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

Prishtina, on 16 April 2021
Ref. no.:AGJ 1749/21

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JUDGMENT

In

Case No. KI177/19

Applicant

NNT "Sokoli"

Constitutional review of Decision Ac.no.2386/2018 of the Court of Appeals of Kosovo, of 17 May 2019

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 filed by NNT "Sokoli", having its seat in Prishtina (hereinafter: the Applicant), which is represented by Fehmi Shala, a lawyer in Prishtina.

Challenged decision

2. The Applicant challenges the constitutionality of Decision Ac.no.2386/2018 of the Court of Appeals of Kosovo, of 17 May 2019, in conjunction with Decision Cp.no.200/2016 of the Basic Court in Prishtina, of 13 April 2018.

3. The Applicant has received the Decision Ac.no.2386/2018 of the Court of Appeals, of 17 May 2019, on 14 June 2019.

Subject matter

4. The subject matter of the Referral is the constitutional review of the above-mentioned decisions, which as alleged by the Applicant alleges have violated its rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of Republic of Kosovo (hereinafter: the Constitution), in conjunction with Article 6 of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

5. The Referral is based on Articles 21.4[General Principles] and 113.7 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47[Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 32[Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 2 October 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 4 October 2019, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (presiding), Bajram Ljatifi and Radomir Laban (members).

8. On 11 October 2019, the Court notified the Applicant about the registration of the Referral and sent a copy thereof to the Court of Appeals. On the same date, the Court notified also the company "Kujtesa Net" L.L.C., in the capacity of the interested party and sent a copy of the Referral to it.

9. On 25 October 2019, the Company "Kujtesa Net" L.L.C., represented by the Law Firm "Sejdiu & Qerkini", submitted its comments regarding the Applicant's Referral.

10. On 29 November 2019, the Court notified the Applicant regarding the comments received from the Company "Kujtesa Net" L.LC.

11. On 6 October 2020, the Court requested from the Court of Appeals to notify it whether the Court of Appeals had received the document which, together with the case file, had been submitted to the Court by the Applicant and which

concerned its request to the Court of Appeals for the exclusion of Judge H. Sh., from the review of its case.

12. On 15 October 2020, the Court of Appeals submitted the requested answer to the Court.

13. On 29 March 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the admissibility of the Referral.

14. On the same day, the Court unanimously found that (i) the Referral is admissible; and that (ii) the Decision Ac.no.2386/2018 of the Court of Appeals of Kosovo, of 17 May 2019, is not in compliance with Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.

Summary of facts

15. Based on the case file, it results that on 12 September 2006 the Applicant had concluded a business contract with the Company "Kujtesa Net" L.L.C, according to which the Applicant would have to build an optical and coaxial cable network in the territory of the Republic of Kosovo, for the needs of the Company "Kujtesa Net" L.L.C., and the latter would pay for the services performed. According to this contract, which was concluded for an indefinite term, it was provided that it can be supplemented, terminated or modified only upon the mutual consent of the parties.

16. Further, it results that because the Company "Kujtesa Net" L.L.C. was late with the performance of payments, on 30 October 2012, the contracting parties had signed a record entitled "*Minutes on the work performed by 'NNT Sokoli' for the benefit of the Company "Kujtesa Net" L.L.C. until 30 October 2010*". This record specified that the Applicant could not invoice other works for the time period up to 30 October 2010, except for the works included in the specification of these minutes.

17. On 5 December 2012, the Applicant and the Company "Kujtesa Net" L.L.C. had signed a new agreement, with no. 949, wherein it was foreseen that the Company "Kujtesa Net" L.L.C. had to pay a total debt in the amount of 529,393.39 Euros, in 16 instalments and that the deadline for the final payment was set to be 16 February 2014.

18. On an unspecified date, the Applicant, according to the aforementioned agreement, sends some invoices to the Company "Kujtesa Net" L.L.C. On 7 March 2014, the Company "Kujtesa Net" L.L.C. returns a letter to the Applicant entitled "REFUSAL", stating: *"we refuse to accept these invoices, as we are not aware of these invoices received in the envelope."* The Applicant, again, continued to send new invoices to the address of the Company "Kujtesa Net' L.L.C. and on 11 April 2014 again these invoices are sent back to the address of the Applicant, by the Company "Kujtesa Net" L.L.C., which refused to accept them with the same reasoning.

19. On 4 April 2014, the Applicant submitted a proposal for enforcement to the Basic Court in Prishtina- Department for Commercial Matters, whereby it requested from the above-mentioned court the scheduling of the enforcement based on an authentic document/invoices (with no. 001/14, 002/14, 003/14, 004/14, 027 / 12,028 / 12,029 / 12,030 / 12,031 / 12,035 / 12, 036/12, 037/12, 038/12, 039/12 and 040/12 all of them of 1 March 2014), in the amount of 261,324.12 euros (two hundred sixty one thousand and three hundred and twenty-four euros and twelve cents).

20. On 17 April 2014, the Basic Court in Prishtina- Department for Commercial Matters, by Decision E.no.567/14, assigned the enforcement against the Company "Kujtesa Net" L.L.C., for the payment of the debt in the amount of 261,324.12 Euros (two hundred sixty-one thousand and three hundred twenty-four euros and twelve cents).

21. On 14 May 2014, the Applicant submitted the second proposal for assigning the enforcement to the Basic Court in Prishtina-Department for Commercial Matters, requesting the payment of debts from the Company "Kujtesa Net" L.L.C., based on invoices (with no. 007/12, 016/12, 018/12, 019/12, 021/12, 022/12, 023/12, 024/12, 025/12, 026/12, 005/14, 006/14, 007/14, 008/14, 009/14 and 010/14, all of them of 7 April 2014), in the amount of 297,968.31 euros (two hundred ninety seven thousand and nine hundred sixty eight euros and thirty one cents).

22. On 13 June 2014, the Company "Kujtesa Net" L.L.C. had filed an objection against the Decision E.no.567/14 of the Basic Court in Prishtina-Department for Commercial Matters, of 17 April 2014.

23. On 24 July 2014, the Applicant requested from the Basic Court in Prishtina that its case be *"transferred to the private enforcement agent E. M. for further enforcement proceedings"*

24. On 22 October 2014, the Basic Court in Prishtina-Department for Commercial Matters, by Decision E.no.719/14, assigned the enforcement against the Company "Kujtesa Net" L.L.C., for the payment of the debt in the amount of 297,968.31 euros (two hundred ninety seven thousand and nine hundred sixty eight euros and thirty one cents).

25. On 28 April 2015, the Basic Court in Prishtina- Department for Commercial Matters held a court hearing. In this session, at the proposal of the authorized person of the Company "Kujtesa Net" L.L.C. (debtor), who had requested the joinder of enforcement cases (respectively case no. E.no.567/14, in the value of 261,324.12 euros and case E.no.719/14 in the value of 297,968.31 euros), this Court decided to join the cases, by registering them under a new number, Cp.nr.200/16. The Applicant's authorized representative (creditor) had not objected to the joinder of these cases.

26. On an unspecified date, the Company "Kujtesa Net" L.L.C. had filed an objection against the decisions E.no.567/14 and E.no.719/14 of the Basic Court in Prishtina-Department for Commercial Matter, allowing the enforcement, alleging that the Applicant did not perform the work as it claimed and that for

such a thing the following conditions had to be met cumulatively: i) Technical acceptance of the works by the creditor, ii) absence of creditor's remarks about the performed works, iii) elimination of eventual remarks that the creditor would have for the works performed by the debtor.

27. The Applicant, through a response to the objection, had stated that there has been no technical acceptance for the performed and unpaid works, but neither the previous works which were paid by the Company "Kujtesa Net" L.L.C. have had a technical acceptance. The Applicant further argued that the Company "Kujtesa Net" L.L.C. has never received a complaint about the Applicant's work or compliance with the deadlines.

28. On 30 December 2015, the Applicant addressed a letter to the President of the Basic Court in Prishtina, requesting an expedited hearing of the case.

29. On 9 February 2016, the Basic Court in Prishtina-Department for Commercial Matters, with the Accompanying Document no. E.no.567, 719 / 2014, sent the case file to the Basic Court in Prishtina-General Civil Department, considering that the Basic Court in Prishtina-Department for Commercial Matters is not competent to decide on this enforcement matter, concerning the rejection of these two enforcement cases.

30. On 20 July 2016, the Applicant addressed a letter to the Kosovo Judicial Council, the Office of the Disciplinary Prosecutor, requesting *"Performance Evaluation of the Judge of the Basic Court in Prishtina [A.K] and other responsible officials in the management of the cases of this Court "II.E.567 / 14 and II.E.nr. 719/14".*

31. On 2 June 2017, the Applicant again had sent a letter to the Basic Court in Prishtina, requesting the expedition of its case.

32. On 13 July 2017, the Applicant has addressed a letter to the Basic Court in Prishtina, *"Notification on violation of legal deadlines"*, alleging that due to the delays the Applicant was being caused irreparable damages.

33. On 23 October 2017, the Basic Court in Prishtina-General Department, through Decision Cp.no.200/2016, rejected as ungrounded the objection of the Company "Kujtesa Net" L.L.C. In its reasoning, the Basic Court had stated that the allegations of the Company "Kujtesa Net" Sh.p.k. were inconsistent, as no evidence had been provided in their support.

34. On 27 October 2017, the Company "Kujtesa Net" L.L.C, had filed an appeal with the Court of Appeals, against the Decision Cp.no.200/2016, of the Basic Court in Prishtina, alleging violations of the provisions of the enforcement procedure, "because the invoices do not have features of enforceability, they are not accepted and signed by the debtor and the debtor has no obligation towards the creditor".

35. On 15 February 2018, the Court of Appeals, by Decision Ac.no.5040/17, approved as grounded the appeal of the Company "Kujtesa Net" L.L.C. and annulled the Decision of the Basic Court in Prishtina-General Department,

Cp.nr.200/2016, of 23 October 2017, by remanding the case for retrial. The Court of Appeals in its reasoning stated as follows:

> *"The court of the first instance has committed an essential violation of the enforcement procedure when rejecting the objection of the debtor because according to article 40 of the LEP, the proposal for enforcement based on an authentic document must contain the request for enforcement from paragraph 1, article 38 of the LEP, wherein it is provided that: "enforcement proposal should contain the request for enforcement which shows the original enforcement document, or a copy certified by law, or authentic document based on which the enforcement is requested ...", in the present case the authentic document does not meet the conditions for enforcement because the invoices are not accepted by the debtor and for them it cannot be verified if they are signed by the debtor itself because, with the submission of 07.03.2014, the debtor has refused to accept the invoices since it was not aware of the invoices received by the envelope. Taking into consideration the Administrative Instruction No.15/2010, on implementation of Law on Tax Administration and Procedures, where in Section 20, paragraph 1.1.17 thereof, it is stipulated that: 'At a minimum, an invoice must be signed by the seller; if the customer or purchaser is available to sign, that person should also sign the tax invoice ', in the concrete case we have invoices not accepted by the debtor [...] Pursuant to Article 38, paragraph 2 of the LEP it is stipulated that: "if the proposal for enforcement under paragraph 1 of this article does not contain requested data and PIN or business registration number of the debtor, enforcement body shall act pursuant to provisions of Article 102 of the Law on Contested Procedure ", in the present case the enforcement body did not act in conformity with the law, since in the case of submission of the proposal allowing enforcement, the enforcement body should have returned the proposal for enforcement to the creditor for supplementation in conformity with the provision of Article 38, paragraph 2 of the LEP [...] In the re-proceedings the court of the first instance should take into consideration the abovementioned remarks, schedule a public hearing to realize the validity of the objection as regards the authentic document-invoices, in such a way that the creditor and the debtor can present their evidence in respect of the appeal claims, so that thereupon it is able to render a fair and lawful decision in conformity with the provisions of the LEP".*

36. On 13 April 2018, the Basic Court in Prishtina-General Department, deciding in the retrial, issued the Decision Cp.no.200/2016, whereby it fully upheld as grounded the objection of "Kujtesa Net" L.L.C. and repealed in its entirety the Decision E.no.567/14 and E.no.719/14, of the Basic Court in Prishtina allowing enforcement. In its reasoning, the Basic Court emphasized that in the Decision of the Court of Appeals [Ac.nr.5040 / 17], of 15 February 2018, it is clearly stated that *"In the re-proceedings the court of the first instance should take into consideration the abovementioned remarks, schedule a public hearing to realize the validity of the objection as regards the authentic document-invoices, in such a way that the Creditor can present its evidence in respect of the appeal claims."*

37. On 30 April 2018, the Applicant submitted an appeal to the Court of Appeals against the Decision Cp.nr.200/2016 of the Basic Court, of 13 April 2018 alleging violation of the provisions of the contested procedure, violation of the provisions of the enforcement procedure and violation of the substantive law.

38. On 30 May 2018, the Applicant addressed a special request to the Court of Appeals whereby it requested the exclusion of Judge H. Sh. from the case review, by expressing doubts regarding the impartiality of the said judge, who had once made a decision regarding its case. Moreover, the Applicant alleged that the judge in question favours the opposing party in this case.

39. Based on the case file it results that the Court of Appeals did not respond to the Applicant regarding the above mentioned request.

40. On 17 May 2019, the Court of Appeals, deciding through the individual judge H.Sh. by Decision Ac.no.2386/2018, rejected as ungrounded the Applicant's appeal and confirmed the Decision Cp.no.200/2016 of the Basic Court, of 13 April 2018. In the reasoning of this Decision, the Court of Appeals stated that the challenged decision was fair and lawful and that it does not contain violations of the provisions of the contested procedure and the enforcement procedure, and the factual situation was correctly determined. Further, in its reasoning the Court of Appeals stated:

> *"This Court considers that the court of the first instance has correctly approved the objection of the debtor and has repealed the decisions allowing the enforcement of E.nr.567 / 2014 and E.nr. 719/2014, allowed by the Basic Court in Prishtina, because the invoices described in the proposal for enforcement of 04.04.2014, which are requested to be enforced, do not meet*
> *the conditions to be considered eligible for enforcement. Taking into consideration Section 20, paragraph 1.1.17 of the Administrative Instruction No.15/2010, on the implementation of Law on Tax Administration and Procedures, it is stipulated that: "At a minimum, an invoice must be signed by the seller; if the customer or purchaser is available to sign, that person should also sign the tax invoice", so in the present case, based on the evidence contained in the case file, it can be seen that the authentic document - the invoices on the basis of which the enforcement is allowed are not signed by the enforcement debtor. The signing of the invoice by the parties in the obligation relationship, is not just a formality, but such an action implies acknowledging the works performed by the creditor and asserting that there is a debt of the debtor towards the creditor in accordance with the invoices, and given that in the present case the debtor has not acknowledged those invoices as its own, consequently they do not meet the conditions to be eligible for enforcement pursuant to the provisions of applicable laws."*
>
> *Taking into consideration the other appeal claims made against the appealed decision, the court of the second instance considers that these allegations are ungrounded because we are not dealing with essential violations of the provisions of the Law on Contested Procedure, which this*

Court observes ex officio pursuant to Article 194 of the LCP, nor of the Law on Enforcement Procedure"

41. On 9 July 2019, the Applicant submitted, to the Office of the Chief State Prosecutor, a Proposal for submitting a Request for Protection of Legality, against the Decision Ac.no.2386/2018 of the Court of Appeals, of 17 May 2019. In the request for protection of legality, the Applicant, among other things, had stated that *"on 01 June 2018, in the Court of Appeals of Kosovo, it had submitted a request for the exclusion of Judge [H. Sh.], from the adjudication of the case which concerned the appeal submitted by the authorized representative of the creditor against the decision Cp.no 200/16, of 13.04.2018, due to the doubt about his impartiality, and according to the statement of the claimant " it does not expect a fair decision from this judge, as it is deeply convinced that he is influenced by the ruling structure." [...] Up to the day of the decision Ac.no. 2386/2018 of 17 May 2019 being rendered, the creditor has not received any notification from the Court of Appeals of Kosovo, that a decision has been taken with respect to the request of the legal representative of the creditor, for the exclusion of the judge-president of the Court of Appeals of Kosovo, from the adjudication of this enforcement matter."*

42. On 13 August 2019, the Office of the Chief State Prosecutor, through Notification, KML.no.118/2019, informed the Applicant that its proposal was not approved as there is not a sufficient legal basis for the protection of legality.

Applicant's allegations

43. The Applicant alleges that the Decision of the Court of Appeals, Ac.no.2386/2018, of 17 May 2019, in conjunction with the Decision Cp.no.200/2016, of the Basic Court in Prishtina, of 13 April 2018, have violated its rights guaranteed by Article 31 [Right to a Fair and Impartial Trial] of the Constitution have been violated, in conjunction with Article 6 (Right to a fair trial) of the ECHR.

44. In essence, the Applicant alleges that the challenged decision has violated three principles which are guaranteed by the right to a fair and impartial trial: (i) the right to a trial by an impartial court; (ii) the right to a reasoned decision; (iii) the right to trial within a reasonable time.

45. The Court notes that the first two allegations - relate to the right to a fair trial and the right to a reasoned decision - are linked and based on the same reasoning. As such, the Court will treat them together. Whilst as regards the allegation on the right to trial within reasonable time it will be presented separately by the Court.

i) The right to a trial by an impartial tribunal in conjunction with the right to a reasoned decision

46. In regard to this allegation, the Applicant states that: *"In all court decisions taken with regard to this enforcement procedure, with the exception of the decision Cp.no. 200/2016 of 23.10.2017, based on the manner of decision-*

making the claimant - creditor [Applicant], considers that the court has shown bias towards the debtor, for the fact that, despite the evidence that were in his favour, the case has been decided in favour of the debtor, and this favouring is manifested by the approval of the request for return to the previous situation, where the real legal reasons were missing, as well as by the unreasonable postponement of the decision on this matter, which were openly expressed by the decisions of the Court of Appeals of Kosovo, Ac. No.5040/17 and Ac.no. 2386/2018 of 17 May 2019, which decisions were taken by the President of the Court of Appeals, H. Sh., in the capacity of the individual judge, himself."

47. The Applicant alleges that due to the doubts that the President of the Court of Appeals (H. Sh.) in this case favours the opposing party, he had submitted a request for his exclusion, but has never received any response to this request of his and the same has not been addressed at all.

48. The Applicant further adds *that "this judge has shown open bias in the addressing of the present case, especially when the decision taken does not represent even the legal minimum of a reasoned decision."*

49. The Applicant states that: *"Acting contrary to the provision of Article 71 of the LCP, the Judge-President of the Court of Appeals of Kosovo, [H. Sh.], by deciding on the creditor's appeal, submitted against the decision of the court of the first instance, when there was a request for his exclusion, he has committed an essential violation of the provision of Article 182 paragraph 2, item c) of the Law on Contested Procedure. Essential violations of the procedural provisions of Article 182 paragraph 2 are of absolute importance, and consequently cause the annulment of the decision taken."*

50. The Applicant also states that *"The Court of Appeals in its decision had to answer to all allegations from the creditor's appeal, which concerned the fact that the debtor bears the responsibility for sending the invoices back knowing that they relate to a work performed by the creditor and the debtor has taken into use [...] The essential function of a reasoned decision by the court of the second instance, is that by decision it must show to the party that its appeal claim has been read, and the court has understood his appeal, and by answering to the appellant's allegations, to convince the party about the reasons for which an appeal claim has been or has not been considered. The decision of the second instance is rendered since this has been requested by the appeal of a party, and it is the essential function of the court of the second instance to convince the party by arguments whether those allegations from the appeal are founded or not."*

ii) The right to trial within a reasonable time

51. In this regard, the Applicant alleges that pursuant to Article 6 of the Law on Enforcement Procedure, it is provided that the enforcement body has the duty to act urgently, based on the time limits provided by the Law on Enforcement Procedure. In its case, the Applicant alleges that: *"The enforcement procedure, for which two proposals for enforcement were submitted, in April 2014, was concluded with a final decision after five (5) years, from the moment when*

objectively it could have been carried out for 5-6 months. It is more than obvious that this is a trial beyond a reasonable time, which openly speaks about a court that is not independent, but is under the influence of the debtor."

52. Finally, the Applicant requests from the Court to annul the Decision Ac.no.2386/2018 of the Court of Appeals of Kosovo, of 17 May 2019, and remand the case for retrial.

Comments submitted by the Court of Appeals

53. In its response to the Constitutional Court upon the request of the latter, concerning the confirmation by the Court of Appeals whether they had received the Applicant's letter regarding the exclusion of Judge H. Sh. from the review of the Applicant's case, the Court of Appeals, among other things, stated the following:

> *"Seeing that there had remained unresolved enforcement cases of 2018, the president of the court collects them to have them resolved as soon as possible, on 11.03.2019, 25 cases are assigned, and among them is also the case AC.no.2386/18. When the request for exclusion was received by the Court of Appeals on 01.07.2018, when it reached the court, the case was with the other judge, and since the case was with Judge G.A, he did not decide on the request for exclusion."*

Comments submitted by the Company "Kujtesa Net" L.L.C.

54. Having been notified by the Court, about the opportunity to give its comments, in its response to the Court, the Company "Kujtesa Net" L.L.C. , stated that none of the issues raised by the Applicant in his Referral stand.

55. Regarding the first allegation of Applicant, the Company "Kujtesa Net" L.L.C. states that *"With the above allegation, the Applicant only expresses dissatisfaction with the manner of assessment of evidence, but does not indicate what are the circumstances envisaged by the provisions of the Law on Contested Procedure, which justify the findings on the impartiality of the court.* Further, as regards the Applicant's claim for the exclusion of Judge H. Sh., from the adjudication of the case, the Company "Kujtesa Net" L.L.C. refers to the relevant articles of the Law on Contested Procedure, which stipulate that the Court may reject a request for exclusion when it is not reasoned.

56. Concerning the Applicant's allegation for prolongation of the procedure, the Company "Kujtesa Net" L.L.C., states that: *"The adjudication of the case within a reasonable time may be an inherent violation and exceeding the reasonable deadlines to give the final epilogue to the legal case is not about the impartiality of the court. If the case is not adjudicated within a reasonable time this does not mean that the court was (not) impartial. The adjudication of the case within a reasonable time is not only in the interest of the creditor but also for the debtor because it also has the interest to clarify its position regarding the creditor's claims within a reasonable time. Therefore, this*

argument which the Applicant uses to prove the impartiality of the court is inadmissible."

57. In connection with the Applicant's allegation for non-reasoning of the decision, the company "Kujtesa Net" L.L.C. states that the challenged decision is sufficiently reasoned.

Relevant constitutional and legal provisions

Article 31 [Right to Fair and Impartial Trial]

1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.
2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.
(...)

European Convention on Human Rights

Article 6
(Right to a fair trial)

1. 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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(...)

Law No. 03/L-006 on Contested Procedure

Article 63

If the competent court can not proceed due to disqualification of judges or any other reason, then it will inform the court of a higher level to designate one of the courts with subject matter jurisdiction to conduct proceedings.

Article 67
Exclusion of the Judge from the Case:

a) if he or she is itself a party, a legal representative or authorized representative or is a co-creditor or codebtor or obliged for repay or if in the same issue he or she has been examined as a witness or as an expert;

[...]

g) if there are other circumstances that challenge his or her impartiality.

Article 71

71.1 When a judge learns that a petition has been filed for his or her disqualification, or as soon as has learned that any of the conditions for disqualification according to the article 67 exist, he or she shall be obliged to suspend with the proceeding and must immediately inform the president of the court.

71.2 Exclusion from paragraph 1 of this Article, when the petition for exclusion is based in Article 67 point g, the judge notifies the president of the court and may continue with the proceeding of the petition on the exclusion, only on such mattered that are endangered of postponement

71.3 The president of the court, if his exclusion is required, then he or she appoints his or her replacement from the rank of the judges of the subject matter, and if this is not possible, then he or she acts according to the article 63 of this law.

Article 182

182.1 Basic violation of provisions of contested procedures exists in case when the court during the procedure didn't apply or wrong application of any of the provisions of this law, while this has or will impact a rightful legal decision.

182.2 Basic violation of provisions of contested procedures exists always:

a) when the court is not made based on provisions or when during the issuance of the verdict was done by the judge who didn't participate in the main hearing;

b) when it is decided on a request which isn't a part of the legal jurisdiction;

c) when the in the issuance of the decision participated the judge who according to the law should be dismissed, respectively the judge was already dismissed by a court decision or in the cases when a person not qualifies as a judge participated in the issuance of the verdict;

[...]

Law No. 04/L-139 on Enforcement Procedure

Article *77*

Appeals against the decision on the objection

1. Against the decision on objection parties have the right on appeal.

2. The appeal against the decision on objection shall be filed through the first instance court for the second instance court within seven (7) days from the day of acceptance.

3. Copy of the appeal shall be submitted to opposing party and other participants who may present response to the appeal within three (3) days.

4. Following receiving the response to appeal or following the deadline for response, the case with all submissions shall be sent to the second instance court within three (3) days. Regarding the appeal, the second instance court shall decide within fifteen (15) days.

ADMINISTRATIVE INSTRUCTION No. 15/2010 ON IMPLEMENTATION OF LAW NUMBER No.03/L-222 ON TAX ADMINISTRATION AND PROCEDURES

Section 20
Invoices and Cash Register Receipts

1. Invoice Requirements for Transactions between Taxable Persons: An invoice with VAT, also known as tax invoice, is required to be issued by all taxpayers who are liable to pay VAT for each transaction in which a supply of goods or services to another taxable person (a person who is registered for VAT, or is required to be registered for VAT) is involved, whether that other taxable person is a business that will pass the service or good to another person or is the final consumer. The invoice should be issued in at least in two authentic copies, one for the seller and one for the customer or purchase.

1.1. The Tax Invoice should contain the following elements:
[...]
1.1.17. At a minimum, an invoice must be signed by the seller; if the customer or purchaser is available to sign, that person should also sign the tax invoice.

Assessment of the admissibility of Referral

58. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.

59. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establish:

"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.

[...]

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."

60. The Court also refers to paragraph 4 of Article 21 [General Principles] of the Constitution, which states:

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

61. In this respect, the Court notes that the Applicant is entitled to submit a constitutional complaint, by calling upon alleged violations of its fundamental rights and freedoms, which are valid for individuals as well as for legal persons to the extend applicable (see, the case of the Constitutional Court No. KI41/ 09, Applicant AAB RIINVEST University L.L.C., Resolution on Inadmissibility of 3 February 2010, paragraph 14).

62. In addition, the Court will examine whether the Applicant has fulfilled the admissibility criteria, as provided by Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47
[Individual Requests]

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

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

Article 48
[Accuracy of the Referral]

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

Article 49
[Deadlines]

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

Rule 39
Admissibility Criteria

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

(a) the referral is filed by an authorized party,
(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted,
(c) the referral is filed within four (4) months from the date on which the decision on the last effective remedy was served on the Applicant, and
(d) the referral accurately clarifies and adequately sets forth the facts and allegations for violation of constitutional rights or provisions.

(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
[...]

63. As to the fulfilment of these criteria, the Court finds that the Applicant is an authorized party, which has exhausted all legal remedies provided by law, pursuant to Articles 21(4) and 113(7) of the Constitution and has submitted the Referral in accordance with the deadline provided in Article 49 of the Law. The Applicant has also accurately clarified the rights and freedoms which it alleges to have been violated and the acts of the public authorities which it is challenging, in accordance with the criteria of Article 48 of the Law.

64. In the light of the facts and arguments presented in this Referral, the Court considers that the Referral raises serious constitutional issues, which require examination of the merits of the Referral. Moreover, the Referral cannot be considered as manifestly ill-founded within the meaning of Rule 39 of the Rules of Procedure and there is no other basis for declaring it inadmissible.

65. Therefore, the Court finds that the Referral must be declared admissible and its merits must be assessed.

Merits of the case

66. The Court initially recalls that the Applicant had concluded a contract with the Company "Kujtesa Net" L.L.C, according to which the Applicant would have to build an optical and coaxial cable network in the territory of the Republic of Kosovo, for the needs of the Company "Kujtesa Net" L.L.C., and the latter would pay for the services performed. Since "Kujtesa Net" L.L.C. had failed to fulfil the obligations stemming from this contract, the Applicant had initiated enforcement proceedings against "Kujtesa Net" L.L.C., which had been approved by the Basic Court in Prishtina. The Company "Kujtesa Net" L.L.C. had filed an objection against the Decision of the Basic Court in Prishtina and the Basic Court rejected the objection as ungrounded. Following the appeal by

the Company "Kujtesa Net" Sh.p.k. against the Decision of the Basic Court in Prishtina, the Court of Appeals approved the appeal and remanded the case for retrial to the Basic Court in Prishtina. The Basic Court, acting in the retrial, had upheld as grounded the objection of the Company "Kujtesa Net" L.L.C. and had repealed in their entirety the decisions of the Basic Court in Prishtina, allowing the enforcement. This decision of the Basic Court was mainly based on the findings reached by the Court of Appeals. In parallel with the appeal submitted to the Court of Appeals against the Decision of the Basic Court, the Applicant had also submitted a request for exclusion of Judge H. Sh. from the review of the Applicant's case. The Court of Appeals, by Decision Ac.no.2368/2018, of 17 May 2019, had rejected as ungrounded the Applicant's appeal. The Court of Appeals did not address at all the Applicant's request for exclusion of Judge H.Sh. from the review of the case. Both cases of the Applicant when being adjudicated, in the Court of Appeals, were adjudicated by Judge H. Sh., as a single judge.

67. As regards the latter, namely the Judgment Ac.no.2368/2018 of the Court of Appeals, of 17 May 2019, the Court recalls that the Applicant alleges that it is in contradiction with Article 31[Right to Fair and Impartial Trial] of the Constitution, in conjunction with Article 6 of the ECHR. According to the Applicant, the challenged decision has violated three principles that are guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution, namely: (i) the decision has been rendered by a biased court; (ii) that decision does not provide an answer to the Applicant's essential allegations; and (iii) the enforcement proceedings, in this case, have been prolonged.

68. Next, the Court will examine the Applicant's allegations separately, in so far as they can be addressed separately. The Court reiterates that the Applicant's first allegation, regarding the violation of the principle of impartiality of the court, is closely related to the allegation for the lack of reasoning of the decision of the Court of Appeals. Consequently, the Court will treat these first two allegations together, before moving to the next allegation regarding the prolongation of the proceedings.

69. In this respect, the above allegations will be addressed by the Court by referring to the case law of the European Court of Human Rights (hereinafter: the ECtHR), on the basis of which the Court, pursuant to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, is obliged to interpret the fundamental rights and freedoms guaranteed by the Constitution.

(i) In relation to the allegation that the decision was rendered by a biased court and that the challenged decision does not provide an answer to the Applicant's essential allegations

70. The Court recalls once again the allegation of the Applicant, who states that "*In all court decisions taken with regard to this enforcement procedure, with the exception of the decision Cp.no. 200/2016 of 23.10.2017, based on the manner of decision-making the claimant - creditor [Applicant], considers that the court has shown bias towards the debtor, for the fact that, despite the evidence that were in his favour, the case has been decided in favour of the debtor, and this favouring is manifested by the approval of the request for*

return to the previous situation, where the real legal reasons were missing, as well as by the unreasonable postponement of the decision on this matter, which were openly expressed by the decisions of the Court of Appeals of Kosovo, Ac. No.5040/17 and Ac.no. 2386/2018 of 17 May 2019, which decisions were taken by the President of the Court of Appeals, H. Sh., in the capacity of the individual judge, himself."

71. In relation to the foregoing, the Applicant alleges that he has had information that the President of the Court of Appeals, Judge (H. Sh.) in this case favours the opposing party.

72. The Applicant in his Referral states that *"this judge has shown open bias in addressing the present case, especially when the decision taken does not represent even the legal minimum of a reasoned decision".*

73. The Applicant has related the doubt about impartiality and the issue of (non) exclusion of Judge H. Sh. to the allegation for non-reasoning of the court decision. Thus, the Applicant in his Referral before the Court specifies that in this case the Court of Appeals, by failing to respond to his request for the exclusion of Judge H. Sh., has violated the principle of impartiality of the court, and by not addressing at all his request, has violated the principle of a reasoned decision. In this respect, the Applicant alleges that the challenged decision of the Court of Appeals has failed to provide answer to all his allegations.

74. In connection with this, the Court recalls the Applicant's allegations that *the Creditor [the Applicant] does not receive any response to his request for the exclusion of the Judge-President of the Court from the adjudication of his case according to the appeal filed [...] The President of the Court, Judge Mr. [H. Sh.] as an expert of law, despite being aware of the consequences and the responsibility for not reporting the request for exclusion, took a decision in the case from which he is requested to be excluded, and thereby showed his persistence in handling the matter, and showed the fact that the creditor's request for his exclusion was grounded. Clearly, this judge, when dealing with the concrete case, has shown open bias, especially when the decision taken does not represent even the legal minimum of a reasoned decision [...] The Court of Appeals in its decision had to answer to all allegations from the creditor's appeal, which concerned the fact that the debtor bears the responsibility for sending the invoices back knowing that they relate to a work performed by the creditor and the debtor has taken into use".*

75. In light of these arguments of the Applicant, the Court first recalls that the Applicant had filed an appeal with the Court of Appeals, against the Decision Cp.no.200/2016 of the Basic Court, and at the same time he had filed a separate request for the exclusion of Judge H. Sh. from the adjudication of his case, by presenting the reasons why he is requesting the exclusion of the judge (who had also decided based on the appeal of "Kujtesa Net" L.L.C. filed against the Decision Cp.no.200/16 of the Basic Court in Prishtina, of 23 October 2017 by upholding the same and remanding the case for retrial).

76. The Court of Appeals, by Decision Ac.no.2368/2018, of 17 May 2019, had rejected as ungrounded the Applicant's appeal and confirmed the Decision Cp.no.200/2016, of the Basic Court.

77. The Court notes that the Applicant in his request for protection of legality, submitted to the Office of the Chief State Prosecutor, against the Decision of the Court of Appeals, had stated that despite his request for the exclusion of Judge H. Sh., from the review of his case, the Applicant had never received a response regarding this allegation. The Court recalls that on 13 August 2019, the Office of the Chief State Prosecutor, by Notification, KML.no. 118/2019 notified the Applicant that his proposal was not approved as there is not a sufficient legal basis for protection of legality.

78. Based on the case file the Court notes that the Applicant had never received a response to the request for the exclusion of the judge, submitted to the Court of Appeals, neither by a special submission nor by an intermediate decision.

79. Moreover, the said judge, whose exclusion was requested by the Applicant, had decided as a single judge, on the occasion of the challenged decision Ac.no.2368/018 of the Court of Appeals being rendered.

80. The Court notes that the Decision Ac.no.2386 / 2018 of the Court of Appeals, of 17 May 2019, does not refer in any point to the Applicant's allegation on the impartiality of Judge H. Sh. nor to his request seeking the exclusion of that judge from the adjudication of the case.

81. Moreover, this is confirmed by the response of the Court of Appeals to the Constitutional Court itself, where it is noticed that the Court of Appeals had never decided on the Applicant's request for the exclusion of Judge H. Sh.

82. In light of this, the Court emphasizes the fact that the Applicant's allegations relate to the procedural guarantees provided by Article 31 of the Constitution (respectively, the right to a fair and impartial trial), in conjunction with Article 6 of the ECHR. The Court first considers it necessary to point out that the guarantees of Article 31 of the Constitution and Article 6 of the ECHR extend throughout the proceedings when deciding on the rights and obligations of the parties. The ECtHR has emphasized that the decision-making in respect of a right implies not only the determination of its existence but also the scope (extent) and the manner of its exercise (see, *mutatis mutandis*, the ECtHR decision in case *Torri v. Italy,* Judgment of 23 January 1996; *Buj v. Croatia*, Judgment of 1 September 2009, paragraph 19).

83. In the present case, the Court points out the essence of the Applicant's allegations concerning the non-reasoning of the Decision of the Court of Appeals. The Court refers to the consistent stance of the ECtHR and of the Constitutional Court that the right to a fair trial includes the right to a reasoned decision. This means that the courts must "indicate with sufficient clarity the grounds on which they based their decisions" (see, inter alia, the case of ECtHR *Hadjianastassiou v. Greece*, Judgment of 16 December 1992, paragraph 33; see case of Court KI97/16, Applicant *"IKK Classic"*, Judgment of 9 January

2018) According to the case law of the ECtHR and the Constitutional Court, this obligation of the courts cannot be understood as a requirement for a detailed answer to any argument or allegation of applicants. The extent to which the obligation to give reasons applies may vary depending on the nature of the decision and must be determined in the light of the circumstances of the case. However, the essential allegations and arguments of the applicants must be addressed and the reasons provided must be based upon the applicable law (see *mutatis mutandis* the case of Court KI97/16, Applicant *"IKK Classic"*, Judgment of 9 January 2018, paragraph 54; KI143/16, Applicant *Muharrem Blaku and others*, Resolution on Inadmissibility of 17 May 2018, paragraph 54, see also the case of the ECtHR, *Van de Hurk v. The Netherlands*, Judgment of 19 April 1994, paragraph 61, *Buzescu v. Romania*, Judgment of 24 May 2005 and *Pronina v. Ukraine*, Judgment of 18 July 2006).

84. In the present case, the Court points out that the Court of Appeals, in its Decision, did not take into consideration at all the Applicant's allegations for the participation of Judge H. Sh., as the single judge in the adjudication of the Applicant's case in the Court of the Appeals, even though the Applicant, in parallel with the appeal, had submitted to the Court of Appeals a special request that the judge in question be excluded from the adjudication of the case, by expressing doubts regarding his impartiality.

85. The Court would like to clarify that, even though the Applicant raises allegations about the impartiality of the court (judge), the essence of the arguments submitted by him relate to the complete disregard by the Court of Appeals of his request for the exclusion of Judge H. Sh. from decision-making in his case.

86. In this connection, the Court considers it important to clarify, *obiter dictum*, that according to the case law of the ECtHR, "impartiality" denotes the absence of prejudice or bias by the courts when adjudicating concrete cases (see, *mutatis mutandis*, the case of the ECtHR, *Hauschild v. Denmark*, Judgment of 24 May 1989). Further, the ECtHR has clarified that when it comes to a judge's personal impartiality, the judge is presumed impartial until there is a proof to the contrary (see, the ECtHR case, *Kyprianou v. Greece*, Judgment of 15 December 2005). When such an allegation is brought before the ECtHR, it applies the so-called subjective test, which means that it must be proved by facts whether the member of the court has shown a "personal bias" against the Applicant (see the decision of the ECtHR in the *case Hauschild v. Denmark*, Judgment of 24 May 1989).

87. However, in the present case, without prejudice to the truthfulness of the Applicant's allegations about the lack of impartiality of the Judge in question, the Court cannot ignore the fact that the Court of Appeals has remained completely silent on the Applicant's request for the exclusion of that judge from the decision-making process in his case.

88. The Court considers that, had the Court of Appeals addressed in its Decision the Applicant's repeated allegations regarding the impartiality of Judge H. Sh. - regardless of the response that would have been given to the request and its

allegations (namely, whether these allegations would have been accepted or not) - then the requirement of the "heard party" and proper administration of justice would have been met. It is not the Constitutional Court's role to examine the extent to which the applicants' allegations in the proceedings before the regular courts are reasonable. However, procedural fairness requires that the essential allegations raised by the parties in the regular courts be properly addressed - particularly if they relate to important issues such as the impartiality of the courts. (see, in an analogous manner, the decision of the Constitutional Court in case KI22/16, Applicant Naser Husaj, Judgment of 2 May 2017, paragraph 47)

89. Therefore, based on the foregoing, the Court considers that the issue of addressing the Applicant's Referral and allegations for exclusion of the judge is of essential significance to the case because its clarification would avoid the Applicant's objective fear regarding the impartiality of the court in the adjudication of his case and would strengthen the conviction that the Applicant's allegations were properly heard (see, in an analogous manner, the decision of the Constitutional Court in case KI22/16, Applicant *Naser Husaj*, Judgment of 2 May 2017, paragraph 46; KI 135/14, Applicant *IKK Classic*, Judgment of 10 November 2015).

90. The Court notes that the appearance of the impartiality of the courts is important, in the light of the legal postulate that "justice must not only be done, but it must also be seen to be done". This is an essential element of the confidence that the courts in a democratic society must inspire in the public (see, *Volkov v. Ukraine*, paragraph 106, ECtHR Judgment of 2013 and *De Cubber v. Belgium*, 26 October 1984, § 26, Series A no. 86, see also the case of the Court KI22/16, Applicant *Naser Husaj*, Judgment of 2 May 2017, paragraph 49; KI 24/17, Applicant *Bedri Salihu*, Judgment of 27 May 2019, paragraph 47).

91. In conclusion, the Court finds that the failure to address the Applicant's request for the exclusion of Judge H.Sh., in the decision-making proceedings before this court, as well as the lack of reasoning of the decision by the Court of Appeals concerning his allegation about the impartiality of Judge H. Sh., raised in his appeal, constitutes an insurmountable deficiency of the judgment - within the meaning of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR.

92. Therefore, the Court finds that the Decision of the Court of Appeals contains a violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR as a result of the lack of legal reasoning by the Court of Appeals.

(ii) The right to trial within a reasonable time

93. In addressing this allegation, the Court first recalls once again this allegation of the Applicant who, among other things, states that the nature of the enforcement procedure is urgent and in his case, all the deadlines provided by the law on enforcement procedure have been exceeded.

94. In this connection, the Applicant states *"The enforcement procedure, for which two proposals for enforcement were submitted, in April 2014, was concluded with a final decision after five (5) years, from the moment when objectively it could have been carried out for 5-6 months. It is more than obvious that this is a trial beyond a reasonable time, which openly speaks about a court that is not independent, but is under the influence of the debtor."*

95. The Court draws attention that the Applicant has raised the issue of prolongation also in the regular courts, alleging that in his case the prolongation is occurring on purpose and emphasizing that the latter have ignored the fact that the enforcement procedure is of an urgent nature.

96. As regards the allegation for prolongation of the proceedings, the Court first points out the principled position of the ECtHR that Article 6 (1) of the ECHR that it is for the Contracting States to organize their legal systems in such a way that the courts cam meet the requirements of the article in question, including the obligation to hear cases within a reasonable time, (See, the Judgment of the ECtHR, in the case *Luli and Others v. Albania*, Judgment of 1 April 2014, paragraph 91).

97. As regards the length of the proceedings, the Court takes into consideration the criteria of the ECtHR established in the Judgment in case *Tomazič v. Slovenia* (Judgment of 2 June 2008, paragraph 54), which reads as follows: *"As to the reasonableness of the length of the proceedings, the [ECtHR] reiterates that it must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute".*

98. The Court, referring to the case law of the ECtHR and its case law, assessed that the calculation of the process, the reasonable length of the proceedings, begins at the moment when the competent court starts the proceedings at the request of the parties for the establishment of a right or a legitimate claimed interest (see, the ECtHR case, *Erkner and Hofauer v. Austria*, of 23 April 1987, paragraph 64; see also the ECtHR case *Poiss v. Austria*, of 23 April 1987, paragraph 50, and the cases of the Constitutional Court No. KI27/15, *Mile Vasovic*, Resolution on Inadmissibility of 15 June 2015, paragraph 43; KI 81/16, Applicant *Valdet Nikqi*, Judgment of 31 May 2017, KI19/17, Resolution on Inadmissibility of 21 February 2018, paragraph 50). This process is considered completed with the issuance of a final decision by a competent court of the last instance (see, the ECtHR case *Eckle v. the Federal Republic of Germany*, of 15 July 1982, paragraph 74).

99. In the present case, the Court notes that we are speaking about an enforcement procedure, which was initiated by the Applicant on 4 April 2014 and concluded with the challenged decision, on 17 May 2019.

100. Based on the foregoing, the Court notes that the period which must be considered in relation to the Applicant's allegations for violation of Article 31.2 of the Constitution in conjunction with Article 6.1 of the ECHR is 5 (five) years.

101. As to the complexity of the case, the Court notes that when considering the parties' allegation concerning the length of the proceedings, the complexity of a proceeding must be considered within the factual and legal aspect of the dispute in question (see, the case of Court, KI19/17, Applicant *Fatos Dervishaj*, Resolution on Inadmissibility of 21 February 2018, paragraph 56)

102. The Court notes that on the basis of the facts elaborated above, the Applicant's case can be considered complex, in view of the factual and legal situation. In this connection, the Court emphasizes that the essential issue that complicates the implementation of the enforcement procedure in this case is precisely the dispute concerning the fact whether this enforcement procedure should be implemented, based on the challenged enforcement document (invoices).

103. As regards the actions of the parties to the proceedings, the Court notes that, in the light of its case-law and that of the ECtHR, the length of the proceedings is also assessed based on the actions of the parties participating in the proceedings (see, mutatis mutandis, the ECtHR case *Eckle v. Germany*, Judgment of 15 July 1982, paragraph 82; see also the case of the Court, KI 19/17, Applicant *Fatos Dervishaj*, Resolution on Inadmissibility of 21 February 2018, paragraph 62)

104. Regarding the actions of the Applicant, the Court notes that the Applicant has been active in undertaking many procedural actions, namely following all the procedural steps made available by the applicable laws. Also, the opposing party in the procedure, the company "Kujtesa Net" L.L.C., has undertaken numerous procedural actions (especially through the objections against enforcement decisions).

105. With regard to the actions of the competent bodies in the above-mentioned procedure, the Court notes that the regular courts from the moment of initiation of proceedings have been active in adjudicating the case, where nine judicial decisions were rendered throughout the procedure. In light of the complex circumstances of this case, the Court by taking into consideration the complex legal basis, the numerous actions of the procedural parties, their legitimate interests and the legal remedies used by the parties, as well as the fact that the courts have issued a total of nine judicial decisions in in this case, came to the conclusion that the regular courts, from the moment of initiation of proceedings in this case, have not been passive. Hence, based on the case file and in the light of the circumstances of the case, the Court finds that the regular courts from the moment of the initiation of proceedings have been active in adjudicating the case and, consequently, did not cause any unreasonable prolongation of proceedings.

106. In view of the foregoing, the Court finds that as regards the Applicant's allegation for prolongation of the proceedings, the Applicant has not sufficiently proved his allegation for violation of the right to trial within a reasonable time, because the facts presented by him do not prove that the regular courts have denied him this constitutional right.

Conclusion

107. In conclusion, the Court finds that in relation to the Applicant's allegation for the violation of the right to a reasoned court decision by the Court of Appeals, in conjunction with the allegation about the impartiality of the Court, the Court finds that it is grounded.

108. In this point, by not responding to the Applicant's request for exclusion of Judge H. Sh., and to the allegations about lack of impartiality of this judge, the Court of Appeals has violated the Applicant's right to a fair and impartial trial guaranteed by Article 31 of the Constitution, in conjunction with Article 6, paragraph 1, of the ECHR.

109. In regard to the Applicant's allegation for prolongation of the proceedings, in light of the criteria established by the case law of the ECtHR and applied also by the Constitutional Court, in relation to trial within a reasonable time, the Court finds that this Applicant's allegation is ungrounded. Therefore, the Court considers that there is no violation of the principle of trial within a reasonable time.

FOR THESE REASONS

The Constitutional Court of the Republic of Kosovo, pursuant to Articles 21.4 and 113(7) of the Constitution, Article 20 of the Law and Rule 59 (1) (a) of the Rules of Procedure, in the session held on 29 March 2021, unanimously

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that there has been a 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 the Decision Ac.no.2386/2018 of the Court of Appeals of Kosovo, of 17 May 2019, is invalid and must be remanded for retrial;

IV. TO ORDER the Court of Appeals to inform the Court as soon as possible, but no later than after 6(six) months, respectively on 12 September 2021 about the measures taken to enforce the Judgment of this Court, pursuant to Rule 63 of the Rules of Procedure;

V. TO REMAIN seized of the matter pending compliance with this order;

VI. TO NOTIFY this Decision to the Parties;

VII. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;

VIII. TO DECLARE that this Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Bekim Sejdiu

Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.