



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

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Pristine, 24 April 2012  
Ref. No.: RK222/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 56/11**

Applicant

**NP-Media Print**

**Constitutional Review of  
the Judgment of the Supreme Court of Kosovo Ae.Nr.104/2009,  
dated 21 September 2010**

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

composed of:

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge.

### **Applicant**

1. The Applicant is a private enterprise "NP-Media Print" from Pristina, represented by a lawyer Teki Bokshi from Gjakova.

## **Challenged decision**

2. The Applicant challenges the decision of the Supreme Court of Kosovo Ae.Nr.104/2009, dated 21 September 2010.
3. The Applicant alleges that there was a violation of Article 21 (general human rights principals), Article 22 (direct applicability of international agreements and instruments) and Article 53 (human rights and fundamental freedoms guaranteed by the Constitution are to be interpreted consistent with the court decisions of the European Court of Human Rights) of the Constitution of the Republic of Kosovo (hereinafter, the "Constitution"). The Applicant further alleges that there has been a violation of Article 6 of the European Convention on Human Rights (hereinafter, the "Convention") as well as Article 1 Protocol No. 1 to the Convention.

## **Legal Basis**

4. The Referral is based on Article 113 (7) of the Constitution, Articles 46, 47, 48 and 49 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the "Law"), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the "Rules").

## **Proceedings before the Court**

5. On 26 April 2011, the Applicant filed a referral with the Constitutional Court of Kosovo (hereinafter, the "Court").
6. On 28 April 2011, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Altay Suroy (Presiding), Ivan Čukalović and Kadri Kryeziu.
7. On 6 December 2011, the Court requested to the District Commercial Court Pristina information on the date of service of the Supreme Court judgment on the Applicant. On 13 December 2011, the District Commercial Court responded that the District Commercial Court attempted to serve the judgment on the Applicant on two separate occasions without success. The main reason for the inability to serve the judgment was the death of the Applicant's then representative, Leke Vuksani. On 13 March 2011, Teki Bokshi became the authorised representative of the Applicant and then the District Commercial Court provided him with access to the court file.
8. On 16 March 2012, 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**

9. On 27 June 2008, the District Commercial Court in Pristine delivered a judgment for permission of an execution in the case E No 260/08, where the Applicant was the Claimant.
10. The Applicant filed an appeal against that judgment and the District Commercial Court scheduled a session to hear the matter on 16 January 2009.
11. On 16 January 2009, the Applicant's representative at the time, Leke Vuksani, though invited in the regular manner, he failed to attend that session without justifying his absence.

12. On that same date of 16 January 2009, the District Commercial Court, in the case II.C.No. 290/2008, annulled the judgment on permission of execution E.No 260/08, dated 27 June 2008, and thereby suppressing entirely the obligation for the principal debt, interest and procedure expenses.
13. On 2 February 2009, Leke Vuksani filed a motion requesting “the permission to return to previous situation due to his absence from the session dated 16 January 2009, attaching to the motion only a report from the specialist doctor”.
14. On 12 May 2009, the District Commercial Court, in the same case II.C.No 290/2008, decided “TO DISMISS the Claimant’s authorized representative motion, MP-MEDIA PRINT of Prishtina for return to previous situation, as not founded”, because the representative did not comply with article 130 (4) of the Law on Contested Procedure (hereinafter, the “LCP”) which provides:  
  
*If the return to previous situation is requested due to failure to complete the procedural action within the prescribed period of time, the requestor is bound to attach the written action which failed to be completed on time.*
15. The Applicant filed an appeal with the Supreme Court against that Judgment of the District Commercial Court.
16. On 21 September 2010, the Supreme Court of Kosovo, by judgment Ae.Nr.104/2009, decided “to dismiss the [Applicant’s] appeal as not founded, and to uphold the Judgment of the District Commercial Court in Prishtina, C.No. 290/2008, date 16.01.2009”, by which the judgment on permission of execution E.No. 260/2008 has been annulled.
17. The Supreme Court considered that the “the first instance court has rightly applied provisions of the contest procedure from article 130.4 of the LCP”. The Supreme Court held that the Applicant’s representative did not meet the conditions stipulated in article 130 (4) in order to substantiate a return to previous situation because illness did not justify the absence of counsel from a court session.

### **Applicant’s allegations**

18. The Applicant claims that the circumstance where counsel is absent from a court session is foreseen in article 129 (1) of the LCP which provides that:  
  
*When the party does not take part in the proceeding or misses the due date for completion of any procedural action and due to this it loses the right to complete the procedural action bound to the prescribed period of time, the court may permit this party to complete this action with delay if there are reasonable circumstances which cannot be determined or avoided.*
19. The Applicant alleges violations of Article 21 of the Constitution, which provides for general human rights principles and Article 22 of the Constitution, which guarantees the direct applicability of international agreements and instruments, especially Article 6 of the Convention, because the judgment II.C.No 290/2008 of District Commercial Court dated 12 May 2009 was “not based on an objective reality”.
20. The Applicant also alleges that there has been a violation of Article 53 of the Constitution which provides that human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights. In this regard, the Applicant believes that the

judgments of the District Commercial Court and the Supreme Court were “absolutely unfair”.

### **Assessment of admissibility**

21. In order to be able to adjudicate the Applicant’s Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
22. Article 49 (Deadlines) of the Law, provides that:

*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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced.*
23. The Applicant claims that the decision of the Supreme Court dated 21 September 2010 was served on him on 6 April 2011 and for that reason he could have filed the Referral with the Constitutional Court only on 26 April 2011.
24. However, he has not supplied the Court with a certificate attesting the date of service, which is prescribed by law as evidence of when the Applicant was served with the judgment. Rather, he has provided the Court with a receipt from the District Commercial Court dated 6 April 2011 for the cost of photocopying the Supreme Court judgment no.290/08.
25. Apparently the Applicant is seeking to rely on the date of the receipt for the cost of photocopying as the same date of first service of the judgment, which is not logically necessary. Moreover, it appears that the judgment allegedly was not served on the Applicant due to the fact that his representative had died and only on 13 March 2011 a new representative was appointed.
26. Even though a receipt for photocopying the judgment is not a compelling evidence of the date of service of it, the specific circumstances of the case advice for reconsideration.
27. In fact, the District Commercial Court stated that they attempted to serve the judgment on the Applicant on two separate occasions without success, because of the absence/death of representative. The District Commercial Court further states that they provided the new representative with access to the court file and this could have happened on 6 April 2011, the date inserted in the receipt for photocopying the judgment delivered in that file case.
28. Before the foregoing, the Court considers that it is reasonable to admit that the Applicant learnt for the first time about the judgment and its content on 6 April 2011, the date the new representative received a copy and that date is the one relevant for assessing the deadline in which the referral must be filed, in accordance with Article 49 of the Law.
29. Therefore, the conclusion is that the Referral is in time.
30. The Court also refers to:
  - a. Rule 36 (1) (a) and (c) of the Rules: *the Court may only deal with referrals if (...) the referral is not manifestly ill-founded.*
  - b. Rule 36 (2) (b) and (d): *the Court shall reject a referral as being manifestly ill-founded when it is satisfied that the presented facts do not in any way justify the*

*allegation of a violation of the constitutional right or the Applicant does not sufficiently substantiate his claim.*

31. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has been committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.
32. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of the decisions taken by regular courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, García Ruiz v. Spain [GC], no 30544/96, para 28 European Court on Human Rights [ECHR] 1999-I).
33. The mere fact that the Applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 of the Constitution (see *mutatis mutandis* Judgment ECHR Appl. No. 5503/02, *Mezotur Tizsazugi Tarsulat v. Hungary*, Judgment of 26 July 2005.)
34. Moreover, the Referral does not indicate that the Supreme Court acted in an arbitrary or unfair manner. It is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the regular court's proceedings were fair in their entirety, including the way in which evidence was taken (see Judgment ECHR App. No 13071/87 *Edwards v. United Kingdom*, para 34, of 10 July 1991).
35. The Referral does not disclose any appearance of a violation of the rights and freedoms set out in the Constitution and in the Convention. In particular, the Applicant failed to show and prove that the challenged Judgment of the Supreme Court was "absolutely unfair" and thus violated Articles 21, 22 and 53 of the Constitution and Article 6 of the European Convention on Human Rights.
36. In these circumstances, the Applicant cannot be considered to have fulfilled the abovementioned established admissibility requirements and therefore the Referral is inadmissible.

### **FOR THESE REASONS**

The Constitutional Court pursuant to Article 113 (7) of the Constitution and Rule 36 of the Rules, unanimously,

### **DECIDES**

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

  
Almiro Rodrigues

**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani