



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

Prishtina, 09 October 2017
Ref. no.: RK1137/17

RESOLUTION ON INADMISSIBILITY

in

Cases No. KI127/16 and KI35/17

Applicant

Private-Trade Enterprise „Riar-Alfis“

Constitutional review of Decision IV. C. No. 408/15 of 7 July 2016 of the Basic Court in Prishtina, Decision GJA. No. 1214/2016 of 25 July 2016 of the Basic Court in Prishtina, and Decision Ac. No. 2685/17 of 31 January 2017 of the Court of Appeals of Kosovo

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Applicant of both Referrals KI127/16 and KI35/17 is the Private-Trade Enterprise “Riar-Alfis” from Prishtina represented by its owner Rifat Sadiku (hereinafter: the Applicant).

Challenged decision

2. The Applicant in Referral KI127/16 challenges Decision IV. C. No. 408/15 of 7 July 2016 of the Basic Court in Prishtina – Department for Commercial Matters, and Decision GJA. No. 1214/2016 of 25 July 2016 of the Basic Court in Prishtina, which were served on him on 21 September 2016.
3. The Applicant in Referral KI35/17 challenges Decision Ac. No. 2685/17 of 31 January 2017 of the Court of Appeals of Kosovo (hereinafter: Court of Appeals).

Subject matter

4. The subject matter is the constitutional review of the challenged decisions. These decisions allegedly have violated the Applicant's rights guaranteed by Articles 21 [General Principles], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Articles 6 [Right to a fair trial], 13 [Right to an effective remedy], 17 [Prohibition of abuse of rights], 18 [Limitation on use of restrictions on rights] and Article 1 of Protocol 1 [Protection of property] of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

5. The Referral is based on Articles 21.4 and 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 4 November 2016, the Applicant submitted Referral KI127/16 to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 5 December 2016, the Applicant submitted additional documents regarding the disciplinary proceeding against the trial judge, and requested that the additional documents be included into the Referral.
8. On 14 December 2016, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Artta Rama-Hajrizi and Bekim Sejdiu.
9. On 22 December 2016, the Court notified the Applicant about the registration of Referral KI127/16, and sent a copy of it to the Basic Court in Prishtina-Department for Commercial Matters.
10. On 30 March 2017, the Applicant submitted another Referral to the Court, registered as Referral KI35/17.

11. On 25 April 2017, the Court notified the Applicant about the registration of Referral KI35/17, and sent a copy of it to the Court of Appeals.
12. On 28 April 2017, the President of the Court ordered the joinder of Referral KI35/17 with Referral KI127/16 in accordance with Rule 37 (1) of the Rules of Procedure. According to the order, the Judge Rapporteur and the composition of the Review Panel in both cases (KI127/16 and KI35/17) remain the same, as decided by her Decision No. KSH. KI127/16.
13. On 08 May 2017, the Court notified the Applicant, the Basic Court in Prishtina and the Court of Appeals about the joinder of Referrals KI127/16 and KI35/17.
14. On 05 September 2017, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral

Summary of facts

15. The facts in relation to both Referrals concern the same series of judicial proceedings.

The contested proceedings

16. On 30 October 2008, the Applicant, entered into an agreement with the Limited Liability Company "Interpress R. Company" (hereinafter: the LLC "Interpress R. Company"), in the capacity of an investor, for the construction and renovation of the former supermarket "Voćar".
17. On 16 April 2009, the Applicant filed a claim with the District Commercial Court in Prishtina, requesting the fulfillment of the contractual obligations. LLC "Interpress R. Company" filed a counterclaim with the same court.
18. On 7 September 2011, the District Commercial Court in Prishtina by Judgment I.C. no. 269/2009 approved the Applicant's statement of claim and ordered LLC "Interpress R. Company", to pay for the work performed by the Applicant, to the amount of 41.250, 00 Euros plus an interest rate of 3.5% from the date of filing the claim, and the costs for the proceedings in the amount of 2,532.00 Euros.
19. The District Commercial Court in Prishtina by the same Judgment rejected the Applicant's statement of claim in respect of the lost profit in the amount of 87,986.25 Euros, and also rejected the counterclaim filed by LLC "Interpress R. Company" in the amount of 102.477.00 Euros.
20. Both litigating parties filed an appeal with the Court of Appeals against Judgment I. C. no. 269/2009 of the District Commercial Court in Prishtina.
21. On 9 October 2014, the Court of Appeals by Judgment Ae. No. 384/2012 partially approved the appeal of the LLC "Interpress R. Company" with respect to the costs of proceedings and reduced the costs of the proceedings to 844.00

Euros, while in other parts upheld Judgment IC no. 269/2009 of the District Commercial Court in Prishtina.

22. The LLC "Interpress R. Company" filed a request for revision with the Supreme Court of Kosovo against the Judgment of the Court of Appeals.
23. On 19 August 2015, the Supreme Court of Kosovo by Decision E Rev. No. 17/2015 approved as grounded the revision of the respondent LLC „Interpress R. Company”, concluding that the earlier judgments were rendered with existence of essential violations of the contested procedures because the respondent was represented by an unauthorized person. The Supreme Court ordered that,

“... Judgment Ae.No.384/2012 of the Court of Appeals of Kosovo of 09.10.2014 and Judgment C. No. 269/2009 of the District Commercial Court in Prishtina of 07.09.2011, are annulled and the case is remanded for retrial to the first instance court.”

24. On 7 July 2016, in the retrial, the Basic Court in Prishtina-Department for Commercial Matters, in the preparatory hearing, rendered Decision IV. C. No. 408/15 by which it approved the request of the LLC „Interpress R. Company“ to suspend the proceedings in the contested procedure pending the completion of proceedings against the enforcement according to Decision E. No. 1877/15 of 25 February 2016. The Basic Court reasoned that the proceedings against the enforcement are a preliminary issue which must be resolved before continuing with the contested proceedings.

The enforcement proceedings and counter-enforcement proceedings

25. On an unspecified date, the Applicant, based on Judgment Ae. No. 384/2012 of the Court of Appeals, initiated the enforcement proceedings before a private enforcement agent, as the request for revision submitted by the LLC "Interpress R. Company" as an extraordinary legal remedy does not stay the execution of the Judgment of the Court of Appeals.
26. The private enforcement agent by Writ of enforcement P. no. 19/15 approved the enforcement based on Judgment Ae. No. 384/2012 of the Court of Appeals.
27. On 20 November 2015, the LLC "Interpress R. Company" submitted a request for counter-enforcement as based on the request for revision, the Supreme Court by Decision E Rev. No. 17/2015 had annulled „*Judgment Ae. No. 384/2012 of the Court of Appeals of Kosovo of 09.10.2014, and of the District Commercial Court in Prishtina C. No. 269/2009 of 07.09.2011.*”
28. On 9 December 2015, the Basic Court in Prishtina by Conclusion E No. 1877/15 requested the Applicant to comment on the request for counter-enforcement.
29. On 11 January 2016, the Applicant filed an objection to the proposal for counter-enforcement.

30. On 27 January 2016, the Basic Court in Prishtina held an oral hearing on the counter-enforcement procedure.
31. On 25 February 2016, the Basic Court in Prishtina by Decision E No. 1877/15 partially approved the proposal for counter-enforcement and obliged the Applicant, *“to return the amount of €51,999.54 which were taken from the creditor based on an enforcement procedure conducted before the private enforcement agent as an enforcement body, with 8% interest from 19.08.2015 until the means are returned, and to pay the amount of 260.00 € on behalf of the costs of the enforcement procedure within time limit of 7 days from the day of serving this decision.”*
32. On 25 February 2016, the Basic Court in Prishtina by another Decision E No. 1877/15 rejected the objection of the counter-enforcement debtor (the Applicant) and continued with the counter-enforcement procedure.
33. The Applicant filed an objection against both decisions of the Municipal Court in Prishtina.
34. On 09 June 2016, the Basic Court in Prishtina by Decision E. No. 1877/2015 rejected the objections of the Applicant.
35. The Applicant filed an appeal with the Court of Appeals against Decision E. No. 1877/2015 of 9 June 2016 of the Municipal Court in Prishtina.
36. On 31 January 2017, the Court of Appeals by Decision Ac. No. 2685/2016 rejected as ungrounded the Applicant's appeal and upheld Decision E. No. 1877/2015 of 09.06.2016 of the Basic Court in Prishtina.

The procedure for recusal of a judge and disciplinary proceedings

37. On 11 July 2016, the Applicant filed a request for recusal of Judge M.P. from the proceedings and adjudication in the retrial in the contested procedures before the Basic Court in Prishtina, with the reasoning that he rendered:

“... the decision on terminating the procedure in this contested matter of 07.07.2016 until the counter-enforcement procedure is completed, the latter is in contradiction with the provisions of Article 277 and 278 of LCP since by no condition foreseen in these provisions cannot be justified the legality of this decision.”
38. On 25 July 2016, the Basic Court in Prishtina by Decision GJA. No 1214/2016 rejected as ungrounded the Applicant's request for recusal of Judge M.P. from the proceedings.
39. On 29 August 2016, the Applicant filed a request for initiation of disciplinary proceedings with the Office of Disciplinary Counsel against Judge M.P..
40. On 7 November 2016, the Office of Disciplinary Counsel by letter ZPD/16/KB/892 informed the Applicant that it had initiated the disciplinary

investigation (which is ongoing) against Judge M.P. regarding the manner of proceeding in the Applicant's case IV. C. No. 408/2015.

Applicant's allegations in both Referrals

41. The Applicant's allegations in relation to both Referrals are substantially identical. Fundamentally, he alleges that his rights to a fair trial and equality of treatment before the law have been violated because the regular courts have allowed the counter-enforcement proceedings to take precedence over the retrial on the merits of the contested proceedings on the fundamental dispute.
42. In Referral KI 127/16, the Applicant specifically alleges that this action by the regular courts constitutes a violation of Articles 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution.
43. In Referral KI35/17, the Applicant repeats the same allegations in relation to the Constitution and also alleges violations of Articles 6 [Right to a fair trial], 13 [Right to an effective remedy], 17 [Prohibition of abuse of rights], 18 [Limitation on use of restrictions on rights] and Article 1 of Protocol 1 [Protection of property] of the ECHR.
44. In sum, the Applicant considers that the counter-enforcement proceedings are not a preliminary issue in relation to the contested proceedings, but that the contested proceedings are a preliminary issue in relation to the enforcement procedure. Therefore, the Applicant claims that the procedures applied by the regular courts are in violation of the law, and this places the Applicant in an unequal position vis-à-vis the respondent party.
45. Because the counter-enforcement proceedings are being decided first, the Applicant claims that this violates his right to a fair hearing on the merits of his contested proceedings.
46. Furthermore, because the judge had decided that the contested proceedings were secondary to the counter-enforcement proceedings, in violation of the law, the Applicant considers that this is evidence of bias against him on the part of that judge. The Applicant's request for recusal of this judge was refused, and therefore the Applicant alleges that he cannot receive a fair trial by this judge.
47. Regarding the constitutional review of Decision IV. C. No. 408/15 of the Basic Court in Prishtina of 7 July 2016, suspending the contested proceedings, the Applicant requests the Court:

*“... 3) To **ANNUL** Decision of 7 July 2016 in the contested matter IV. C. No. 408/15, of the Basic Court in Prishtina – Department for Commercial Matters, which violates Article 24, item 1, Articles 31, 32 and 54 of the Constitution of the Republic of Kosovo and Article 6, item 1 and 13 of the ECHR.*

*4) To **ORDER** the Basic Court in Prishtina – Department for Commercial Matters to start the retrial in the contested matter IV. C. No. 408/15*

according to Decision Rev. No. 17/2015, of 19 August 2015, of the Supreme Court of Kosovo, based on Rule 74.1 of Rules of Procedure.

5) To **ORDER** the Basic Court in Prishtina – Department for Commercial Matters –Civil Division to terminate the procedure of counter-enforcement according to Decision E. No. 1877/15, of 9 June 2016, until completion of contested procedures of the retrial by a final Decision according to Decision E. Rev. No. 17/2015, of 19 August 2015, of the Supreme Court of Kosovo because the contested procedure is a preliminarily matter of the contest and the Decision E. No. 1877/15, of 9 June 2016, violates Article 24, item 1, Article 31, 32 and 54 of the Constitution of the Republic of Kosovo and Article 6, item 1 and 13 of the ECHR.“

48. Regarding the constitutional review of Decision GJA. No. 1214/2016 of the Basic Court in Prishtina of 25 July 2016, rejecting the request for recusal of a judge, the Applicant requests the Court:

“..3) To **ANNUL** Decision GJA. No. 1214/2016, of 25.07.2016 of the Basic Court in Prishtina – Department for Commercial Matters, which violates Article 24, item 1, Articles 31, 32 and 54 of the Constitution of the Republic of Kosovo and Article 6 and 13 of the ECHR.

4) To **APPROVE** the request of the Applicant for recusal of M.P. - Judge in the Basic Court in Prishtina-Department for Commercial Matters from proceeding and decision upon the contested legal matter IV. Ek. No. 408/2015, as grounded.”

49. Regarding the constitutional review of Decision Ac. No. 2685/17 of 31 January of the Court of Appeals, allowing the counter-execution proceedings, the Applicant requests the Court to:

“TO **ANNUL** Decision Ac. No. 2685/17 which caused him irreparable damage.

TO **HOLD** that the Applicant’ rights and freedoms guaranteed by the Constitution of the Republic of Kosovo, defined under Article 21 item 1), 2), 3), Article 24, item 1), Articles 31, 46 and 54 and provisions of the ECHR defined under Article 6.1, 13, and Article 1 of Protocol 1 and Articles 14, 17 and 18, have been violated by the Decision.

[...]
”

Assessment of the admissibility

50. The Court will examine whether the Applicant has fulfilled the admissibility requirements established in the Constitution, in the Law and the Rules of Procedure.
51. Firstly, the Court refers to Article 113 [Jurisdiction and Authorized Parties], paragraphs 1 and 7, of the Constitution, which provides that,

“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."

52. Then the Court refers to Article 21 [General Principles], paragraph 4, of the Constitution which provides that,

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

53. The Court also refers to Articles 47 [Individual Requests], paragraph 2, of the Law, which provides that:

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

54. The Court further refers to Article 48 [Accuracy of the Referral] of the Law, which provides that,

"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".

55. Furthermore, the Court takes into account Rule 36, paragraph 1 (b) and (d), and paragraph 2 (a) of the Rules of Procedure, which foresee that,

"(1) The Court may consider a referral if:

[...]

b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted, or

[...]

d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

(a) the referral is not prima facie justified, or [...]."

56. The Court first considers that, pursuant to Article 21.4 of the Constitution, which provides that *"fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable,"* the Applicant is entitled to submit a constitutional complaint, invoking constitutional rights, valid for individuals and applicable as well for legal persons such as the Applicant (see, (see Resolution on Inadmissibility, *AAB-RIINVEST University L.L.C. Prishtina v. the Government of the Republic of Kosovo*, case KI41/09, of 21 January 2010).

57. In the present case, the Court considers that the Applicant is an authorized party, and has filed the Referral within the prescribed deadline. However, the Court should further assess if the requirements provided by Articles 47 and 48 of the Law and foreseen by Rule 36 of the Rules of Procedure have been met.

58. The Court will assess the allegations against each of the three challenged decisions of the regular courts separately.

A. Regarding Decision IV. C. No. 408/15 of the Basic Court in Prishtina of 7 July 2016

59. The Court recalls that the Applicant challenges Decision IV. C. no. 408/15 of the Basic Court in Prishtina of 7 July 2016, suspending the contested proceedings, on the basis of the argument that this decision was in violation of the law, and thereby violated his rights to a fair trial on the merits of his contested proceedings.

60. The Court notes that the Basic Court suspended the contested proceedings pending a determination on the counter-enforcement proceedings.

61. As such, the Court notes that the contested proceedings will resume once the counter-enforcement proceedings have been concluded.

62. In this respect, the Court recalls that it may only accept Referrals once the Applicant has exhausted all legal remedies provided by the law.

63. The rationale for the exhaustion rule, as in the present case, is to afford the regular courts the opportunity to put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order shall provide an effective legal remedy for the violation of the constitutional rights (see Resolution on Inadmissibility, *AAB-RIINVEST University L.L.C. Prishtina v. the Government of the Republic of Kosovo*, case KI41/09, of 21 January 2010, and see *mutatis mutandis*, ECHR *Selmouni vs. France*, No. 25803/94, decision of 29 July 1999).

64. In the present case, the Court notes that the challenged decision is a preliminary determination, and that the contested proceedings will continue on the merits of the Applicants rights and obligations once the counter-enforcement proceedings have been concluded.

65. The Court recalls that on 31 January 2017, the Court of Appeals by Decision Ac. No. 2685/2016 rejected as ungrounded the Applicant's appeal and upheld Decision E. No. 1877/2015 of 09.06.2016 of the Basic Court in Prishtina on the counter-enforcement proceedings.

66. The Court notes that, therefore, the proceedings before the Basic Court on the substance of the Applicant's claims can now continue.

67. In these circumstances, the Court considers that the proceedings are ongoing and the Applicant's case has not yet reached a final decision by a court.

68. Therefore, the Court concludes that the Applicant's allegations in relation to the challenged Decision IV. C. No. 408/15 of the Basic Court in Prishtina of 7 July 2016, are premature, because the Applicant has not exhausted all legal remedies available under the law.

B. Regarding Decision GJA. No. 1214/2016 of the Basic Court in Prishtina of 25 July 2016

69. Regarding the constitutional review of Decision GJA. No. 1214/2016 of the Basic Court in Prishtina of 25 July 2016, rejecting the request for recusal of a judge, the Court recalls that the Applicant alleges that the judge who ordered the suspension of the contested proceedings was biased against the Applicant.
70. The Court recalls that where there are questions about the impartiality of a judge, the ECtHR has identified both a subjective test, where the judge is personally biased against the Applicant, and an objective test.
71. The Court recalls the ECtHR case law which states that, *“Under the objective test, it must be determined whether, quite apart from the judge’s personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused. Accordingly, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw. (see ECtHR Judgment of 24 May 1989, Hauschildt v. Denmark, No. 10486/83, paragraph 48).”*
72. The Court notes that the Applicant had submitted a request for disciplinary proceedings against the challenged judge.
73. The Court further notes that regarding this disciplinary complaint, the Office of Disciplinary Counsel (letter ZPD/16/kb/892) informed the Applicant that it had initiated a disciplinary investigation against the challenged judge regarding the manner of handling the Applicant’s case. The Court notes that this disciplinary investigation is still ongoing.
74. As such, the Court considers that the question of potential bias of the challenged judge has not yet been determined by the competent authority.
75. The Court notes that, once these disciplinary proceedings have been concluded, it will remain open to the Applicant to challenge the decisions of this judge for reasons of bias, because of how the contested proceedings were handled.
76. In these circumstances, the Court considers that the proceedings regarding the fundamental issue of the impartiality of the judge have not yet reached a final decision by a court.
77. Therefore, the Court concludes that the Applicant’s allegations in relation to the challenged Decision GJA. No. 1214/2016 of the Basic Court in Prishtina of 25 July 2016 are premature, because the Applicant has not exhausted all legal remedies available under the law.

C. Regarding the constitutional review of Decision Ac. No. 2685/17 of 31 January 2017 of the Court of Appeals

78. Regarding the constitutional review of Decision Ac. No. 2685/17 of 31 January 2017 of the Court of Appeals, allowing the counter-execution proceedings, the Court recalls that the Applicant alleges that this is based upon an incorrect application of the law, and causes him irreparable damage.
79. The Court notes that the Applicant alleges that the Court of Appeals applied an “*erroneous linguistic and legal interpretation*” of Article 54, paragraph 1.1, of the Law on Enforcement Procedure.
80. The Court recalls that the Court of Appeals reasoned its decisions on this point, stating that,
- “... The Court of the first instance correctly ascertained the fact that the conditions for imposing the counter-execution have been fulfilled, pursuant to Article 54, paragraph 1 and item 1.1 of the LEP, which defines that: “1. Debtor is entitled during same enforcement procedure, and after the end of enforcement procedure, to request the court the issuance of a decision ordering the enforcement creditor to return the items taken based on enforcement procedure, if: 1.1. enforcement document by a final decision is overruled, amended, annulled, dismissed or was concluded in another way that it is without legal effect; and in the present case by Decision Rev. nr. 17/2015, of the Supreme Court of Kosovo, of 19 August 2015, the execution document - Judgment C. nr. 269/2009, of 7 September 2011, and Judgment Ac. Nr. 384/2012, of 9 October 2014, based on which the execution was applied before the private enforcement agent, have been annulled by the Supreme Court.”*
81. The Court reiterates that it is not its role to deal with errors of facts or law allegedly committed by the regular courts when assessing the evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality). When alleging violation of the rights and freedoms guaranteed by the Constitution are done by a public authority, the Applicant must present reasoned and convincing arguments.
82. The Court considers that the Applicant had the opportunity to present his factual and legal arguments on the case before the regular courts. His arguments were duly heard and examined by the regular courts, and the proceedings as a whole were fair and the rendered decisions were well reasoned.
83. The Court considers that the mere fact that the Applicant does not agree with the decisions of the regular courts cannot of itself raise an arguable claim of a breach of the right to fair and impartial trial (see: *mutatis mutandis* case *Mezotur - Tiszazugi Tarsulat v. Hungary*, Judgment of 26 July 2005)
84. The Court recalls that the Applicant has made allegations that there has been a violation of his constitutional rights, but he did not present any *prima facie*

evidence indicating how his constitutional rights were violated (see: ECtHR Judgment of 31 May 2005, *Vanek v. Slovak Republic*, no. 53363/99).

85. The Court considers that the Applicant has not substantiated his allegations that the relevant proceedings were in any way unfair or arbitrary, and that the challenged decision has violated the Applicant's constitutional rights and freedoms guaranteed by the Constitution and the ECHR (see: *mutatis mutandis*, ECtHR, Decision of 30 June 2009, *Shub v. Lithuania*, No. 17064/06).
86. Therefore, the Court concludes that the Applicant's allegations against the Decision Ac. No. 2685/17 of 31 January 2017 of the Court of Appeals is inadmissible as manifestly ill-founded on a constitutional basis.

Conclusions

87. Regarding the Applicant's allegations against Decision IV. C. No. 408/15 of 7 July 2016 of the Basic Court in Prishtina and Decision GJA. No. 1214/2016 of 25 July 2016 of the Basic Court in Prishtina, the Court concludes that the proceedings before the regular courts have not been completed.
88. Therefore, the Applicant's allegations regarding these two Decisions are premature and are to be rejected as inadmissible in accordance with Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, because the Applicant has not exhausted all legal remedies provided by law in order to be able to submit a Referral to the Constitutional Court.
89. Regarding the Applicant's allegations against Decision Ac. No. 2685/17 of 31 January 2017 of the Court of Appeals of Kosovo, the Court concludes that the Applicant has not substantiated his allegations.
90. Therefore, the Applicant's allegations are to be rejected as inadmissible as manifestly ill-founded in accordance with Article 48 of the Law and Rule 36 (2) a) of the Rules of Procedure, because the Applicant did not provide any *prima facie* evidence which would indicate a violation of constitutional rights.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Articles 21 and 113. of the Constitution, Articles 47 and 48 of the Law, and Rules 36 (1) (b) and 36 (2) (a) of the Rules of Procedure, in the session held on 05 September 2017, unanimously

DECIDES

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

Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama-Hajrizi