



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

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Prishtina, 21 November 2014  
Ref. no.: RK731/14

## **RESOLUTION ON INADMISSIBILITY**

in

**Case no. KI125/14**

Applicant

**University for Business and Technology - UBT**

**Constitutional review of the Decision Rev. No. 9/2014 of the Supreme  
Court dated 6 March 2014**

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

composed of:

Enver Hasani, President  
Ivan Čukalovič, Deputy-President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge, and  
Arta Rama-Hajrizi, Judge

### **Applicant**

1. The Referral was filed by the University for Business and Technology - UBT, with its seat in Prishtina (hereinafter, the Applicant), represented by Mr. Ymer Bardhi, lawyer from Prishtina.

## **Challenged decision**

2. The Applicant challenges the Judgment Rev. No. 9/2014 of the Supreme Court of Kosovo dated 6 March 2014, which was served on the Applicant on 12 May 2014.

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the challenged decision, which allegedly violated the Applicant's right to a fair and impartial trial as guaranteed by Article 31 of the Constitution.
4. In addition, the Applicant requests from the Constitutional Court of the Republic of Kosovo (hereinafter, the Court) to impose an interim measure, namely, the postponement of judgment execution.

## **Legal basis**

5. The referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 29 and 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

## **Proceedings before the Court**

6. On 1 August 2014, the Applicant submitted the Referral to the Court.
7. On 6 August 2014, the President of the Court appointed Judge Kadri Kryeziu as Judge Rapporteur and the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues and Ivan Čukalović.
8. On 19 August 2014, the Constitutional Court notified the Applicant on the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 15 September 2014, the President of the Court replaced Judge Robert Carolan, as Presiding the Review Panel, with Judge Altay Suroy.
10. On 23 September 2014, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

11. On an unspecified date, in the second half of 2010, the Applicant concluded a contract on broadcasting television spots in a national television called GK.
12. On 13 November 2012, GK filed a claim with the Basic Court in Prishtina, proposing the enforcement with regard to the debt payment by the Applicant in certain amount of money.

13. On 29 April 2013, the Basic Court (Judgment C. no. 529/2012) rejected in entirety the GK statement of claim on the debt payment, due to the statutory limitation of the Claim, pursuant to Article 378 of the Law on Contract and Torts.
14. On an unspecified date, but in the first part of 2013, GK filed an Appeal with the Court of Appeal against the Judgment of the Basic Court.
15. On 9 December 2012, the Court of Appeal (Judgment Ae. no. 93/2013) granted the Appeal of GK and quashed the Judgment of the Basic Court, noting that the period of time for statute of limitation was applied erroneously.
16. On 10 January 2014, the Applicant filed a Revision with the Supreme Court, *“due to a violation of the provisions of the contested procedure under Article 188 of the LCP, made by the second instance court and Erroneous application of the substantive law”*.
17. On 6 March 2014, the Supreme Court (Judgment E. Rev. no. 9/2014) partially approved the revision only with regard to the interest, obliging the Applicant, *“... to pay to the Claimant the adjudicated amount according to the interest that local banks pay for time-bound instruments for over one (1) year, without a determined destination”*.

### **Applicant’s allegation**

18. The Applicant has not precisely indicated which Articles of the Constitution have been breached and which fundamental rights or freedoms have been violated. However, it appears that the Applicant complains that the court decisions of the regular courts are not well-reasoned and that the Applicant challenges the impartiality of the Trial Panel of the Court of Appeal, which would result in the violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution.
19. In this regard, the Applicant states:

*“It is a legal rule and principle that the judgment must be reasoned succinctly and substantively, which has not been made in the case of this contest. Pursuant to law, the reasoning of a judgment with unclear and contradictory data, as is the case with the challenged judgment, is equivalent to the full absence of reasoning...”*
20. The Applicant further alleges:

*“the Court of Appeal did not only render a disputable judgment, but, in a rather short period of time, has forced and speed up the rendering of the challenged judgment, even though the statistics show that the Court of Appeals of Kosovo – as the only second-instance court, having a territorial jurisdiction all over the Republic of Kosovo – has a large number of unsolved matters, while the subject matters of an economic contest-related*

*nature, as is the case with the current subject matter, are not considered to be matters that must be treated and decided on with priority.”*

21. In addition, the Applicant requested for interim measure, seeking the postponement of the judgment enforcement until a final decision is rendered by the Court.

### **Admissibility of the Referral**

22. First of all, the Court examines whether the Applicant has met the admissibility requirements provided by the Constitution and further specified by the Law and the Rules of Procedure of the Court.

23. In this regard, the Court refers to Article 113 of the Constitution which provides:

*“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.”*

24. The Court also refers to Article 48 of the Law which provides;

*“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.”*

25. The Court further refers to Rule 36 of the Rules of Procedure, which provides:

*“(1) The Court may only deal with Referrals if: (c) the Referral is not manifestly ill-founded.*

*(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: [...] d) the Applicant does not sufficiently substantiate his claim.”*

26. The Court recalls that the Applicant claims that the Supreme Court violated his rights guaranteed by the Constitution, without specifying any particular provision of the Constitution, but alluding to the violation of the right to fair trial.

27. The Court notes that the Supreme Court, while thoroughly replying to the most salient legality questions raised by the Applicant, considered that *“the second instance court has correctly applied the substantive law”* and concluded that *“it is confirmed the fact that we are dealing with claims of legal persons, which derive from the contract on sale of goods and services, and the calculation of the prescription time limit must be done pursuant to article 374, paragraph 1 of the Law of Contract and Torts, which is 3 years”*.

28. The Court also notes that the Supreme Court further reasoned holding that “*Statements of the Revision according to which, during the proceedings before the second instance court, there has been made a violation of provision of Article 182.2 (n) of the LCP, are not grounded, because the second instance court provides enough and convincing reasons, which are approved also by this Court.*” The Supreme Court continued its reasoning saying that “*The statements of revision according to which, in the concrete case, Article 378, paragraph 1, item 3 and 4 of Law on Contested Procedure, setting forth the one-year prescription, must be applied is ungrounded, because for the business relations between legal persons, in relation to sale of goods and services, the prescription time limit is set out in Article 374, paragraph 1 of the Law of Contract and Torts, which is a 3-year time limit*”.
29. The Court notes that the main issue under discussion is how the “*calculation of the prescription time limit must be done*”.
30. The Court considers that the alleged erroneous application of certain legal provisions instead of others pertains to the domain of legality, which falls under the prerogatives of the regular courts.
31. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of fact or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
32. In this regards, the Constitutional Court reiterates that it is not its task under the Constitution to act as a court of fourth instance in relation to the decisions rendered by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *Garcia Ruiz v. Spain*, no. 30544/96, European Court on Human Rights [ECHR], Judgment dated 21 January 1999; see also Resolution on Inadmissibility in Case no. KI70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Constitutional Court, dated 16 December 2011).
33. The Constitutional Court can only consider whether the evidence has been presented in a correct manner, and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial (see, among other authorities, Report of the European Commission on Human Rights in the case *Edwards v. United Kingdom*, no. 13071/87, adopted on 10 July 1991).
34. Based on the case files, the Court considers that the reasoning given in the Judgment of the Supreme Court is justified and clear, and the Court further considers that the proceedings in the regular courts were not unfair or arbitrary (see case *Shub v. Lithuania*, ECHR Decision No. 17064/06 of 30 June 2009).



35. The Court considers that the Applicant has not substantiated and proved how and why the Supreme Court violated his right to a fair and impartial trial by deciding that “*the prescription time limit is (...) a 3-year time limit*”.
36. Before the foregoing, the Referral is manifestly ill-founded and must be declared inadmissible pursuant to Rule 36 (1) c) and (2) d) of the Rules of Procedure.

### **Request for interim measure**

37. In relation to the interim measure, the Court refers to Article 116.2 [Legal Effects of Decisions] of the Constitution, which establishes that “*While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court finds that application of the contested action or law would result in unrecoverable damages.*”
38. The Court also refers to Article 27 of the Law, which provides that “*The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.*”
39. Furthermore, Rule 54 (1) of the Rules of Procedure provides that “*At any time when a referral is pending before the Court and the merits of the referral have not been adjudicated by the Court, a party may request interim measures.*”
40. In order for the Court to decide upon an interim measure, pursuant to Rule 55 (4), it is necessary that:
  - “(a) *the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
  - “(b) *the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*
  - “(c) *the interim measures are in the public interest. If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application.*”
41. The Court notes that, as concluded above, the Referral is manifestly ill-founded and thus inadmissible.
42. The Court finds that, since the Referral of the Applicant is rejected as inadmissible, then the request for interim is moot, therefore, the request for imposing the interim measure should be rejected.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113 of the Constitution, Article 47 of the Law, and Rules 36 (2), d), 55 (4) and 56 (2) of the Rules of Procedure, on 23 September 2014, unanimously

## DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO REJECT the Request for Interim Measures;
- III. TO NOTIFY the Parties of this Decision;
- IV. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- V. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

  
Dr. Sc. Kadri Kryeziu

  
Prof. Dr. Enver Hasani