



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

Pristina, 31 July 2017  
Ref. No.:RK 1111/17

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI51/17**

Applicant

**KB “Cërmjani”**

**Constitutional review of Decision E. Rev. no. 28/2016 of the Supreme  
Court of Kosovo of 5 January 2017**

### 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 Referral was submitted by KB “Cërmjani” based in Cërmjan, municipality of Gjakova (hereinafter, the Applicant). The Applicant is represented by Bajram Morina, a lawyer, based on the power of attorney signed by the Applicant’s Administrator.

## **Challenged decision**

2. The Applicant challenges the Decision E. Rev. no. 28/2016 of the Supreme Court of Kosovo (hereinafter, the Supreme Court) of 5 January 2017, which approved as grounded the Revision of the Kosovo Energy Corporation (hereinafter, the Respondent) and changed the Judgment Ae. nr. 44/2014 of the Court of Appeals in Prishtina (the Court of Appeals) of 14 December 2015 and Judgment C. nr. 255/2007 of the District Commercial Court in Pristina (the Commercial Court) of 11 June 2009, and rejected as ungrounded the Applicant's claim for compensation of damages against the Respondent.
3. The challenged Decision was served on the Applicant on 4 February 2017.

## **Subject matter**

4. The subject matter of the Referral is the constitutional review of the challenged Decision which allegedly violated the rights of the Applicant guaranteed by Articles 3 [Equality Before the Law], 7 [Values], 21 [General Principles], 24 [Equality Before the Law], 31 [Right to a Fair and Impartial Trial], 53 [Interpretation of Human Rights Provisions], 54 [Judicial Protection of Rights] and 119 [General Principles] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).

## **Legal basis**

5. The Referral is based on paragraph 4 of Article 21 [General Principles] and paragraph 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, 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) and Rule 29 [Filling of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter, the Rules of Procedure).

## **Proceedings before the Court**

6. On 18 April 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
7. On 24 April 2017, the President of the Court appointed Judge Almiro Rodrigues as Judge Rapporteur and the Review Panel composed of the judges Bekim Sejdiu (Presiding), Selvete Gërxhaliu-Krasniqi and Gresa Caka-Nimani.
8. On 26 April 2017, the Court notified the Applicant of the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 4 May 2017, the Court requested the Basic Court in Prishtina (hereinafter, the Basic Court) to submit evidence on the date of receipt of the Revision by the Applicant and on which the Applicant submitted the response to the Revision.

10. On 8 May 2017, the Basic Court delivered to the Court the receipt showing the date the Applicant received the response to the Revision and the receipt showing the date the Applicant submitted the response to the Revision.
11. On 5 July 2017, 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**

12. On 14 September 2006, as a result of high tension of electricity, the poultry farm (hereinafter, the farm) of the Applicant was burned.
13. On 5 May 2007, the Applicant filed a Claim with the Commercial Court against the Respondent requesting compensation for the damages caused in the farm.
14. On 11 June 2009, the Commercial Court (IC. C. nr. 255/2007) obliged the Respondent to pay certain amount of compensation for material damages as well as lost benefits, and for procedural expenses.
15. The Applicant appealed that Judgment due to erroneous and incomplete ascertainment of the factual situation, essential violations of the provisions of the contested procedure, wrong application of substantive law.
16. The Respondent also filed an appeal against the above Judgment due to essential violations of the provisions of the contested procedure, erroneous and incomplete ascertainment of the factual situation and wrong application of substantive law.
17. On 14 December 2015, the Court of Appeals (Judgment Ae. nr. 44/2014) rejected as ungrounded both the appeals of the Applicant and of the Respondent.
18. On 18 February 2016, the Respondent filed with the Supreme Court a Revision due to *"violation of the provisions of the [Law on Contested Procedure] and erroneous application of material law"*.
19. On 29 February 2016, the Applicant received the Revision of the Respondent.
20. On 9 April 2016, the Applicant filed a response to the Revision, proposing that the Supreme Court rejects *"on its entirety the Revision of the Respondent"*.
21. On 5 January 2017, the Supreme Court (Decision E. Rev. no.28/2016) approved as grounded the Revision of the Respondent and changed the Judgment of the Court of Appeals (Ae.nr.44/2014) and Judgment of the Commercial Court (C.nr.255/2007) and rejected as ungrounded the Applicant's claim for compensation of damages against the Respondent.



## **Applicant's allegations**

22. The Applicant claims that the Supreme Court (Decision E. Rev. no. 28/2016) violated its rights guaranteed by Articles 3 [Equality Before the Law], 7 [Values], 21 [General Principles], 24 [Equality Before the Law], 31 [Right to a Fair and Impartial Trial], 53 [Interpretation of Human Rights Provisions], 54 [Judicial Protection of Rights] and 119 [General Principles] of the Constitution of the Republic of Kosovo (hereinafter, the Constitution).
23. The Applicant alleges that *"the Supreme Court in the reasoning stated that the Applicant did not provide Answer to the Revision, a fact which proves that the Supreme Court when deciding the Revision of the Respondent was bias and did not decide fairly the legal matter of the Applicant based on the uncontested fact that the Applicant on time has submitted the Answer to the Revision [...] on 08.03.201[6] which can be proved with the Answer to the Revision of the Applicant of 08.03.201[6] and the receipt of the postal service of Prishtina no. 2052205 of 09.03.201[6]"*.
24. The Applicant claims that *"the Supreme Court did not adjudicate fairly in Applicant's legal matter based on uncontested facts"* confirmed by the Expert Prof Dr. J.K who concluded that *"the cause of fire in the Farm of the Applicant was high tension as a result of irregular and non-continues supply of electricity by the Respondent [...]"*.
25. The Applicant further considers that *"lack of Consent (of the Respondent to connect to electricity), on which decision of the Supreme Court was based when they approved the Revision of the Respondent does not exculpate the Respondent from the responsibility"* and that *"the electrical installations of the Respondent from which the Farm was supplied met all the technical norms"*.
26. The Applicant states that it *"was in legal relationship with the Respondent before the building was burned but also now is in legal relationship as a commercial consumer, which proves that that the Applicant was never illegally connected in the network of the Respondent"*.
27. Finally, the Applicant requests the Court to approve the Referral as grounded and to annul the challenged Decision.

## **Admissibility of the Referral**

28. The Court first examines whether the Referral has fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
29. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:
  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.*

30. The Court also refers to Article 49 [Deadlines] of the Law, which provides:

*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.*

31. The Court considers that the Applicant is an authorized party, has exhausted the available legal remedies and submitted the Referral in due time.

32. However, the Court refers to Article 48 [Accuracy of the Referral] 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.*

33. In addition, the Court also refers to paragraphs (1)(d) and (2)(d) of Rule 36 [Admissibility Criteria] of the Rules of Procedure, which foresee:

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

*[...]*

*(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:*

*[...]*

*d) the Applicant does not sufficiently substantiate his claim.*

34. In that respect, the Court recalls that the Applicant claims that the Supreme Court violated numerous rights protected by the Constitution; however, its main claim is in essence related to its right to fair and impartial trial.

35. In this respect, the Court notes that the Applicant claims that:

*(i) the Supreme Court decided the Revision without considering its Answer to the Revision although it was submitted in a timely manner which can be proved with the receipt of the postal service of Prishtina no. 2052205 of 9 March 2016; and,*

*(ii) the Supreme Court ignored uncontested facts confirming that the fire in its farm occurred as a result of high tension of electricity due to irregular and non-continuous supply of electricity by the Responded, while, the lack of Consent to connect to the electrical network does not exculpate the Responded from his responsibility.*

36. Regarding allegation (i) the Court notes that the Supreme Court considered that *"the respondent did not file response to the Revision"* In fact, the



Applicant received the Revision of the Respondent on 29 February 2016, while he filed the Response to the Revision, through the postal services, on 9 March 2016.

37. The Court considers that the Supreme Court, even though not explicitly, took into account Article 219 (2) of the Law on Contested Procedure which provides that *“the opposing party has the right that within seven days starting from the day of receiving the revision, to file a response to the revision through the court of first instance”*.
38. Consequently, the Court also considers that the Applicant did not submit the response to the revision within the calendar deadline prescribed by law, which means that *“the respondent did not file response to the Revision”*. Therefore, the allegation (i) of the Applicant is not grounded.
39. Regarding allegation (ii), the Court recalls that the Supreme Court considered that the Applicant has connected the electricity to its farm in violation of the Rules on the General Conditions for Energy Supply, because the Applicant *“conducted an unauthorised use of electricity and as a household consumer used electricity as [commercial] consumer since he supplied the building of the Farm with electricity from the household building. [...]*

*Based on Article 29.2 of the above Regulation, the [Applicant] as a consumer for every change or any issue of connection, measuring device or any other device could not have done without the written consent of the energy company [...]. Article 29.1 [of the Regulation] specifies that an unauthorised connection is considered if the electricity is used in a manner or quantity that has not been authorised by the energy company.*

*Based on Article 48 of the Regulation, on the de-connection and re-connection of the consumers in the electricity sector it is specified that only the authorised persons can do the connection and de-connection of the consumers. [The Applicant] has done himself the connection of his commercial building from the household building in an unauthorised manner”.*

40. The Court notes that the Supreme Court assessed the facts determined by the Commercial Court and the Court of Appeals and interpreted and applied the procedural and substantive law provisions regarding his claim. Their conclusions were reached after detailed examination of all the arguments presented and dealt with by the Commercial Court and Court of Appeals.
41. 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 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). In fact, the role of regular courts is to interpret and apply the pertinent rules of both procedural and substantive law. (See, *mutatis mutandis*, the European Court of Human Rights (hereinafter: ECtHR) case *Garcia Ruiz v. Spain*, No. 30544/96, Judgment of 21 January 1999, para. 28).

42. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Constitutional Court cannot act as “fourth instance court”. (See ECtHR case *Akdivar v. Turkey*, No. 21893/93, Judgment of 16 September 1996, para. 65; see also, *mutatis mutandis*, Constitutional Court case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
43. In other words, the complete determination of the factual situation and the correct application of the law is within the full jurisdiction of the regular courts (matter of legality).
44. In that respect, the Court considers that the reasoning provided by the Supreme Court when referring to Applicant’s allegations of violations of procedural and material law is justified and that the proceedings before the regular courts have not been unfair or arbitrary. (See ECtHR case *Shub vs. Lithuania*, No. 17064/06, Judgment of 30 June 2009).
45. With regard to Applicant’s allegation regarding violation of its rights guaranteed by Articles 3 [Equality Before the Law], 7 [Values], 21 [General Principles], 24 [Equality Before the Law], 53 [Interpretation of Human Rights Provisions], 54 [Judicial Protection of Rights] and 119 [General Principles] of the Constitution, the Court notes that the Applicant has not substantiated any of allegations indicating how and why the Supreme Court has violated its rights.
46. In sum, the Court further considers that the Applicant has not presented facts showing that the proceedings before the regular courts were in any way a constitutional violation of its guaranteed rights under the Constitution.
47. Consequently, the Referral is manifestly ill-founded on a constitutional basis and it should be declared inadmissible pursuant to Rules 36 (1) (d) and 36 (2) (d) of the Rules of Procedure.


**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 (1) (d) and 36 (2) (d) of the Rules of Procedure, in the session held on 5 July 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**



Almiro Rodrigues



**President of the Constitutional Court**



Arta Rama-Hajrizi