



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

Pristina, 27 December 2016  
Ref. No.:RK1028/16

## RESOLUTION ON INADMISSIBILITY

in

**Cases No. KI80/15, KI81/15 and KI82/15 (joined)**

Applicant

**Rrahim Hoxha**

**Constitutional review of  
Decisions Ae. Nos. 188/2014, 189/2014, of 19 January 2015,  
and Decision Ae. No190/2014, of 20 January 2015, all of the  
Court of Appeals**

### THE 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 Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

#### **Applicant**

1. The Referrals KI.80/15, KI.81/15 and KI.82/15 were submitted by Rrahim Hoxha, owner of the Company "ISARS" (hereinafter, the Applicant). Mr. Hoxha is represented by Mr. Bajram Tmava, a lawyer practicing in Pristina.

## **Challenged decision**

2. The Applicant challenges Decisions Ae. Nos. 188/2014 (Referral KI.80/15) and 189/2014 (Referral KI.81/15), of 19 January 2015, and Decision Ae. No. 190/2014 (Referral KI.82/15), of 20 January 2015, all of the Court of Appeals, which rejected the Applicant's request for repetition of the executive proceedings.
3. The three decisions were served on the Applicant on 2 March 2015.

## **Subject matter**

4. The subject matter of the Referrals is the constitutional review of the challenged Decisions Ae. Nos. 188/2014 and 189/2014 dated 19 January 2015 and Ae. No. 190/2014 dated 20 January 2015 of the Court of Appeals in Pristina, which allegedly violated Article 31, paragraph 1, of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

## **Legal basis**

5. The Referrals are based on Article 21.4 and 113.7 of the Constitution and Articles 22 [Processing referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

## **Proceedings before the Court**

6. On 17 June 2015, the Applicant submitted the Referrals Nos. KI80/15, KI81/15 and KI82/15 to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 3 August 2015, the President of the Court decided to join Referrals KI81/2015 and KI82/2015 to Referral KI80/2015 and to appoint Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of the Judges Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Bekim Sejdiu.
8. On 6 October 2015, the Court requested the Applicant to provide an authorization or document proving that the Applicant was the representative or owner of the Company "ISARS".
9. The Court also informed the Applicant that, on 3 August 2015, the President of the Court decided to join Referrals KI81/2015 and KI82/2015 to Referral KI80/2015.
10. On 9 October 2015, the Applicant submitted the Certificate of Registration of the Company, issued by the Ministry of Trade and Industry, indicating that the Applicant was its owner.
11. On 2 November 2016, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur to replace Judge Robert Carolan who left the Court on 9 September 2016.

12. On 6 December 2016, 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**

### **Executive proceedings**

13. On an uncertain date, the Applicant filed with the District Commercial Court in Pristina three proposals for execution of three credits for works performed in compliance with the contract concluded between the Applicant and the Kosovo Protection Corps (hereinafter, the KPC).
14. On 19 January 2011 and 20 January 2011, the District Commercial Court (Decisions E. no. 57/2008, E. no. 58/2008 and E. no. 59/2008) rejected the Applicant's "proposals for execution" of the three unpaid bills for works performed the KPC.
15. The District Commercial Court reasoned that, pursuant to UNMIK Regulation No. 2000/46, the KPC was acting under the control and authority of UNMIK and could not take part in the proceedings as a party, because "*UNMIK, its property, funds and assets shall be immune from a legal process*".
16. The Applicant appealed to the Supreme Court against Decisions E. nos. 57/2008 and 59/2008. The case file does not contain any information that the Applicant also appealed against Decision E. no. 58/2008 of the District Commercial Court.
17. On 29 and 30 November 2012, respectively, the Supreme Court (Decisions Ae. Nos. 19/12, and 17/2011) rejected the Applicant's appeals, reasoning that by no legal provision or UNMIK regulation had the KPC been recognized as having the quality of a legal person. Moreover, the Supreme Court considered that the KPC did not meet the conditions to obtain the quality of a party, considering that it had no funding of its own and did not possess financial assets or property on which the execution could be carried out.

### **Repetition of executive proceedings**

18. On 30 May 2014, the Applicant requested the Basic Court in Pristina to allow the repetition of the three executive proceedings and annul the decisions previously rendered in relation to the cases.
19. On 8 October 2014, the Basic Court (Decisions E. Nos. 57/2008, 58/2008 and 59/2008) rejected as ungrounded the requests for repetition since, "*pursuant to Article 68 of the Law on Enforcement Procedure, revision and repetition of the enforcement procedure are not allowed*".
20. Thereupon, the Applicant appealed to the Court of Appeals against these Decisions, "*due to the violation of the contested procedure provisions,*

*erroneous and incomplete ascertainment of factual situation, and erroneous application of substantive law”.*

21. On 19 January 2015 (Decisions Ae. No. 188/2014 and 189/2014) and on 20 January 2015 (Decision Ac. No 190/2014), the Court of Appeals (Decisions Ae. No. 188/2014, 189/2014 and 190/2014) rejected as ungrounded the Applicant’s appeals and upheld the appealed Decisions of the Basic Court holding that the revision and repetition of the executive procedure is not allowed.

### **Applicant’s allegations**

22. The Applicant claims that the Decisions of the Court of Appeals violated his rights and fundamental freedoms, provided by paragraph 1 of Article 31 [Right to a Fair and Impartial trial] of the Constitution.
23. The Applicant requests the Court to annul the Decisions of the Court of Appeals (Ae. Nos. 188/2014, 189/2014, 190/2014) and the Decisions of the Basic Court (E. nos. 57/08, 58/2008 and 59/2008), all related to the repetition of executive proceedings; and remand the contested matter to the Basic Commercial Court for retrial and reconsideration.

### **Admissibility of the Referrals**

24. The Court first examines whether the Applicant has met the requirements of the admissibility of the joined Referrals which are established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
25. The Court recalls that the Applicant initiated two sets of proceedings related with the Referrals KI.80/15, KI.81/15 and KI.82/15: executive proceedings and repetition of the executive proceedings. The Court will confine itself to the repetition of the executive proceedings since they are the subject matter of the Referrals and they are also the last procedural step of all process occurred before the regular courts.
26. In this respect, the Court refers to Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establishes:
  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*
27. The Court also refers to Article 47 (Individual Requests) of the Law which provides:

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.*

28. The Court further refers to paragraph 3 (e) of Rule 36 [Admissibility Criteria] of the Rules of Procedure which foresees:

[...]

(3) *A referral may also be deemed inadmissible in any of the following cases:*

[...]

(e) *the Referral is incompatible ratione materiae with the Constitution [...].*

29. The Court also recalls that the Applicant claims a violation of paragraph 1 of Article 31 [Right to a Fair and Impartial trial] of the Constitution, because the challenged decisions rejected the repetition of executive proceedings.
30. The Court reiterates that, in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution, “*human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights*”.
31. In that respect, the Court notes that the European Court of Human Rights consistently has held that paragraph 1 of Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the Convention) does not guarantee a right to have proceedings reopened or repeated, and thus Article 6 does not apply to requests for the reopening or repeating of proceedings. (See ECtHR cases, *inter alia*, *Zawadzki v. Poland* (dec.), no. 34158/96, 6 July 1999; *Sablon v. Belgium*, no. 36445/97, § 86, 10 April; *Steck-Risch and Others v. Liechtenstein* (dec.), no. 29061/08, 11 May 2010; *Nistler v. Austria*, no. 24912/08, Decision of 19.11.2013; *Dichev v. Bulgaria*, no. 1355/04, Judgment of 27.01.2011).
32. Thus the Court considers that Article 31 [Right to Fair and Impartial Trial] of the Constitution, in connection with Article 6 § 1 of the Convention, is not applicable to the Applicant’s claim to repeat the executive proceedings.
33. The Court emphasizes that the compatibility *ratione materiae* of a Referral with the Constitution derives from the Court’s substantive jurisdiction. The right relied on by the Applicant must be protected by the Constitution in order for a constitutional complaint to be compatible *ratione materiae* with the Constitution. However, the Constitution does not guarantee to the Applicant a right to have proceedings reopened or repeated.
34. Moreover, the Court considers that the Applicant’s complains about the rejection of the regular courts to repeat executive proceedings are as such incompatible *ratione materiae* with Article 31 of the Constitution, in connection with Article 6 § 1 of the Convention.

35. Thus, the Court further considers that the Applicant's Referrals have not fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure
36. Therefore, the Court finds that the Applicant's complaints in Referrals KI.80/15, KI.81/15 and KI.82/15 are inadmissible *ratione materiae*.

### FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113.1 and 7 of the Constitution, Article 48 of the Law and Rules 36 (2) (d) and 56 of the Rules of Procedure, in the session held on 6 December 2016, 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**

Almiro Rodrigues



**President of the Constitutional**

Arta Rama-Hajrizi

