



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

Prishtina, on 16 August 2019  
Ref. no.:RK 1412/19

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

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI192/18**

Applicant

**Kosovo Energy Distribution Services KEDS j.s.c.**

**Constitutional review of Decision Ac. No. 3208/18 of the Court of Appeals, of 12 November 2018**

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

composed of:

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

### **Applicant**

1. The Referral was submitted by Kosovo Energy Distribution Services KEDS jsc. (hereinafter: the Applicant), which is represented by Arben Krasniqi, a graduated lawyer.

## **Challenged decision**

2. The Applicant challenges the constitutionality of Decision Ac. No. 3208/18 of the Court of Appeals, of 12 November 2018, which was served on the Applicant on 21 November 2018.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged Decision which allegedly violates the rights of the Applicant guaranteed by Articles 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] in conjunction with paragraph 4 of Article 21 [General Principles] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 14 December 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 20 December 2018, the President of the Court appointed Judge Nexhmi Rexhepi as Judge Rapporteur and the Review Panel, composed of Judges: Selvete Gërxhaliu -Krasniqi (Presiding), Bajram Ljatifi and Radomir Laban.
7. On 27 December 2018, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeals.
8. On 21 March 2019, the Applicant's representative notified the Court, as follows: *"Through this submission, we send you, as a supplementation to the evidence, the case file of the administrative conflict initiated by a lawsuit by KEDS j.s.c., regarding the present case, which are still pending"*.

## **Summary of facts**

### *Administrative procedure*

9. On 20 February 2016, the Applicant made an analysis of its internal reorganization (reform), stating that from 2016 the organizational structure of the various sectors should be changed.
10. On 22 March 2016, the Applicant's Executive Board made a unanimous decision to close the project department and terminate many positions,

including the position of treasurer, within the control and reporting department.

11. On 29 September 2016, the Federation of Independent Trade Unions of Elektro-Kosova, on behalf of 93 employees of the Applicant, filed a complaint with the Labor Inspectorate, because the latter terminated their employment contracts, contrary to the provisions of the Law on Labor No. 03/L-212.
12. On 26 October 2016, the Labor Inspectorate by Decision No. 37-00194/16-A, annulled the decision of the KEDS Executive Board, reasoning that: *"...the decision of the KEDS Executive Board dated 22.09.2016 to terminate the Department for Projects and Operations was in breach of the factual situation, as KEDS management did not carry out an analysis and assessment of the situation as it was obliged by the Board by decision of 22.03.2016, while the report on which the board is based was issued before 22.03.2016, i.e. prior to the planning of the Board of the Company for the closure of departments and job positions considered redundant. Whereas the decisions of the KEDS management issued by General Director Gregor Karagutoff are in breach of the provisions of Article 70, paragraph 1, item 1.1, and 1.3, the provisions of Article 76, paragraph 1.2, and paragraph 3., item 3.2. 1; 3.2.2; 3.2.3; 3.2.4; of Law No. 03/L-212 on Labor"*.
13. On 30 December 2016, the Labor Inspectorate, against the Applicant, issued Decision No. 37/00194/16-A imposing a penalty amounting to a total amount of € 10,100, due to violation of the provisions of the Law on Labor.
14. Against the decision of 26 December 2016, the Applicant appealed in the second instance, namely to the Executive Body of the Labor Inspectorate due to essential violations of the provisions of the Law on Labor, the Law on Administrative Procedure and the Law on the Labor Inspectorate No. 2002/9, as amended by Law No. 03/L-017, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
15. On 2 February 2017, the Executive Body of the Labor Inspectorate, by Decision No. 156/2016, rejected as ungrounded the appeal of KEDS, and upheld the first instance decision no. 37/00194/16-A of the Labor Inspectorate of 26 December 2016.
16. Against the decision of the Executive Body of the Labor Inspectorate, the Applicant initiated an administrative conflict with the Basic Court in Prishtina on the grounds of exceeding the legal powers and the issuance of the decision by an incompetent body, failure to determine the factual situation and incorrect application of the legal provisions.

#### *Enforcement procedure*

17. On 16 February 2017, the Basic Court in Prishtina, by Decision Cp. No. 3086/16, imposed the enforcement order for the execution of the Decision of the Executive Body of the Labor Inspectorate of 2 February 2017, which upheld Decision No. 37/00194/16-A of the Labor Inspectorate of 26 December 2016.

18. On 13 March 2017, the Labor Inspectorate filed a proposal for enforcement of Decision No. 37/00194/16-A of 30 December 2016, by which it proposed that KEDS in the capacity of a debtor pay its liabilities to the Labor Inspectorate, reasoning that: *“According to Decision No. 37-001 94/16-A of 30.12.2016, of the Labor Inspectorate in Kosovo which is final and enforceable, the debtor was obliged on behalf of the punitive measure within 3 days to pay the creditor the amount of € 10,100 (ten thousand one hundred euro)”*.
19. On 2 March 2017, the Applicant filed an objection with the second instance within the Basic Court in Prishtina against Decision Cp. No. 3086/16 of the first instance, of 16 February 2017, due to essential violations of the provisions of the procedural and substantive law.
20. On 15 March 2017, the Enforcement Office, by order P. No. 512/17 allowed the enforcement of Decision No. 37-00194/16-A of the Labor Inspectorate of 30 December 2016, imposing a punitive measure in a total amount of € 10,100.
21. On 22 March 2017, the Applicant filed an objection against Order P. no. 512/17 of the Enforcement Office, of 15 March 2017, because of essential violations of the provisions of procedural and substantive law.
22. On 26 May 2017, the Basic Court in Prishtina, by Decision Cp. No. 3086/16, rejected as ungrounded the objection filed by the Applicant against Decision Cp. No. 3086/16 of the Basic Court in Prishtina of 16 February 2017, for the assignment of the enforcement. The court in question reasoned, *inter alia*: *“The Court, after examining the debtor’s objection of the enforcement and viewing and analyzing all other case files, the allegations in the objection, found that they were inconsistent and not based on law, because no evidence was provided in support of the allegations. as provided for in Article 69 par. 4 of the LEP, therefore, none of the legal requirements for annulment of a court decision on the assignment of enforcement or postponement of the enforcement, as regulated by the provisions of Article 61 paragraph 1 item 1 and Article 71 paragraph 1 item 1 to 12 of the Law on Enforcement Procedure (Law No. 04/L-139) of the Republic of Kosovo”*.
23. On 30 May 2017, the Basic Court in Prishtina, by Decision PPP. No. 336/17, rejected as ungrounded the objection filed by KEDS against Order No. 1512/17 of the Enforcement Office of 15 March 2017. The said court, *inter alia*, reasoned: *“The Court held that the Decision N. No. 37-0194/16-A of 30.12.2016, issued by the Ministry of Labor and Social Welfare-Labor Inspectorate, which is final from 24.02.2017, enforceable from 24.02.2017, according to which the enforcement body has executed the enforcement, it is an enforcement document and constitutes a legal basis for the assignment of the enforcement since it has fulfilled the legal requirements of Articles 24 and 27 of the LEP to be enforceable and at the same time suitable for enforcement”*.
24. On 6 June 2017, the Applicant filed an appeal with the Court of Appeals against Decision Cp. No. 3086/16, of the Basic Court in Prishtina of 26 May 2017, on the grounds of essential violations of the provisions of the procedure,

erroneous and incomplete determination of factual situation, and erroneous application of the substantive law.

25. On 22 November 2017, the Court of Appeals of Kosovo, by Decision Ac. No. 2935/17, approves the appeal filed by KEDS and annuls Decision Cp. No. 3086/16 of 26 May 2017, and remanded the case to the first instance court on the grounds that: *“The Court of Appeals cannot uphold the assessment of the first instance court as regular and lawful because the challenged decision contains essential violation of the provisions of contested procedure under Article 182 of the LCP, erroneous and incomplete determination of factual situation under Article 183 of the LCP, in conjunction with Article 71, paragraph 1.2 and Article 73, paragraph 1, of the Law on the Enforcement Procedure”*.
26. On 8 June 2018, the Basic Court in Prishtina, by Decision Cp. No. 3086/16, partially approves the Applicant’s objection only regarding 16 employees of the latter, and rejects as ungrounded the objection with respect to other employees, thereby upholding Decision Cp. No. 3086/16 of the first instance of 16 February 2017.
27. On 20 June 2018, the Applicant filed an appeal with the Court of Appeals against the Decision of the first instance court on the grounds of essential violations of the provisions of the procedure, erroneous and incomplete determination of factual situation and erroneous enforcement of the substantive law.
28. On 12 November 2018, the Court of Appeals of Kosovo rendered Decision Ac. No. 3208/18, which rejected the appeal filed by the Applicant and upheld Decision Cp. No. 3086/16 of the Basic Court in Prishtina of 8 June 2018.
29. The Court of Appeals reasoned that: *“The Court of Appeals holds that the appealing allegations of the debtor that the decision of the Labor Inspectorate is out of its legal jurisdiction and in accordance with Law on Labor Inspectorate has no jurisdiction to oblige the debtor to annul the decisions on termination of employment relationship is ungrounded allegation, due to the fact that the court in the enforcement proceedings is not entitled to enter the legality and regularity of the enforcement document, and that the debtor could have pursued these allegations in any other proceedings, such as in the present case the administrative conflict. In the enforcement procedure, the enforcement body shall determine and implement the enforcement only on the basis of the enforcement document such as Decision No. 37-00194/l6-A of 26.10.2016. Therefore, based on the foregoing, the decision of the first instance court had to be upheld and the appeal of the debtor to be rejected as ungrounded”*.
30. On 20 November 2018, the Basic Court in Prishtina renders the Enforcement Order ordering the Applicant to implement this order and to enforce Decision Cp. No. 3086/16 of the Basic Court in Prishtina of 8 June 2018.

31. On 23 July 2017, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

### **Applicant's allegations**

32. The Applicant alleges that: *"The Basic Court in Prishtina, by a decision that is further upheld by the Court of Appeals in Prishtina, decided to exceed their jurisdiction by granting enforced enforcement of the unlawful decision of the Labor Inspectorate, namely the Executive Body of the Labor Inspectorate, by which obliges KEDS to annul the decisions on termination of employment relationship with some employees. The decision of the Labor Inspectorate could only be executed under Article 147 par. 1 and Article 149 of the Law on General Administrative Procedure as an administrative act. The proposal to allow execution is contrary to Article 24 par. 3 of the LEP because the execution order is missing"*.
33. The Applicant further alleges that: *"The court was launched by persons that are not legitimized. The court would have jurisdiction for enforcement only under Article 312 of the LEP, but we do not deal with this case. The decision of the Labor Inspectorate orders KEDS to annul the decisions on termination of employment relationship, but not the reinstatement of the employee to work. Contrary to Article 44 par. 2 of the Law on General Administrative Procedure and Article 194 of the LCP, the Court did not take care ex-officio of the nullity of the administrative act, namely the decision of the Labor Inspectorate. The decision of the Labor Inspectorate is unlawful and therefore null, because it exceeds the limits recognized by Law No. 2002/9 on the Labor Inspectorate"*.
34. In addition, the Applicant alleges that the decisions of the Labor Inspectorate and the Executive Body of the Labor Inspectorate: *"...were taken by exceeding its subject matter jurisdiction, assuming the role of a court, without a legal basis within the scope of what they are invoked because in Law on Labor Inspectorate No. 2002/9 is specified:*

#### *Article 2 Labor Inspection*

- a) Insure implementation of the labor law, conditions of work and protection at work;*
- b) Provide technical information and advice to employers and employees on the most effective means of observing the legal provisions;*
- c) Notify the Minister of Labor and Social Welfare or other competent authorities on any deficiencies in the applicable law;*
- d) Supply information and advice to employers and employees and which would comply with the law and forewarn the competent authorities on any defects or abuses not covered by existing legal provisions;*
- e) Give advice on issues relating to labor law and protection of employees in a case or reorganization or restructuring of an enterprise.*

*Law on Labour No. 03 L-212 :  
Article 82 Protection of Employee by the Labour Inspectorate*

- 1. An employee may submit an appeal to the Labour Inspectorate at any time for issues falling under the competencies of this body.*
- 2. Labour Inspectorate is obliged to issue a decision regarding the appeal of the employee within thirty (30) days or inform the submitter of the appeal regarding the extension of the term when the decision shall be reached”.*

35. Finally, the Applicant proposes: “...to the Constitutional Court of the Republic of Kosovo to annul as unconstitutional (*EXCEPTIO REI IUDICATE*) Decision CP. No. 3086/16 of the Basic Court in Prishtina, of 16.02.2017 and Decision Ac. No. 3208 of the Court of Appeals of Kosovo in Prishtina of 12.11.2018, due to violation of Article 31 (Right to Fair and Impartial Trial) of the Constitution of the Republic of Kosovo”.

**Admissibility of the Referral**

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

[...]

Article 21 [General Principles]

“[...]

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

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

Article 47  
[Individual Requests]

[...]

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

39. In addition, the Court also examines whether the Applicant has met the admissibility requirements as defined by the Law. In this regard, the Court first refers to Articles 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 48  
[Accuracy of the Referral]

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

Article 49  
[Deadlines]

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

40. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely Decision Ac. No. 3208/18 of the Court of Appeals of 12 November 2018, after exhausting all legal remedies provided by law. The Applicant has also clarified the rights and freedoms they claim to have been violated in accordance with the criteria of Article 48 of the Law and have submitted the Referral in accordance with the deadlines set out in Article 49 of the Law.
41. In addition, the Court examines whether the Applicant has met the admissibility requirements specified in Rule 39 [Admissibility Criteria] of the Rules of Procedure. Rule 39 (2) of the Rules of Procedure sets out the criteria on the basis of which the Court may consider the Referral, including the criterion that the Referral is not manifestly ill-founded. Specifically, Rule 39 (2) states that:

*“(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim”.*

42. The Court, initially, notes that in the present case we are dealing with two sets of proceedings, the administrative procedure and the enforcement procedure.
43. With regard to the administrative procedure, the Court notes that the Applicant has initiated an administrative conflict with the competent courts. In



this regard, the Court notes that its decision does not prejudice the eventual outcome of the proceedings still pending before the regular courts.

44. As to the completed enforcement proceedings with the challenged Decision of the Court of Appeals, the Court notes that all of the Applicant's allegations of a violation of Article 31 of the Constitution by the Court of Appeals, as a final instance, relate to exceeding of competence, namely legal authorizations by the Labor Inspectorate and the Executive Body of the Labor Inspectorate, which found violations of the provisions of the Law on Labor by the Applicant due to termination of employment contracts of its 95 employees.
45. In this regard, the Court recalls that the Court of Appeals responded to the Applicant's allegation, with the following reasoning: *"The Court of Appeals holds that the debtor's appealing allegation that the decision of the Labor Inspectorate is outside its legal jurisdiction and according to the law, the Labor Inspectorate has no competence to oblige the debtor to annul the decisions on termination of employment relationship, is an unfounded allegation, due to the fact that the court in the enforcement proceedings is not entitled to enter the legality and regularity of the enforcement document, and that the debtor could have addressed these allegations in any other proceedings, such as in the present case, the administrative conflict"*.
46. Furthermore, the Court of Appeals reasoned: *"In the enforcement procedure the enforcement authority shall assign and implement the enforcement only on the basis of the enforcement document such as Decision No. 37-00194/l6-A of 26.10.2016. Therefore, based on the foregoing, the decision of the first instance court had to be upheld and the appeal of the debtor to be rejected as ungrounded"*.
47. The Court recalls that the Court of Appeals rejected the Applicant's appeal as ungrounded solely on procedural grounds, because the response to be received by the Applicant regarding the allegation raised before the regular courts had to be followed by a separate procedure, namely the administrative one, through the initiation of an administrative conflict, a legal remedy which the Applicant was advised to exhaust in the competent court, which subsequently did and is awaiting decision-making.
48. Therefore, the Court considers that the Applicant's allegations that the challenged decision violated its rights guaranteed by Article 31 of the Constitution, due to the rejection of its complaint and the failure to address its allegations for assessment of the legality of the decisions of the Labor Inspectorate and the Executive Body of the Labor Inspectorate, are manifestly ill-founded, from the foregoing considerations..
49. Moreover, the Applicant's allegations fall within the scope and domain of the regular courts because they raise questions of interpretation of legal norms and do not raise allegations of violations of the rights guaranteed by Article 31 of the Constitution, as the Applicant alleges.
50. The Court further recalls that it is not its duty to deal with errors of fact or law allegedly committed by regular courts when assessing evidence or applying the

law (legality), unless and insofar as they may have violated the rights and freedoms protected by the Constitution (constitutionality). In fact, it is the role of the regular courts to interpret and apply the relevant rules of procedural and substantive law. (See, *mutatis mutandis*, Judgment of the European Court on Human Rights (hereinafter: the ECtHR) of 21 January 1999, *Garcia Ruiz v. Spain*, no. 30544/96, paragraph 28).

51. The Court reiterates its position that the fair and complete determination of factual situation, as well as the relevant legal interpretations, in principle fall within the jurisdiction of the regular courts. The role of the Constitutional Court is to ensure compliance with the standards and rights guaranteed by the Constitution, namely, it cannot act as a “fourth instance court”. (See *mutatis mutandis*, regarding the “fourth instance” doctrine, the Constitutional Court cases KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012, paragraph 33; as well as the joined cases KI73/17, KI78/17 and KI85/17 Applicants *Istref Rexhepi and 28 others*, Resolution on Inadmissibility of 27 November 2017, paragraphs 46 and 47).
52. The Court further considers that all arguments of the Applicant, which were relevant to the resolution of the dispute, had been properly heard and examined by the Court of Appeals. Therefore, viewed in entirety, the Court concludes that the proceedings before the regular courts, were constitutionally fair (See, *mutatis mutandis*, ECtHR Judgment of 21 January 1999, *Garcia Ruiz v. Spain*, No. 30544/96, paragraphs 29 and 30).
53. The Court notes that the Applicant merely does not agree with the outcome of the proceedings before the regular courts, in this case the enforcement procedure. However, the dissatisfaction of the Applicants with the outcome of the proceedings by the regular courts cannot of itself raise an arguable claim of violation of the right to fair and impartial trial (see: *mutatis mutandis*, case *Mezotur - Tiszazugi Tarsulat v. Hungary*, ECtHR, Judgment of 26 July 2005, paragraph 21; and see also case KI56/17, Applicant *Lumturije Murtezaj*, Resolution on Inadmissibility of 18 December 2017, paragraph 42).
54. Therefore, Court considers that the Applicant did not substantiate allegations that the respective proceedings before the regular courts were in any way unfair or arbitrary and that the challenged decision violated the rights and freedoms guaranteed by the Constitution and the ECHR. (see *mutatis mutandis*, *Shub v. Lithuania*, no. 17064/06, ECtHR, Decision of 30 June 2009).
55. In conclusion, in accordance with Rule 39 (2) of the Rules of Procedure, the Referral is manifestly ill-founded on constitutional basis, and is to be declared inadmissible.

## FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law, and Rules 39 (2) and 59 (b) of the Rules of Procedure, on 23 July 2019, with majority/unanimously

## DECIDES

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

**Judge Rapporteur**

**President of the Constitutional Court**

Nexhmi Rexhepi

Arta Rama-Hajrizi



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