

[Supreme court - Ruling on Commercial Disputes - procedural dispute - appeal rejected - final judgment - article 348 (1) LCP]

The respondent appealed the decision of the District Commercial Court of Prishtina, arguing that the Court had wrongfully applied the substantive law.

The Supreme Court ruled that the District Commercial Court had acted correctly when it held that the appeal of the respondent was unfounded, considering that the respondent filed an appeal against the final judgment of the Supreme Court.

The Supreme Court ruled that appeals against the decisions of the Supreme Court which decided on the appeal and affirmed the ruling of the first instance Court, shall not be allowed, as required by article 348 (1) of the LCP. Accordingly, the Supreme Court ruled that the respondent's appeal was unfounded.

Ae.No.10 /2005

IN THE NAME OF PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Meleqe Bexheti, presiding judge, Shahdane Agani and lay judge Ejup Neziri, members, in the legal action of plaintiff Banka e Re e Kosoves (BRK) in Prishtina, against the respondent party N.P.SH "EUROARD" from Prishtina, for the debt, regarding the appeal of respondent filed against the decision of the District Commercial Court in Prishtina C.No.182/2003 of 10 February 2005, at the hearing held on 26.04.05, rendered the following:

DECISION

To reject the appeal of the respondent as unfounded and affirm the ruling of the District Commercial Court in Prishtina C.No.182/2003 of 10 February 2005.

Reasoning

The District Commercial Court in Prishtina, by a ruling rejected the appeal of the respondent filed against the ruling of the District Commercial

Court C.No.182/2003 of 12 January 2004.

The respondent filed an appeal against the ruling on the ground of wrongful application of substantive law, and proposed to annul the appealed decision and return the case to the same Court for retrial.

Upon reviewing the appealed ruling as provided for in Article 365 in conjunction with Article 381 of the Law on Contested Procedure, the Supreme Court held that appeal was unfounded.

The case files and appealed decision indicate that the Supreme Court, deciding on the appeal of the respondent, by the judgment Ac. No. 23/2004 of 27 May 2004, rejected the appeal and affirmed the ruling of the first instance Court. The respondent filed an appeal against the judgment of the Supreme Court and required from the petitioner to reprogram the debt for 24 months commencing from 01.06.05 until 01.06.07. Upon reviewing the case files, the District Commercial Court in Prishtina held that the appeal was unfounded, for the judgment has already come into effect with the issuance of judgment by the Supreme Court, Ae.No.23/2004 of 27 May 2004, which rejected the appeal of the respondent as unfounded and affirmed the ruling of the District Commercial Court. Thus, no appeal shall be permitted to be filed against the judgment of the Supreme Court.

The Supreme Court held that the first instance Court had acted correctly when it found the appeal of respondent as unfounded and when rendering sufficient reasons in its decision, which are accepted also by this Court.

The appeal against the judgment of the Supreme Court, which decided on the appeal and affirms the ruling of the first instance Court, shall not be allowed. In this respect Article 348 paragraph 1 of the LCP prescribes the following: Parties may file an appeal against the decision of the first instance. Since the judgment, which decided on the appeal, is a second instance judgment, no appeal can be filed against the second instance Court. Thus, the Supreme Court held that the first instance Court had acted correctly when it found the appeal of respondent as unfounded and rejected it.

As stated above, pursuant to Article 380 paragraph 2 of the LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO PRISHTINA

On 26.04.2004, Ae.No.10/2005

Presiding Judge
Meleqe Bexheti

**[Supreme Court - Ruling on Commercial Disputes - Appeal Rejected
Statutory Limitation - Article 378(1) Item 3 Contract Law]**

The plaintiff appealed the decision of the District Commercial Court of Prishtina, arguing that the Court had violated the applicable provisions of contested procedure, had determined erroneously and incompletely the factual situation and had wrongfully applied the substantive law.

Plaintiff required from the respondent party to pay the obligation in the name of the services provided by public network of telecommunication system, which the respondent party used. The respondent party had challenged the claim of the plaintiff and had contested the value of the debt by stating the statutory limitation of the debt.

The Supreme Court ruled that the Commercial Court made a correct and complete determination of factual situation, and applied correctly the substantive law when it found that the claim of the plaintiff is unfounded on the ground of statutory limitation of the debt, as required by article 378 (1) Item 3 of the Contract Law. The Supreme Court ruled that the debt shall be subject to statutory limitation after one year. In the following case the claim of the plaintiff on the use of telephone services were subject to statutory limitation after one year. Accordingly the Supreme Court ruled that the plaintiff's appeal was unfounded.

Ae.No. 14/2005

IN THE NAME OF PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Shahdane Agani, presiding judge, Meleqe Bexheti and lay judge Ejup Neziri, members, in the legal action of the plaintiff Post and Telecom of Kosovo in Prishtina against the respondent party "Elan" in Prizren, for the debt that is the value of dispute 10,827.78 euro, regarding the appeal of the plaintiff filed against the ruling of the District Commercial Court of Prishtina C.No.202/2004 of 23 November 2004, at the hearing held on 26.04.05, rendered the following

JUDGEMENT

To reject the appeal of the plaintiff as unfounded and affirm the ruling of the District Commercial Court of Prishtina C.No.202/2004 of 23 November 2004.

Reasoning

The District Commercial Court of Prishtina, by the section I of the enacting clause of the ruling C.No.202/2004 of 23 November 2004, annulled the judgment on permission of execution of decision E.No.221/2004 of 22 October 2004. Section II of the enacting clause of the ruling rejects the claim of the plaintiff, through which the plaintiff requires from the respondent party to pay the plaintiff an amount of 10,278.78 euro with annual interest rate of 3 % in conformity with deposited means in the Commercial Bank without particular destination within one year period commencing from 01.09.02 until the final payment is collected within 8 days from the moment of service of ruling under the threat of forced execution, as unfounded.

The plaintiff filed an appeal against this ruling in due time on the ground of violation of the applicable provisions of contested procedure, erroneous and incomplete determination of factual situation, and wrongful application of substantive law, and proposed to annul the appealed ruling and return the case to the first instance Court for retrial.

Upon reviewing the ruling pursuant to Article 365 of the CPL, the Supreme Court held that the appeal was unfounded.

The case files indicated that the plaintiff through its claim required from the respondent party to pay the plaintiff the amount in question in the name of the services provided by public network of telecommunication system in amount of 10.278.00 euro, which the respondent party used during the period September 2001 July 2003. The respondent party challenged the claim of the plaintiff and contested the value of the debt by pointing to the statutory limitation of the debt.

The first instance Court determined that the plaintiff fulfilled its obligation towards the respondent party regularly during the contested period, whereas the respondent party did not pay the abovementioned amount to the plaintiff and established that debt exceeded the statutory limitation, for the debt was accrued for the period September 2001 July 2003 and the legal action was filed on 21.10.04 one year after the debt was accrued as provided for in Article 378 paragraph 1 of the Contract Law.

Taking into account this legal case, the Supreme Court held that the first instance Court had made a correct and complete determination of factual situation, and had applied correctly the substantive law when it found that the claim of the plaintiff was unfounded on the ground of statutory limitation of the debt. The first instance Court also rendered sufficient reasons on decisive facts in its reasoning of judgment, which were accepted by the Supreme Court. The appealed judgment is not on violation of applicable provisions of the law on

contested procedure, which this Court is bound to apply *ex officio*.

The mere fact that the debt is required in the name of provision of the services of public network of telecommunication system for the period September 2001 July 2003, indicated that the first instance Court applied the substantive law correctly when it held that the debt shall be subject to statutory limitation pursuant to Article 378 paragraph 1 item 3 of the Contracts Law.

Article 378 paragraph 1 item 3 of the Contract Law prescribes that the claim of the Post Telecom of Kosova on the use of telephone services, which are billed quarterly or even monthly, shall be subject to statutory limitation after one year. The provision on question indicates that the debt shall be subject to statutory limitation.

As stated above, pursuant to Article 368 of the LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO PRISHTINA
On 26.04.05, Ae.No.14 /2005

Presiding Judge
Shahdane Agani

[Supreme Court - Ruling on Commercial Disputes - appeal rejected judgment in default - Article 332 (1) LCP]

The respondent M.F.S "Krokodili" in Ferizaj appealed the decision of the District Commercial Court, arguing that the Court had determined erroneously and incompletely the factual situation and had wrongfully applied the substantive law.

The District Commercial Court rendered a judgment in default against the M.F.S "Krokodili" in Ferizaj and ordered it to pay the debt due to the "Banka e Re e Kosovës within 8 days.

The Supreme Court ruled that the Court made a correct and complete determination of factual situation, and applied correctly the substantive law when rendering a judgment in default and that the legal conditions had been met considering that the respondent was summoned regularly, as required by article 332 of the LCP. Accordingly, the Supreme Court ruled that the respondent's appeal was unfounded.

Ae.No.20 /2005

IN THE NAME OF PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Shahdane Agani, presiding judge, Meleqe Bexheti and lay judge Ejup Neziri, members, in the legal action of the plaintiff Banka e Re e Kosoves (BRK) in Prishtina, against the respondent party M.F.S "Krokodili" in Ferizaj, which is represented by attorney in fact N. A., owner of the respondent, for returning the credit, in amount of 6,000 euro, which is the value of the dispute, regarding the appeal of the respondent filed against the ruling of the District Commercial Court in Prishtina C.No.220/2004 of 8 February 2005, at the hearing held on 26.04.05, rendered the following

JUDGEMENT

To reject the appeal of the respondent as unfounded and affirm the ruling of the District Commercial Court in Prishtina C.No.220/2004 of 8 February 2005.

Reasoning

The District Commercial Court in Prishtina, by the ruling in default

C.No.220/2004 of 8 February 2005, ordered the respondent to pay the debt to the plaintiff in amount of 6,000 euro, an amount of 93 euro in the name of the interest rate, and interest payment delay charge of 0.08 % per day commencing from 22.08.04 until the final payment of 152.50 euro is collected in the name of the expenditures for contested procedure, within 8 days from the moment when the judgment comes into effect, under the threat of compulsory execution of the ruling.

The respondent filed an appeal against the judgment of the first instance Court in due time on the grounds of erroneous and incomplete determination of factual situation, wrongful application of substantive law, and proposed to annul the judgment and return the case to the same Court for retrial.

Upon reviewing the appealed ruling as provided for in Article 365 of the Law on Contested Procedure, the Supreme Court held that the appeal was unfounded.

The case files indicate that based on the credit contract Nr. 81/2004 of 22 July 2004, the respondent received 6,000 euro from the plaintiff on credit, which the respondent was obliged to pay back within 15 days. The plaintiff had satisfied its obligations as prescribed by the contract completely, whereby the respondent did not satisfy its obligations as per contract.

Article 332 of the LCP prescribes that when the respondent does not appear at preparatory proceedings until its conclusion, or at the first hearing before main hearing is held if the main hearing was not held, or if he appears at the hearing but does not wish to enter further examination of the legal affair or withdraws from the hearing and does not challenge the petition, the judgment shall be rendered, which accepts the petition (judgment in default) if the following legal conditions have been met: if the respondent was summoned regularly; if the petitioner files a motion for a judgment to be rendered in absentia; if the respondent did not dispute the petition through a submission; if the grounds of petition arise from the facts included in the petition; if the facts on which the petition was based are not in contradiction with the evidence introduced by the petition or facts that were acknowledged by all parties; if the circumstances that impede the respondent to appear at the hearing exist.

In this specific case, the legal conditions as provided for in Article 1 of the present law had been met, thus, the Supreme Court held that the first instance Court had acted correctly when rendering judgment in default.

The Supreme Court held that the appeal claims of the respondent were unfounded as described in the appeal that the appealed judgment applied wrongfully the substantive law by expressly stating "I have received the amount of money from the plaintiff for the sake of my enterprise and I could not

return the debt within envisioned deadline, and I am not able to return the debt for the moment being".

Article 1065 of the Contract Law prescribes that based on the credit contract the bank shall be obliged to make available to the beneficiaries of the credit the contracted amount, within determined or undetermined period, for a particular destination, whereas the beneficiary shall be obliged to pay back the contracted interest and return the principal amount within the deadline specified by the contract. Given the respondent did not meet its obligations completely, the petitioner, in accordance with Article 262 of the Contract Law, shall be vested an authorization to require from the debtor to fulfill its obligations as specified by the contract.

As stated above, pursuant to Article 368 of the LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO PRISHTINA
On 26.04.05, Ae.No.20/2005

Presiding Judge
Shahdane Agani

[Supreme Court - Ruling on Commercial Disputes - appeal rejected - absolute jurisdiction of Court - Article 354(2) item 3 / Article 16 (2) LCP - Article 14 LEP]

The Creditor NSHIMB "Kualiteti" appealed the decision of the District Commercial Court of Prishtina.

The creditor with the motion for execution of decision requires from the debtor to pay the debt. The District Commercial Court of Prishtina rejected the motion of creditor to allow the execution of decision against the debtor YUA Military Post Leskovc.

The Supreme Court ruled that the decision of the Court was in violation with applicable provisions of the contested procedure, as required by article 354 (2), item 3 in conjunction with Article 16 (2) of the LCP and Article 14 of the LEP. The Supreme Court ruled that the violation of the contested procedure, as such arises from the facts that the proposal to permit the execution of the decision against debtor did not fall under the jurisdiction of either regular courts of Kosovo or any other Court of special jurisdiction, considering that the debtor had neither its representative office nor its headquarters in the territory of Kosovo, as required by article 55 of the Law on Resolution of Disputes with Foreign Regulations. The Supreme Court ruled that when during the procedure for resolution of disputes no Court established by law was competent, the Court shall dismiss the lawsuit, as required by article 16(2) of the LCP.

Accordingly, the Supreme Court ruled that the Creditor's appeal was founded and annulled the District Commercial Court decision and dismissed the lawsuit.

Ae.No. 29/2005

IN THE NAME OF PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Shahdane Agani, presiding judge, Meleqe Bexheti and Osman Tmava, members, in the legal action of the creditor NSHIMB "Kualiteti" against the debtor YUA Military Post 5399 Leskovc, for the debt of 416.310.40 dinars, regarding the appeal of the creditor filed against the decision of the District Commercial Court of Prishtina E.No.63/2004 of 21 April 2005, at the hearing held on 25.05.05 rendered the following

JUDGEMENT

To annul the decision of the District Commercial Court of Prishtina E.No.63/2004 of 21 April 2005 and reject the appeal.

Reasoning

The District Commercial Court of Prishtina, by the decision E.No.63/2004 of 21 April 2005 rejected the motion of the creditor to allow the execution of the decision against the debtor YUA Military Post 5300 Leskovc.

The creditor filed an appeal against this decision in due time and proposed to the Supreme Court to annul the appealed decision and return the case to the first instance Court for retrial.

Upon reviewing the ruling pursuant to Article 365 paragraph 2 in conjunction with Article 381 and 369 paragraph 2 of the CPL, the Supreme Court annulled the decision and rejected the appeal.

The case files indicate that the creditor, with the motion for execution of decision, requires from the debtor to pay the debt in amount of 416,310.40 dinars.

The first instance Court held that the debtor YUA Military Post 5300 Leskovc, pursuant to Article 21 of the LEP was not a legal entity exercising economic activity, hence it decided as in the enacting clause of this decision.

Taking into account this state of legal case, the Supreme Court held that the appealed decision was in violation of applicable provisions of contested procedure as provided for in Article 354 paragraph 2 item 3 in conjunction with Article 16 paragraph 2 of the LCP and Article 14 of the LEP that this Court is bound to apply *ex officio*. Such violation of contested procedure is of absolute nature, hence the appealed decision should be annulled and the lawsuit should be dismissed. The violation of contested procedure as such arises from the facts that the proposal to permit the execution of the decision against the debtor YUA Military Post 5300 Leskovc does not fall under the jurisdiction of either regular Courts of Kosovo or any other Court of special jurisdiction.

The Law on Contested Procedure prescribes that the Court, at all stages of proceedings, shall ensure whether the resolution of dispute falls under jurisdiction of that Court. When the Court during the procedure establishes that for the resolution of dispute in question no Court established by law is competent to deal with, then the Court shall dismiss the lawsuit (Article 16 paragraph 2 of the LCP).

Article 14 of the LEP prescribes that during the execution procedure provisions of the LCP shall apply analogically, unless this law or other federal provisions provide otherwise.

Article 46 paragraph 1 and 2 of the Law on Resolution of Disputes with Foreign Regulations prescribes that the jurisdiction of the SFRY exists if the respondent party has residence or is placed in the territory of the SFRY. If the respondent party does not reside in the SFRY or any other country, the jurisdiction of the SFRY Court is existent when the respondent party stays in the territory of the SFRY.

Article 55 of the Law on Resolution of Disputes with Foreign Regulations prescribes that for contests against natural or legal person which stays abroad, regarding obligations that have arisen in SFRY or should have been fulfilled in the territory of the SFRY, the jurisdiction of the SFRY Court exists if this person has its representative in the territory of the SFRY where the headquarters of joint labor organization is placed to which the exercise of its activities was entrusted. In this event, the debtor has neither its representative office nor its headquarters in the territory of Kosovo.

The absolute jurisdiction of the Court is the basic procedural presumption for granting judicial protection. From circumstances under which no regular Court or any other Court of special jurisdiction are competent to handle this legal affair, it turns out that the decision in question is in violation of applicable provisions of contested procedure or provisions of execution procedure. Thus, the Supreme Court decided to annul the decision in question.

As stated above, pursuant to Article 369 paragraph 2 of the LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO PRISHTINA

On 25.05.05, Ae.No.29/2005

Presiding Judge
Shahdane Agani

[Supreme Court - Ruling on Commercial Disputes - appeal rejected - absolute jurisdiction of Court - Article 354(2) item 3 / Article 16 (2) LCP - Article 14 LEP]

The Creditor NSHIMB "Kualiteti" appealed the decision of the District Commercial Court of Prishtina.

The creditor with the motion for execution of decision requires from the debtor to pay the debt. The District Commercial Court of Prishtina rejected the motion of creditor to allow the execution of decision against the debtor YUA Military Post Leskovc.

The Supreme Court ruled that the decision of the Court was in violation with applicable provisions of contested procedure, as required by article 354 (2), item 3 in conjunction with Article 16 (2) of the LCP and Article 14 of the LEP. The Supreme Court ruled that the violation of contested procedure, as such arises from the facts that the proposal to permit the execution of the decision against the debtor did not fall under the jurisdiction of either regular courts of Kosovo or any other Court of special jurisdiction, considering that the debtor had neither its representative office nor its headquarters in the territory of Kosovo, as required by article 55 of the Law on Resolution of Disputes with Foreign Regulations. The Supreme Court ruled that when during the procedure for resolution of disputes no Court established by law was competent, the Court shall dismiss the lawsuit, as required by article 16(2) of the LCP.

Accordingly, the Supreme Court ruled that the Creditor's appeal was founded and annulled the District Commercial Court decision and dismissed the lawsuit.

Ae.No. 31/2005

IN THE NAME OF PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Meleqe Bexheti, presiding judge, Shahdane Agani and Osman Tmava, members, in the legal action of the creditor NSHIMB "Kualiteti" against the debtor YUA Military Post 8264 Ferizaj, for the debt of 104,285.10 dinars, regarding the appeal of the creditor filed against the decision of the District Commercial Court of Prishtina E.No.60/2004 of 21 April 2005, at the hearing held on 25.05.05 rendered the following

JUDGEMENT

To annul the decision of the District Commercial Court of Prishtina E.No.60/2004 of 21 April 2005 and reject the appeal.

Reasoning

The District Commercial Court of Prishtina, by the decision E.No.60/2004 of 21 April 2005 rejected the proposal of creditor to allow the execution of the decision against the debtor YUA Military Post 8264 Ferizaj.

The creditor filed an appeal against this decision in due time and proposed to the Supreme Court to annul the appealed decision and return the case to the first instance Court for retrial.

Upon reviewing the ruling pursuant to Article 365 paragraph 2 in conjunction with Article 381 and 369 paragraph 2 of the CPL, the Supreme Court annulled the decision and rejected the appeal.

The case files indicate that the creditor, with the motion for execution of decision, requires from the debtor to pay the debt in amount of 104,285.10 dinars.

The first instance Court held that the debtor YUA Military Post 8264 Ferizaj, pursuant to Article 21 of the LEP was not a legal entity exercising economic activity, hence it decided as in the enacting clause of this decision.

Taking into account this state of legal affair, the Supreme Court held that the appealed decision was in violation of applicable provisions of contested procedure as provided for in Article 354 paragraph 2 item 3 in conjunction with Article 16 paragraph 2 of the LCP and Article 14 of the LEP that this Court is bound to apply *ex officio*. Such violation of the contested procedure is of absolute nature, hence the appealed decision should be annulled and the lawsuit should be dismissed. The violation of contested procedure as such arises from the facts that proposal to permit the execution of the decision against the debtor YUA Military Post 8264 Ferizaj does not fall under the jurisdiction of either regular Courts of Kosovo or any other Court of special jurisdiction.

The Law on Contested Procedure prescribes that the Court, at all stages of proceedings, shall ensure whether the resolution of dispute falls under the jurisdiction of that Court. When the Court during the procedure establishes that for the resolution of dispute in question, no Court established by law is

competent to deal with, then the Court shall dismiss the lawsuit (Article 16 paragraph 2 of the LCP).

Article 14 of the LEP prescribes that during the execution procedure the provisions of the LCP shall apply analogically, unless this law or other federal provisions provide otherwise.

Article 46 paragraph 1 and 2 of the Law on Resolution of Disputes with Foreign Regulations prescribes that the jurisdiction of the SFRY exists if the respondent party has residence or is placed in the territory of the SFRY. If the respondent party does not reside in the SFRY or any other country, the jurisdiction of the SFRY Court is existent when the respondent party stays in the territory of the SFRY.

Article 55 of the Law on Resolution of Disputes with Foreign Regulations prescribes that for contests against natural or legal person which stays abroad, regarding obligations that have arisen in the SFRY or should have been fulfilled in the territory of the SFRY, the jurisdiction of the SFRY Court exists if this person has its representative in the territory of the SFRY where the headquarters of joint labor organization is placed to which the exercise of its activities was entrusted. In this event, the debtor has neither its representative office nor its headquarters in the territory of Kosovo.

The absolute jurisdiction of the Court is the basic procedural presumption for granting judicial protection. From the circumstances under which no regular Court or any other Court of special jurisdiction are competent to handle this legal affair, it turns out that the decision in question is in violation of applicable provisions of the contested procedure or provisions of the execution procedure. Thus, the Supreme Court decided to annul the decision in question.

As stated above, pursuant to Article 369 paragraph 2 of the LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO PRISHTINA
On 25.05.05, Ae.No.31/2005

Presiding Judge
Meleqe Bexheti

[Supreme Court - Ruling on Commercial Disputes - appeal rejected - absolute jurisdiction of Court - Article 354 (2) item 3 / Article 16 (2) LCP - Article 14 LEP]

The Creditor NSHIMB "Kualiteti" appealed the decision of the District Commercial Court of Prishtina.

The creditor with the motion for execution of decision requires from the debtor to pay the debt. The District Commercial Court of Prishtina rejected the motion of the creditor to allow the execution of the decision against the debtor YUA Military Post Leskovc.

The Supreme Court ruled that the decision of the Court was in violation with applicable provisions of contested procedure, as required by article 354 (2), item 3 in conjunction with Article 16 (2) of the LCP and Article 14 of the LEP. The Supreme Court ruled that the violation of contested procedure, as such arises from the facts that proposal to permit the execution of the decision against the debtor did not fall under the jurisdiction of either regular Courts of Kosovo or any other Court of special jurisdiction, considering that the debtor had neither its representative office nor its headquarters in the territory of Kosovo, as required by article 55 of the Law on Resolution of Disputes with Foreign Regulations. The Supreme Court ruled that when during the procedure for resolution of disputes no Court established by law was competent, the Court shall dismiss the lawsuit, as required by article 16(2) of the LCP.

Accordingly, the Supreme Court ruled that the Creditor's appeal was founded and annulled the District Commercial Court decision and dismissed the lawsuit.

Ae.No. 33/2005

IN THE NAME OF PEOPLE

THE SUPREME COURT OF KOSOVO, through a panel composed of the following judges: Shahdane Agani, presiding judge, Meleqe Bexheti and Osman Tmava, members, in the legal action of the creditor NSHIMB "Kualiteti" against the debtor YUA Military Post 4622/12 Ferizaj, for the debt of 71.953.40 dinars, regarding the appeal of the creditor filed against the decision of the District Commercial Court of Prishtina E.No.61/2004 of 21 April 2005, at the hearing held on 25.05.05 rendered the following

JUDGEMENT

To annul the decision of District Commercial Court of Prishtina E.No.61/2004 of 21 April 2005 and reject the appeal.

Reasoning

The District Commercial Court of Prishtina, by the decision E.No.61/2004 of 21 April 2005 rejected the proposal of the creditor to allow the execution of the decision against the debtor YUA Military Post 4466/12 Ferizaj.

The creditor filed an appeal against this decision in due time and proposed to the Supreme Court to annul the appealed decision and return the case to the first instance Court for retrial.

Upon reviewing the ruling pursuant to Article 365 paragraph 2 in conjunction with Article 381 and 369 paragraph 2 of the CPL, the Supreme Court annulled the decision and rejected the petition.

The case files indicate that the creditor, with the motion for execution of decision, requires from the debtor to pay the debt in amount of 71.953.60 dinars.

The first instance Court held that the debtor YUA Military Post 4466/12 Ferizaj, pursuant to Article 21 of the LEP was not a legal entity exercising economic activity, hence it decided as in the enacting clause of this decision.

Taking into account this state of legal affair, the Supreme Court held that the appealed decision was in violation of applicable provisions of the contested procedure as provided for in Article 354 paragraph 2 item 3 in conjunction with Article 16 paragraph 2 of the LCP and Article 14 of the LEP that this Court is bound to apply *ex officio*. Such violation of contested procedure is of absolute nature, hence the appealed decision should be annulled and the lawsuit should be dismissed. The violation of contested procedure as such arises from the facts that proposal to permit the execution of the decision against debtor YUA Military Post 4466/12 Ferizaj does not fall under the jurisdiction of either regular Courts of Kosovo or any other Court of special jurisdiction.

The Law on Contested Procedure prescribes that the Court, at all stages of proceedings, shall ensure whether the resolution of dispute falls under the jurisdiction of that Court. When the Court during the procedure establishes that for the resolution of dispute in question, no Court established by law is competent to deal with, then the Court shall dismiss the lawsuit (Article 16 paragraph 2 of the LCP).

Article 14 of the LEP prescribes that during the execution procedure the provisions of the LCP shall apply analogically, unless this law or other federal provisions provide otherwise.

Article 46 paragraphs 1 and 2 of the Law on Resolution of Disputes with Foreign Regulations prescribes that the jurisdiction of the SFRY exists if the respondent party has residence or is placed in the territory of the SFRY. If the respondent party does not reside in SFRY or any other country, the jurisdiction of the SFRY Court is existent when the respondent party stays in the territory of the SFRY.

Article 55 of the Law on Resolution of Disputes with Foreign Regulations prescribes that for contests against natural or legal person which stays abroad, regarding obligations that have arisen in the SFRY or should have been fulfilled in the territory of the SFRY, the jurisdiction of the SFRY Court exists if this person has its representative in the territory of the SFRY where the headquarters of joint labor organization is placed to which the exercise of its activities was entrusted. In this event, the debtor has neither its representative office nor its headquarters in the territory of Kosovo.

The absolute jurisdiction of Court is the basic procedural presumption for granting judicial protection. From circumstances under which no regular Court or any other Court of special jurisdiction are competent to handle this legal affair, it turns out that the decision in question is in violation of applicable provisions of the contested procedure or provisions of execution procedure. Thus, the Supreme Court decided to annul the decision in question.

As stated above, pursuant to Article 369 paragraph 2 of the LCP, the Court decided as in the enacting clause of this judgment.

SUPREME COURT OF KOSOVO PRISHTINA
On 25.05.05, Ae.No.33/2005

Presiding Judge
Shahdane Agani

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