declare as null and void Decision IV. EK. C No. 273/2016 of the Basic Court in Prishtina - Department for Commercial Matters, dated 14 June 2017, and Decision Ae. No. 185/2017 of the Court of Appeals of Kosovo - Department for Commercial Matters, dated 11 August 2017, and to remand the case for reconsideration before the Basic Court in Prishtina - Department for Commercial Matters, in accordance with this Judgment.

IV. To affirm/confirm, as a final court decision, Decision I. C Nr. 273/2016 of the Basic Court in Prishtina, Department for Commercial Matters, dated 29 September 2016, for issues/ points that have been confirmed by Decision Ae. No. 241/2016 of the Court of Appeals of Kosovo, dated 16 December 2016. [...]"

### Comments submitted by the Compact Group LL.C.

113. The interested party, namely the Compact Group LL.C. recommends to the Court to declare the Referral inadmissible because: i) the arguments presented by the Applicant have to do with the field of legality and the same do not fall under the jurisdiction of the Constitutional Court; and ii) the Challenged Decisions do not constitute a final decision with respect to the merits of the case.
114. With respect to the applicability of the guarantees of Article 31 of the Constitution and Article 6 of the ECHR to the present Referral, the Compact Group LL.C. states that such applicability is "indisputable" as confirmed by the Applicant's reference to the ECtHR case-law of *Micallef v. Malta* (Application no. 17056/06). However, the Compact Group LL.C. considers that the content of the above-mentioned case-law is not as it was presented by the Applicant. More specifically, the Compact Group LL.C. argues that the *Micallef v. Malta* case "enforces the principle that a party may address to the Constitutional Court in case of denial of its right to request injunctive relief with the purpose of securing the claim but does not provide the opportunity to submit the case to the Constitutional Court just because the court [regular courts] decides not in favour of the party who has proposed an injunctive relief."
115. The Compact Group LL.C. considers that the Applicant's arguments that: "[...] the Court of Appeals by the Third Decision on Injunctive Relief reopened a case which had become final and when the Court of Appeals by remanding the Second Decision on Injunctive Relief of the Basic Court [...] had erroneously applied the provisions of the Law on Contested Procedure [...] are legality matters and based on the function and the case-law of the Constitutional Court they are not subject of review of the Constitutional Court [...]."
116. With respect to the Compact Group LL.C. observation that Challenged Decisions do not constitute a final decision with respect to the merits of the case, the Compact Group LL.C. states: "The decisions in question, due to their nature that deals with running of the contested procedure, cannot become final in material



*aspect since the subject of decision does not mean res judicata and due to this reason, the court is not bounded to such decisions. This means that the court may modify such decisions any time when the legal conditions are met and deciding differently does not mean deciding contrary to the principle 'ne bis in idem' because the case which is modified is not an adjudicated matter."*

### **Admissibility of the Referral**

117. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

118. In this respect, the Court first 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."*

119. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution which foresees that: *"Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent possible."*

120. In this regard, the Court notes that the Applicant is entitled to submit a constitutional complaint, invoking fundamental rights which are valid for individuals as well as for legal persons. (See Constitutional Court case No. KI41/09, *AAB-RIINVEST University LL.C.*, Resolution on Inadmissibility of 27 January 2010, para 14).

121. The Court also refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which provide:

#### *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 challenged."*

#### *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. [...]"*

122. Regarding the fulfilment of those criteria, the Court notes that the Applicant has fulfilled the criteria established by Article 113 (7) of the Constitution, as it is an



authorized party, contesting acts of public authorities, namely the Decision of the Court of Appeals [Ae. No. 185/2017, of 11 August 2017] and the Decision of the Basic Court [IV. EK. C. No. 273/2016, of 14 June 2017], and has exhausted all legal remedies provided for by law.

123. The Court further notes that the Applicant has accurately specified the rights, guaranteed by the Constitution and the ECHR that have allegedly been violated, in accordance with Article 48 of the Law, and has supported its allegations with specific reference to the case-law of the Constitutional Court and that of the ECtHR. Also, the Court notes that the Applicant has submitted the Referral within the four (4) month legal deadline foreseen in Article 49 of the Law.
124. In respect of applicability of Article 6 of the Convention and Article 31 of the Constitution to preliminary proceedings – as those deciding on the Applicant's request for injunctive relief, the Court observes that such application has been interpreted by the ECtHR through its case-law. The Court, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the human rights and fundamental freedoms guaranteed by the Constitution in harmony with the ECtHR case-law. Consequently, the Court will determine the applicability of Article 6 of the Convention in conjunction with Article 31 of the Constitution to the facts of the present Referral by relying on the case-law of the ECtHR.

**(i) General principles on the applicability of Article 6 of the ECHR to preliminary proceedings**

125. The Court first notes that Article 6 of the ECHR, in its civil limb, applies to proceedings determining civil rights or obligations. (See ECtHR case: *Ringeisen v. Austria*, appl. no. 2614/65, Judgment of 22 June 1972).
126. The Court further notes that preliminary proceedings, like those concerned with the granting of an interim measure/injunctive relief, are not usually considered to determine civil rights and obligations and therefore do not usually fall within the ambit of such protection. (See ECtHR cases *Wiot v. France*, appl. no. 43722/98, Judgment of 7 January 2003; *APIS a.s. v. Slovakia*, appl. no. 39754/98, Decision of 13 January 2000; *Verlagsgruppe NEWS GMBH v. Austria*, appl. no. 62763/00, Decision of 23 October 2003; *Libert v. Belgium*, appl. no. 44734/98, Decision of 8 July 2004.)
127. Nevertheless, in certain cases, the ECtHR has applied Article 6 of the ECHR to such preliminary proceedings when it considered that the injunctive relief measures were decisive for the civil rights of the Applicant. (See, *inter alia*, ECtHR cases *Aerts v. Belgium*, appl. no. 25357/94, Judgment of 30 July 1998; and *Boca v. Belgium*, appl. no. 50615/99, Judgment of 15 November 2012).
128. In 2009, however, the ECtHR purposefully altered its previous approach towards preliminary proceedings by making the following statement when answering the question as to whether there is a need for a development of the case-law:



*“79. The exclusion of interim measures from the ambit of Article 6 has so far been justified by the fact that they do not in principle determine civil rights and obligations. However, in circumstances where many Contracting States face considerable backlogs in their overburdened justice systems leading to excessively long proceedings, a judge’s decision on an injunction will often be tantamount to a decision on the merits of the claim for a substantial period of time, even permanently in exceptional cases. It follows that, frequently interim and main proceedings decide the same civil rights or obligations and have the same resulting long-lasting or permanent effects.”* (See ECtHR case: *Micallef v. Malta*, appl. no. 17056/06, Judgment, [GC], 15 October 2009, para 79).

129. Based on this Judgment, the Court notes that not all injunctive relief/interim measures determine civil rights or obligations and the applicability of Article 6 of the ECHR to preliminary proceedings depends on whether certain conditions are fulfilled.
130. Firstly, the right at stake should be “civil”, in both the main trial and in the injunction proceedings, within the autonomous meaning of that notion under Article 6 of the ECHR. (See, *inter alia*, ECtHR cases *Stran Greek Refineries and Stratis Andreadis v. Greece*, appl. no. 13427/87, Judgment of 9 December 1994, para 39; *König v. Germany*, appl. no. 6232/73, Judgment of 28 June 1978, paras 89-90; *Ferrazzini v. Italy*, appl. no. 44759/98, Judgment of 15 July 1999, paras 24-31; *Roche v. the United Kingdom*, appl. no. 32555/96, Judgment of 9 December 1994, para 119; and *Micallef v. Malta*, appl. no. 17056/06, Judgment, , 15 October 2009, para 84).
131. Secondly, the ECtHR points out that the nature of the interim measure/injunctive relief must be scrutinized considering that whenever such measure can be considered to effectively determine the civil right or obligation at stake – Article 6 will be applicable. (See ECtHR case *Micallef v. Malta*, *Ibidem*, para 85).

**(ii) The application of the above referred principles to the present case**

132. The Court notes that the substance of the right at stake, in the main proceedings, concerns the annulment of the Decision on Voluntary Dissolution, which is a right that has a civil law character according to the applicable legislation in the Republic of Kosovo.
133. The purpose of the injunctive relief was to secure the main claim of the Applicant, which the latter considered indispensable for the enforcement of the final Arbitration Award. As such, the Court notes that the execution of the final Arbitration Award is directly dependent on the results of the request for injunctive relief in the current contested proceedings.
134. It follows that the injunctive relief proceedings in the present case fulfils the criteria for Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, to be applicable, and no convincing reasons have been established by the Compact Group LL.C. to limit the scope of such application in any respect.



135. Therefore, the Court concludes that, in light of the facts of the present Referral, the injunctive relief sought by the Applicant can be considered to effectively determine its civil rights and in that respect the guarantees contained in Article 31 of the Constitution, in conjunction with Article 6 of the ECHR, apply to these preliminary proceedings.
136. After having examined the Applicant's complaints and observations, as well as the observations submitted by the Compact Group LL.C. as an interested party to these proceedings, the Court considers that the Referral raises serious questions of fact and law which are of such complexity that their determination should depend on an examination of the merits. The Referral cannot, therefore, be regarded as being manifestly ill-founded within the meaning of Rule 36 (1) (d) of the Rules of Procedures, and no other ground for declaring it inadmissible has been established. (See ECtHR case *A and B v. Norway*, [GC], applications nos. 24130/11 and 29758/11, Judgment of 15 November 2016, para 55; see also, *mutatis mutandis*, Constitutional Court case No. KI132/15, *Visoki Dečani Monastery*, Judgment of the Constitutional Court of 20 May 2016).
137. In sum, the Court determines that the Referral is admissible.

### **Merits of the Referral**

138. Before entering the merits of the Referral, the Court notes that the following matters are not disputed before this Court:
- a) The Applicant had a valid contract with the Compact Group LL.C., which stipulated that disputes would be handled by the Court of Arbitration in the Czech Republic;
  - b) The Applicant brought a dispute with the Compact Group LL.C. to the Arbitration Court and received an Arbitration Award of EUR 1,364,527.00 plus default interest;
  - c) This Arbitration Award is final and binding;
  - d) This Arbitration Award was recognized as executable in Kosovo by the regular courts in Kosovo, both in first instance and on appeal;
  - e) A valid Enforcement Order was issued by a Private Enforcement Agent;
  - f) This Enforcement Order was confirmed by the regular courts, both in first instance and on appeal, and became final and binding;
  - g) The Shareholders of the Compact Group LL.C. made a Decision on Voluntary Dissolution of the Compact Group LL.C.;
  - h) The Applicant initiated Contested Proceedings against this Decision on Voluntary Dissolution;
  - i) The Applicant requested Injunctive Relief pending the outcome of the Contested Proceedings.
139. The Court notes that what is at stake for the Applicant is the availability of sufficient funds and assets for the Arbitration Award to be executed.
140. Having emphasized these points, the Court recalls that the Applicant alleges a violation of its rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a Fair Trial) of the

ECHR; and Article 32 [Right to Legal Remedies] of the Constitution, in conjunction with Article 13 (Right to an Effective Remedy) of the ECHR.

141. In this aspect, the Applicant primarily maintains that the principle of legal certainty and respect for a final court decision have been violated by the Court of Appeals by not respecting the finality of the previous decisions of the Basic Court and Court of Appeals.
142. In addition, the Applicant maintains that its right to a reasoned decision has been violated by the Court of Appeals considering that the Applicant's essential argument, that a *res judicata* decision has been overturned, has been entirely disregarded by the Court of Appeals.
143. The Applicant also alleges a violation of its right of access to court; right to an impartial court; and the right to a legal remedy.
144. In the present case, the Court will examine the merits of the Referral, pursuant to Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 (Right to a fair trial) of the ECHR.
145. The Court recalls Article 31 [Right to Fair and Impartial Trial] of the Constitution, which provides:

*"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."*

146. In addition, paragraph 1 of Article 6 (Right to a fair trial) of the ECHR provides:

*"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]"*

147. The Court reiterates that the right to legal certainty and respect for a final court decision, as well as the right to a reasoned decision, are guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the ECHR, and that its application has been interpreted, in great detail, by the ECtHR's case-law. This Court, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret human rights and fundamental freedoms guaranteed by the Constitution consistent with the decisions of the ECtHR. Consequently, the Court will assess the merits of the Referral by relying on the ECtHR case-law.
148. In this aspect, the Court observes that there is one crucial question to be answered by this Court, namely, whether the Court of Appeals has violated the



Applicant's right to a fair and impartial trial in respect of legal certainty and respect for a final court decision by quashing a final and binding decision which had become *res judicata* in respect of some specific points.

**(i) General principles on the right to legal certainty and respect for a final court decision as developed by the ECtHR case-law**

149. The Court recalls that the right to a fair trial requires that a matter which has become *res judicata* is to be considered irreversible, in accordance with the principle of legal certainty. (See ECtHR case *Brumărescu v. Romania*, appl. no. 28342/95, Judgment of 28 October 1999).

150. The Court recalls that the ECtHR has provided a definition of the concept of *res judicata* (see ECtHR case *Nikitin v. Russia*, appl.no. 50178/99, Judgment of 15 December 2004, § 37), as follows:

*“37. According to the explanatory report to Protocol No. 7, which itself refers back to the European Convention on the International Validity of Criminal Judgments, a “decision is final ‘if, according to the traditional expression, it has acquired the force of res judicata. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them”.*

151. The ECtHR has accentuated that the principle of legal certainty presupposes respect for the principle of *res judicata* (see ECtHR case *Ponomaryov v. Ukraine*, appl. no. 3236/03, Judgment of 3 April 2008, § 40). More specifically, the ECtHR maintained that:

*“[...] the right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, in its relevant part, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which presupposes respect for the principle of res judicata that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. [...] A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character.”*

152. The ECtHR has elaborated on the principle of legal certainty in relation to the right to a fair trial in other instances as well. (See, for example, ECtHR case *Ryabykh v. Russia*, appl. no. 52854/99, Judgment of 24 July 2003, § 52 and 56).

153. In this particular Judgment, the ECtHR emphasized the following:

*“52. Legal certainty presupposes respect for the principle of res judicata (ibid., § 62), that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and*



binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character. [...]

56. The Court considers that the right of a litigant to a court would be equally illusory if a Contracting State's legal system allowed a judicial decision which had become final and binding to be quashed by a higher court on an application made by a State official."

154. Furthermore, the Court recalls that the ECtHR has determined that, aside from final judgments on the merits, also interim decisions can become *res judicata*. In the case of *Okçay and Others v Turkey* (Judgment of 12 July 2005, appl. no. 36220/97, §§ 72-75), the ECtHR stated that,

"72. The Court reiterates that the execution of a judgment given by a court is to be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, Reports 1997-II, pp. 511-12, § 40). The right of access to a court guaranteed under that Article would be rendered illusory if a Contracting State's legal system allowed a final binding judicial decision or an interlocutory order made pending the outcome of a final decision to remain inoperative to the detriment of one party. [...].

73. The Court notes that the administrative authorities failed to comply with the Aydın Administrative Court's interlocutory order of 20 June 1996 suspending the activities of the three thermal power plants (see paragraph 17 above). Furthermore, the decisions of the Supreme Administrative Court upholding the Aydın Administrative Court's judgments of 30 December 1996 were not enforced within the prescribed time-limits. On the contrary, by a decision of 3 September 1996, the Council of Ministers decided that the three thermal power plants should continue to operate despite the administrative courts' judgments. This latter decision had no legal basis and was obviously unlawful under domestic law (see paragraph 57 above). It was tantamount to circumventing the judicial decisions. In the Court's opinion, such a situation adversely affects the principle of a law-based State, founded on the rule of law and the principle of legal certainty (see *Taşkın and Others*, cited above, § 136).

74. In the light of the foregoing, the Court considers that the national authorities failed to comply in practice and within a reasonable time with the judgments rendered by the Aydın Administrative Court on 30 December 1996 and subsequently upheld by the Supreme Administrative Court on 3 and 6 June 1998, thus depriving Article 6 § 1 of any useful effect.  
75. There has therefore been a violation of Article 6 § 1 of the Convention."

155. The Constitutional Court, based on the case-law of the ECtHR, has also elaborated on the issue of *res judicata*. In its Judgment of 17 December 2010 in



Case No. KI 08/09, *Independent Union of Workers of IMK Steel Factory Ferizaj*, the Court stated in paragraphs 61 and 62:

*“61. In this connection, the Court stresses that the right to institute proceedings before a court in civil matters, as secured by Article 31 of the Kosovo Constitution and Article 6, in conjunction with Article 13 of the European Convention of Human Rights (ECHR), would be illusory, if the Kosovo legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that these Articles prescribe in detail procedural guarantees afforded to litigants - proceedings that are fair, public and expeditious - without protecting the implementation of judicial decisions. To construe the above Articles, as being concerned exclusively with access to a court and the conduct and efficiency of proceedings, would be likely to lead to situations incompatible with the principle of the rule of law which the Kosovo authorities are obliged to respect (see, mutatis mutandis, ECtHR Judgment in Romashov v. Ukraine, Application No. 67534/01, Judgment of 25 July 2004).*

*62. The rule of law is one of the fundamental principles of a democratic society and presupposes respect for the principle of legal certainty, particularly as regards judicial decisions that have become res judicata. No party is entitled to seek for a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case (see, mutatis mutandis, Sovtransavto Holding v. Ukraine, no. 48553/99, § 72, ECHR 2002-VII). Were that not the case, the reversal of final decisions would result in a general climate of legal uncertainty, reducing public confidence in the judicial system and consequently in the rule of law. [...].”*

156. Furthermore, in its Judgment of 12 February 2016 in Case No. KI 132/15, *Visoki Dečani Monastery*, the Court stated in paragraphs 95-97:

*“95. In these circumstances, the Court considers that the Applicant had a legitimate expectation that its case had been decided in final instance by the Ownership Panel and that it could not be re-opened before the Appellate Panel. As such, the Applicant should have been able to benefit from the Judgments of the Ownership Panel and to see them executed.*

*96. Based on these considerations and its previous case law, as well as that of the ECtHR, the Court concludes that the Judgments of the Ownership Panel of 27 December 2012 (No. SCC08-0226 and No. SCC08-0227) had become res judicata on the basis of the earlier final and binding decision of the Appellate Panel of 24 July 2010 regarding the authorized parties.*

*97. By using the appeal procedure to overturn these Judgments of the Ownership Panel and to refer the original property dispute back to the regular courts, the Court finds that by its Decisions of 12 July 2015 (Nos. AC-I-13-0008 and AC-I-13-0009) the Appellate Panel infringed the principle of legal certainty and denied the Applicant a fair and impartial hearing on its rights and obligations within the meaning of Article 31,*



*paragraph 2, of the Constitution and of Article 6, paragraph 1, of the ECHR.”*

157. In this regard, the Court observes that its own case-law, as well as the case-law of the ECtHR referred to above, clearly and explicitly state that the right to a fair trial under Article 6 of the ECHR and Article 31 of the Constitution includes the principle of legal certainty, which encompasses the principle that final judicial decisions which have become *res judicata* must be respected and cannot be re-opened or become subject to appeals.
158. Furthermore, the Court observes that the principle of *res judicata* not only applies to final judicial decisions, but also to interim decisions pending the outcome of a definite decision.

***(ii) Application of the above referred principles to the present case***

159. In this Referral the central question is whether or not the Court of Appeals had overturned one of its own previous decisions on the same matter.
160. In this respect, the Court recalls that the Basic Court, with its Second Decision on Injunctive Relief [I.C. No. 273/2016, of 29 September 2016] approved the Applicant’s request for injunctive relief on the following points:
  - i) block/freeze the bank accounts of the Compact Group LL.C.;
  - ii) block/freeze the bank accounts of the shareholders of the Compact Group LL.C.;
  - iii) prohibit the alienation, concealment, charge with - and/or disposal of- immovable and movable property of the Compact Group LL.C. and its shareholders; and
  - iv) prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C..
161. The Court then recalls that the Court of Appeals, with its Second Decision on Injunctive Relief [Ae. No. 241/2016, of 16 December 2016], returned the matter for retrial only pertaining to the item (ii) on blocking/freezing the bank accounts of the shareholders of the Compact Group LL.C.. With regard to this point, the Court of Appeals instructed the Basic Court to explain how and why the shareholders of a Limited Liability Company were nevertheless personally liable in this particular case. The Court of Appeals rejected the appeal of the Compact Group LL.C. on all other points.
162. Consequently, the Court notes that the Court of Appeals thus upheld the three other points contained in the Second Decision on Injunctive Relief [Ae. No. 241/2016, of 16 December 2016] of the Basic Court, namely:
  - i) to block/freeze the bank accounts of the Compact Group LL.C.;
  - iii) to prohibit the alienation, concealment, charge with- and/or disposal of- immovable and movable property of the Compact Group LL.C. and its shareholders; and
  - iv) to prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C..



163. The Court also recalls the reasoning provided by the Court of Appeals in its Second Decision, which reads:

*“The Court of Appeals approves the legal assessment of the first instance court as regular and lawful due to the reason that the challenged Decision [I.C. No. 273/2016 of 29 September 2016 i.e. the Second Decision on Injunctive Relief of the Basic Court] is not rendered with substantial violations of the provisions of the contested procedure [...] and also the substantive law has been correctly applied, the appealed allegations are reviewed by the Court of the second instance pursuant to the official duty and based on Article 194 of the LCP, except in item I, paragraph 2.  
[...]*

*Therefore, the Court of Appeals considers that the conditions defined under Article 297.1, under item a) and b) of the LCP, for imposing the injunctive relief have been met because in the present case, the [Applicant] made reliable the existence of the request or its subjective right and it exists the risk that if such measure is not imposed, it would cause considerable damage to the [Applicant], which could be hardly repaired.*

*The challenged Decision should have been quashed [the Item] of the enacting clause which obliged the Commercial Banks in Kosovo to freeze the bank accounts of the objector of the injunctive relief, “Compact Group” LL.C. and its shareholders S.SH, F.SH and F.SH, up to the amount of EUR 1.364.527.00 because this paragraph is incomprehensible and cannot be executed because no reasons have been provided why the shareholders shall respond regarding the debts or obligations of the company only due to the reason that they are the shareholders. [...]”*

164. In other words, the Court of Appeals determined that the Basic Court had correctly applied the relevant law, that the Applicant’s main claim was not inadmissible, and that the imposition of injunctive relief was justified by the potential damage which would be caused to the Applicant.
165. Furthermore, the Court notes that the Court of Appeals only remanded for retrial only one point, namely item (ii) blocking/freezing of the bank accounts of the shareholders of the Compact Group LL.C..
166. In these circumstances, the Court considers that the Applicant had a legitimate expectation that its case, with respect to the specific measures of injunctive relief upheld by the Court of Appeals as being in compliance with the law, had been decided in final instance by the Court of Appeals and that it could not be re-opened by the Court of Appeals itself. As such, the Applicant should have been able to benefit from those decisions and see them executed.
167. Furthermore, the Court notes that in its Third Decision on Injunctive Relief the Court of Appeals decided that the Basic Court in its Third Decision on Injunctive Relief had committed substantial violations of the provisions of the contested procedure and rejected the case in its entirety, despite having explicitly stated in its Second Decision on Injunctive Relief that “[...] the legal assessment of the first instance court as regular and lawful [and] is not rendered with substantial violations of the provisions of the contested procedure [...] and also the substantive law has been correctly applied.”



168. The Court also notes that in its submissions to the Court of Appeals in both the Third and Fourth appeals on Injunctive Relief the Applicant explicitly raised the issue of the finality of the points upheld by the Court of Appeals in its Second Decision on Injunctive Relief, namely that the Basic Court in its Second Decision on Injunctive Relief had decided on the Applicant's request for injunctive relief in full accordance with the law, and that the following measures must be applied:
- i) to block/freeze the bank accounts of the Compact Group LL.C.;
  - iii) to prohibit the alienation, concealment, charge with - and/or disposal of immovable and movable property of the Compact Group LL.C. and its shareholders;
  - iv) to prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C..
169. The Court notes that, in both its Third and Fourth decisions on Injunctive Relief, the Court of Appeals did not address the Applicant's arguments regarding the finality of the Court of Appeals' Second Decision on Injunctive Relief. Instead of addressing the Applicant's arguments, the Court of Appeals' rendered its Third and Fourth decisions on Injunctive Relief on the basis of entirely new arguments that bore no relationship to either the Applicant's arguments, or those of the Compact Group LL.C..
170. Indeed, the Compact Group LL.C. did not contest the finality of the measures upheld by the Court of Appeals in its Second Decision on Injunctive Relief, but merely contested the issue of the liability and responsibility of the shareholders of the Compact Group LL.C.. It was precisely the issue of the liability of the shareholders which was the only point remanded by the Court of Appeals in its Second Decision on Injunctive Relief.
171. Based on these considerations and its previous case law, as well as that of the ECtHR, the Court concludes that the Second Decision on Injunctive Relief [I.C. No. 273/2016, of 29 September 2016] of the Basic Court and the Second Decision on Injunctive Relief [Ae. No. 241/2016, of 16 December 2016] of the Court of Appeals had become *res judicata* on the points that were confirmed and approved by the Court of Appeals itself.
172. By using the appeal procedure to overturn these Decisions on its own motion, without being asked by the Compact Group LL.C., the Court of Appeals infringed the principle of legal certainty and denied the Applicant a fair and impartial hearing on its rights and obligations within the meaning of Article 31, paragraph 2, of the Constitution and of Article 6, paragraph 1, of the ECHR.
173. The Court concludes that there has been a violation of the Applicant's right to a fair and impartial hearing as protected by Article 31, paragraph 2, of the Constitution in conjunction with Article 6, paragraph 1, of the ECHR.
174. In addition, the Court is concerned that the Applicant is compelled to undertake these additional proceedings against the voluntary dissolution of the respondent company in order to realize the execution of a final and binding judicial decision regarding its Arbitration Award. The execution of final and binding judicial decisions is an integral part of the guarantee of a fair trial as protected by Article



31 of the Constitution and Article 6.1 of the ECHR, as has been repeated by this Court in its case law (see also, *inter alia*, ECtHR case: *Hornsby v Greece*, appl. no. 18357/91, Judgment of 19 March 1997). The economic development of Kosovo is dependent upon the effective protection of the rule of law and the enforcement of judicial decisions, such as in the case of the Applicant as presented here.

## Conclusions

175. In conclusion, the Court finds that by not respecting the principle of legal certainty and respect for a final court decision, in addition to not addressing the Applicant's allegation regarding *res judicata* matters, the Court of Appeals has violated the Applicant's right to a fair and impartial trial as guaranteed by Article 31 of the Constitution in conjunction with Article 6, paragraph 1, of the ECHR. As a result of these violations, the Applicant has been deprived of the benefit of a final and binding court decision.
176. Regarding the proceedings as a whole, the Court is concerned that the Applicant is compelled to undertake these additional proceedings against the voluntary dissolution of the respondent company in order to realize the execution of a final and binding judicial decision regarding its Arbitration Award.
177. In accordance with Rule 74 (1) of the Rules, the following Decisions are declared invalid:
  - i) Decision of the Court of Appeals Ae. No. 185/2017, of 11 August 2017;
  - ii) Decision of the Basic Court IV. EK. C. No. 273/2016, of 14 June 2017.
178. In accordance with Rule 74 (1) of the Rules, the Decision of the Court of Appeals Ae. No. 241/2016, of 16 December 2016, is declared final and binding in respect of the following points, which are to be executed:
  - i) to block/freeze the bank accounts of the Compact Group LL.C.;
  - iii) to prohibit the alienation, concealment, charge with - and/or disposal of-immovable and movable property of the Compact Group LL.C. and its shareholders;
  - iv) to prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C..

## FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law and Rule 56 (1) of the Rules of Procedure, in the session held on 18 April 2018, by majority


## DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been violation of Article 31 of the Constitution of the Republic of Kosovo in conjunction with Article 6 of the European Convention on Human Rights;
- III. TO HOLD that it is not necessary to examine whether there has been a violation of Article 32 of the Constitution of the Republic of Kosovo in conjunction with Article 13 of the European Convention on Human Rights;
- IV. TO HOLD that the following Decisions are invalid, and therefore null and void:
  - a. Decision of the Court of Appeals Ae. No. 185/2017, of 11 August 2017;
  - b. Decision of the Basic Court IV. EK. C. No. 273/2016, of 14 June 2017;
- V. TO HOLD that the Decision of the Court of Appeals Ae. No. 241/2016, of 16 December 2016, is final and binding and, as such, is *res judicata*, in respect of the following points, which are to be executed:
  - a. to block/freeze the bank accounts of the Compact Group LL.C.;
  - b. to prohibit the alienation, concealment, charge with - and/or disposal of- immovable and movable property of the Compact Group LL.C. and its shareholders;
  - c. to prohibit any legal statutory changes made by the shareholders of the Compact Group LL.C.;
- VI. TO ORDER the Court of Appeals to inform the Constitutional Court as soon as possible, but not later than within six (6) months, regarding the measures taken to implement the Judgment of this Court, in accordance with Rule 63 of the Rules of Procedure;




- VII. TO REMAIN seized of the matter pending compliance with that order;
- VIII. TO NOTIFY this Decision to the Parties;
- IX. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- X. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

  
Snezhana Botusharova



**President of the Constitutional Court**

  
Arta Rama-Hajrizi



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

GJYKATA KUSHTETUESE

УСТАВНИ СУД

CONSTITUTIONAL COURT

Prishtina, on 28 May 2018

Nr. ref.: UK 1236/18

In accordance with Article 112 [General Principles] of the Constitution of the Republic of Kosovo, Article 11.1.4 of the Law on Constitutional Court of the Republic of Kosovo and Rule 61 [Correction of Judgments and Decisions] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo, the Constitutional Court of the Republic of Kosovo (hereinafter, the Court), issues the following Rectification Order for the purpose of rectifying a clerical error in the published Judgment in case KI122/17 of 18 April 2018.

## **RECTIFICATION ORDER**

### **of a clerical error in the Judgment in case KI122/17 of 18 April 2018**

1. On 18 April 2018, the Court by majority declared the Referral admissible, and decided by majority to hold that there has been a violation.
2. On 02 May 2018, the Judgment KI122/17 was served on the interested party, the Compact Group LL.C., through postal services.
3. On 08 May 2018, the interested party, Compact Group LL.C., represented by "Sejdiu & Qerkini" based in Prishtina, submitted a request for rectification of a clerical error in Judgment KI 122/17 of 18 April 2018.
4. The interested party submitted its request for rectification of a clerical error within two weeks of the service of the Judgment KI122 as foreseen by Rule 61 (1) of the Rules of Procedure.
5. The interested party alleged that the Operative Part of the Court's Judgment contained a clerical error in item V. under (b). Specifically, the interested party claimed that there was a discrepancy between the Judgment of the Constitutional Court and the Enacting Clause of the Decision of the Basic Court in Prishtina - Department for Economic Matters (I.C. No. 273/2016, of 29 September 2016), as



upheld by the Court of Appeals (Ae. No. 241/2016, of 16 December 2016) which the Constitutional Court declared final and binding.

6. The interested party requested that the Court rectify item b, under paragraph V, of the Operative Part of the Judgment in KI 122/17 so that it becomes identical to the Enacting Clause of the upheld Decision of the Basic Court.
7. The Enacting Clause of the Decision of the Court of Appeals (Ae. No. 241/2016, of 16 December 2016), states:

*"I. Decision I.C. No. 273/2016, of the Basic Court in Prishtina - Department for Economic Matters, of 29 September 2016, is QUASHED by the partial approval of the appeal in item I, paragraph 2, of the enacting clause, and the case is returned to the Court of the first instance for re-trial and re-consideration regarding this item.*

*II. The appeal of the objector of the proposal of the injunctive relief regarding the other part of the enacting clause is REJECTED while item I, paragraph 1, 3 and 4 of the enacting clause of Decision I.C. No. 273/2016, of the Basic Court in Prishtina - Department for Economic Matters, of 29 September 2016, is UPHELD.*

*III. The other part of the challenged Decision remains unexamined."*

8. The Enacting Clause of the Decision of the Basic Court in Prishtina – Department for Economic Matters (I.C. No. 273/2016, of 29 September 2016), as referred to by the Enacting Clause of the Court of Appeals given above, states:

*"I. The proposal of the proposer of injunctive relief Česka Exportni Banka A.S., with business registration number 63078333, headquartered in Prague, Vodičkova 34/701, Czech Republic, is partly approved regarding the objectors of the injunctive relief: "Compact Group" LL.C. and its shareholders S. Sh., F.Sh. and F. Sh., and it is decided as following:*

*- Commercial Banks in Kosovo: Pro Credit Bank; Raiffeisen Bank: Economic Bank; TEB Bank; National Trade Bank; NLB Prishtina and Bank for Business are obliged to block the bank accounts of the objector of the injunctive relief "Compact Group" LL.C., and its shareholders S. Sh., F. Sh. and F. Sh., up to the amount of EUR 1.364.527.00;*

*- The objector of the injunctive relief "Compact Group" LL.C., its managing bodies and its owners, are prohibited from alienation, hiding, charging and possession with the properties of the Trade Company "Compact Group" LL.C.; and*

*- All the actions that may result in changing the status of the objector of the injunctive relief "Compact Group" LL.C. are prohibited.*

*II. The proposal for imposing the injunctive relief, whereby it was requested to declare null and void the procedure of voluntary dissolution of the Trade Company "Compact Group" LL.C.; to annul the decisions, actions and other legal works of "Compact Group" LL.C. and its shareholders, especially the legal works that refer to alienation, sale, transfer, charge and giving in use of its property; and to freeze the bank accounts of the Trade Company "Adea Group" L. L. C., the prohibition of the alienation of its property and the prohibition of its status change, is rejected.*

*III. It is confirmed that pursuant to the Decision of this Court of 20 September 2016, the proposer of the injunctive relief, on 29 September 2016, deposited in the bank account of this Court the amount of EUR 50.000.00, which can serve as a cover for the eventual damage that may be caused to the objectors of the injunctive relief due to the approval and application of injunctive relief measures, imposed by this Decision.*

*IV. A copy of this Decision shall be sent to: the KBRA and the Notary Chamber of the Republic of Kosovo.*

*V. This Decision on imposing injunctive relief measures is upheld until the next Court Decision which will modify or withdraw these measures."*

9. Accordingly, the Court determines that there has been a clerical error in the Court's Judgment in case KI 122/17 of 18 April 2018, and issues the following:

### **ORDER**

- I. The Operative Part of Judgment KI 122/17 of 18 April 2018 is amended such that in item V. shall read:

V. TO HOLD that the Decision of the Court of Appeals Ae. No. 241/2016, of 16 December 2016, is final and binding and, as such, is *res judicata*, in respect of the following points, which are to be executed:

- a. Commercial Banks in Kosovo: Pro Credit Bank; Raiffeisen Bank; Economic Bank; TEB Bank; National Trade Bank; NLB Prishtina and Bank for Business are obliged to block the bank accounts of the objector of the injunctive relief "Compact Group" LL.C. [...] up to the amount of EUR 1.364.527.00;
- b. The objector of the injunctive relief "Compact Group" LL.C., its managing bodies and its shareholders, are prohibited from alienation, hiding, charging and possession with the properties of the Trade Company "Compact Group" LL.C.; and
- c. All the actions that may result in changing the status of the objector of the injunctive relief "Compact Group" LL.C. are prohibited.

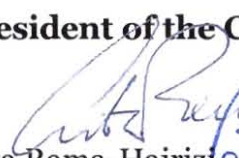
- II. Paragraphs 39, 42, 49, 58, 71, 92, 160, 162, 168, and 178 of Judgment KI 122/17 of 18 April 2018, under the respective items (iii), are



amended such that the phrase “[...] and its shareholders” is replaced by the phrase “[...] by its managing bodies or by its shareholders”;

- III. This Order shall be attached to the original Judgment of the Court, in accordance with Rule 61 (2) of the Rules of Procedure;
- IV. This Order will be communicated to the parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court;
- V. This Order shall enter into force immediately.

**President of the Constitutional Court**

  
Arta Rama-Hajrizi

