



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 13 June 2016
Ref. No.:RK952/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI04/16

Applicant

“ALDEKO” Limited Liability Company

**Constitutional review of Judgment ARJ·UZVP. no. 10/2015 of the
Supreme Court of Kosovo of 30 July 2015**

THE CONSTITUTIONAL COURT OF REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy President
Robert Carolan, Judge
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 is submitted by Mr. Mulet Haziraj, owner of “ALDEKO” L.L.C, from Tropojë-Pradesh of the Republic of Albania on behalf of “ALDEKO” L.L.C with residence in Gjakova (hereinafter, the Applicant Company), represented by Mr. Bajram Morina, a lawyer practicing in Gjakova.

Challenged decisions

2. The Applicant Company challenges Judgment ARJ·UZVP. no. 10/2015 of the Supreme Court of Kosovo of 30 July 2015 in connection with Judgment AA. No. 434/2014 of the Court of Appeal of Kosovo of 29 November 2014, Judgment A. No. 586/12 of the Basic Court in Prishtina and Decision K.A. No. 170/2012 of the Independent Commission for Mines and Minerals of 19 March 2012.
3. The Judgment of the Supreme Court was served upon the Applicant Company on 19 September 2015.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment, ARJ·UZVP. no. 10/2015 of the Supreme Court of Kosovo of 30 July 2015.
5. The Applicant Company alleges violation of Article 3 [Equality Before the Law], Article 7 [Values], Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

Legal basis

6. The Referral is based on Articles 113.7 and 21.4 of the Constitution of the Republic of Kosovo (hereinafter, the Constitution), Articles 47 and 48 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law).

Proceedings before the Constitutional Court

7. On 8 January 2016, the Applicant Company submitted a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
8. On 12 February 2016, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel composed of judges Robert Carolan (presiding), Altay Suroy and Gresa Caka-Nimani (judges).
9. On 23 March 2016, the Court notified the representative of the Applicant Company about the registration of the Referral and asked him to provide explicit power of attorney for representation before the Court. On the same day a copy of the Referral was sent to the Supreme Court and the Independent Commission for Mines and Minerals (hereinafter, the ICMM).
10. On 14 April 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

11. On 7 April 2004, the Applicant Company filed an application with the ICMM in order to obtain a license to use lime in vicinity of Gjakova.
12. On 30 June 2005, the ICMM granted the above-stated request of the Applicant Company and furnished them with "License on Use" No. 204/MI/ICMM/05.
13. On 21 January 2009, the Applicant Company was notified by the ICMM that they were not conducting their operations in accordance with the license and were in breach of it. For those purposes they were given a deadline of 60 days in order to comply with the criteria set out in the license.
14. On 20 September 2011, the ICMM by Decision No. 5033 annulled the license of the Applicant Company due to non-compliance with the criteria set therein.
15. The Applicant Company appealed against the ICMM decision to annul their license before the ICMM following the respective procedure.
16. On 19 March 2012, the ICMM by Decision K.A. No. 170/2012 rejected the appeal of the Applicant Company and upheld its decision on annulment of the license. The ICMM reasoned, *inter alia*, that the Applicant Company were notified on time that they were operating out of the scope foreseen by the license, and in spite of that, they did not meet with the criteria set out in the license within a timeline of 60 days.
17. On 2 September 2014, the Applicant Company filed an appeal with the Basic Court in Prishtina against the above-stated decision of the ICMM. The Applicant Company, *inter alia*, complained that they continuously complied with criteria set out in the license because the ICMM had forced them to pay the annual tax on license for the years 2010 and 2011 even though the license was annulled by the ICMM on 20 September 2011.
18. On 22 September 2014, the Basic Court in Prishtina by Judgment A. No. 586/12 rejected the statement of claim of the Applicant Company against the ICMM decision as unfounded. The Basic Court reasoned that: (i) the ICMM had annulled the license of the Applicant Company in accordance with the applicable law in Kosovo, (ii) that the Applicant Company were notified in due time and were given a timeline of 60 days in order to meet the criteria set out in the license, and that (iii), the license was annulled because the Applicant Company did not meet the criteria set out therein even after being notified by the ICMM. The Basic Court also added that from the facts of the case it results that the law was not applied to the detriment of the Applicant Company, and that, the ICMM had submitted sufficient evidence confirming the legal obligation of the Applicant Company to meet the criteria set out in the license.
19. On 20 October 2014, the Applicant Company filed an appeal with the Court of Appeal of Kosovo against the judgment of the Basic Court alleging essential violation of the procedural law and erroneous application of the substantive law. The Applicant Company, *inter alia*, complained against the findings of the Basic Court as to the legality of the decision of ICMM, and that, the Applicant

Company did not act in accordance with the criteria set out in the license. The gist of the Applicant Company's complaints was that the Basic Court did not take into account the fact that the scope of the license was broadened with the consent of competent local authorities and the KFA.

20. On 29 November 2014, the Court of Appeal of Kosovo by Judgment AA. No. 434/2014 rejected the appeal of the Applicant Company as unfounded and upheld the judgment of the Basic Court. The Court of Appeal confirmed the impugned judgment of the Basic Court and reiterated that: (i) it is verified that the Applicant Company were operating outside of the scope set out in the license (ii), that the Applicant Company did not respond to the ICMM warnings with regards to non-compliance with the criteria set out in the license and (iii) that the ICMM had acted in accordance with the applicable law in Kosovo.
21. With regard to the allegation of the Applicant Company about the broadening of the license by competent authorities, the relevant part of the judgment of the Court of Appeal reads:

“The consent from the municipality and the KFA, which the claimant invokes are related to the change of plots in the field and the claimant’s application for another license and do not apply to the license which envisaged the operating borders, whereas for operating in a different area it is required to have a valid license because the operating borders are set as envisaged by Article 33 of the Regulation on Mines and Minerals. Therefore the administrative authority ICMM after finding the complete factual situation and confirming the perpetrated action pursuant to the legal provisions specified in the Ruling challenged by the claim annulled the license of this entity”.
22. The Applicant Company filed with the Supreme Court a request for extraordinary review of the judgments of the Court of Appeal and the Basic Court. The Applicant Company mainly alleged that: (i) both the Basic Court and the Court of Appeal had overlooked the non-contentious fact that the ICMM decision to annul the license was rendered after 3 years from the day it notified the Applicant Company about the possibility to annul the license, (ii) both the Basic Court and the Court of Appeal had overlooked the fact that the Applicant Company had taken all the necessary measures to broaden the scope of the license with the consent of the competent authorities and (iii) the fact that the ICMM had obliged the Applicant Company to pay the annual tax during years 2010 and 2011 shows that they had operated within the scope of the license.
23. On 30 July 2015, the Supreme Court by Judgment ARJ-UZVP No. 10/2015 rejected the Applicant Company's request for extraordinary review of the judgments of the lower instances. The Supreme Court adopted the findings of the courts of lower instances namely that the Applicant Company was operating outside the scope of the license and that the courts of the lower instances correctly applied provisions of procedural and substantive law.
24. The relevant part of the judgment of the Supreme Court read:

“Article 9 of the Law on Mines and Minerals of Kosovo (no. 03/L-163) and Article 8 of Regulation no.2005/3 on Mines and Minerals specify that if a Licensee or Permit Holder fails to maintain its eligibility or to otherwise comply with a material requirement of the Present Law or any License, Permit, agreement or other instrument issued and/or executed pursuant to the Present Law, the ICMM shall provide such Licensee or Permit Holder with a written “Notice of Failure to Comply” and the instruction to correct the concerned failure. If the failure continues after the time period specified in the “Notice of Failure to Comply”, the Commission may suspend or annul the license of permit of the concerned person.

This court also finds that on 19.01.2011 the respondent sent to the claimant the notice of failure to comply with the terms of license no.024/MI/ICMM/05. Since the noncompliance continued after the time period specified in the ‘Notification’ the ICMM with its Ruling no.5033 of 20.09.2011 annulled “Aldeko’s” license of 04.08.2005, and due to the latter’s failure to comply with the given remarks the Commission’s Ruling K.A. no.170/2012 of 19.03.2012 rejected the claimant’s complaint and the first instance Ruling was left in power”.

Applicant’s allegations

25. The Applicant alleges violation of Article 3 [Equality Before the Law], Article 7 [Values], Article 21 [General Principles], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution.
26. As to the judgments of the Basic Court and the Court of Appeal, the Applicant alleges that: *“Basic Court in Prishtina – Department for Administrative Affairs, in its capacity of first instance court upon rendering Judgment A.No.586/12 of 22.09.2014, and the Court of Appeals of Kosovo – Department for Administrative Affairs upon rendering Judgment A.A.No.434/2014 of 29.12.2014, both failed to correctly assess the legality of the challenged decision No.170/2012 of 19.03.2012 of the ICMM (rendered almost 3 years after the notice on License suspension)”.*
27. As to the judgment of the Supreme Court, the Applicant alleges that: *“the Supreme Court of Kosovo with its Judgment ARJ-UZVP.No.10/2015 of 30.07.2015, did not render a merited decision and described in the reasoning of its Judgment the erroneous and unsustainable conclusions of both the first and second instance courts pertaining to the Applicant’s legal matter. Due to the generalized reasons in its Judgment this court rejected as not grounded the Applicant’s Request of 04.03.2015 for the extraordinary review of Judgment A.A.No.434/2014 of 29.12.2014 of the Court of Appeals of Kosovo – Department for Administrative Affairs”.*

Assessment of admissibility

28. The Court first will examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

29. In this respect, the Court refers to Article 113.7 of the Constitution which establishes:

“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. Article 21.4 of the Constitution [General Principles] establishes:

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

31. The Court also refers to Article 48 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”.

32. The Court further takes into account Rule 36 2 (d) of the Rules of Procedure which foresee:

(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.

33. The Court notes that the regular courts replied to the questions related to the Applicant Company's case as they explained that: (i) the ICMM decision to annul the license was grounded on the law applicable in Kosovo, (ii) that the ICMM had notified the Applicant Company in due time that they were operating out of the scope laid out in the license – and for that purpose – they were given a deadline of 60 days, and that (iii) the license was annulled because the Applicant Company did not comply with the criteria set out therein even after being notified by the ICMM.
34. The Court also draws attention to the Applicant Company's allegation that the regular courts had overlooked, and thus did not address, the fact that the scope of the license was broadened with the consent of competent authorities implying that they were conducting operations within the scope of the license.
35. Furthermore, the Court considers that that particular allegation does not correspond and is contradictory to the evidence contained in the referral. In that respect the Court of Appeal had found that the consent given to the Applicant Company by the competent authorities was related to the request for another license and did not concern the license under review by the ICMM and subsequently the basic court.
36. As to the Applicant Company's allegation that the ICMM had annulled the license three years following the first official notice, the Court considers that

such allegations – for the purposes of constitutional procedure – are irrelevant because they are a matter of fact and are not allegations raised on the constitutional level.

37. Moreover, the Court considers that the Applicant Company only quotes provisions of the Constitution without substantiating how those constitutional norms were violated to their detriment as is required by Article 48 of the Law.
38. The Court emphasizes that it is not the task of the Constitutional Court to deal with errors of facts or law allegedly committed by the regular courts when assessing evidence or applying the law (legality), unless and in so far as they may have infringed rights and freedoms protected by the Constitution (constitutionality).
39. In fact, it is the role of regular courts 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).
40. The Constitutional Court recalls that it is not a fact-finding Court and thus the correct and complete determination of the factual situation is within the full jurisdiction of regular courts. The role of the Constitutional Court is to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
41. In these circumstances, the Court considers that the Applicant Company has not substantiated the allegations of a violation of fundamental human rights guaranteed by the Constitution. The facts of the case do not reveal that the regular courts acted in breach of procedural safeguards established by the Constitution.
42. Consequently, the Referral, on constitutional grounds, is manifestly ill-founded and must be declared inadmissible as established by Articles 113.7 and 21.4 of the Constitution, provided for by Article 48 of the Law and as further specified by Rule 36 (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (2) (d) of the Rules of Procedure, on 14 April 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;
- IV. TO DECLARE this Decision effective immediately.

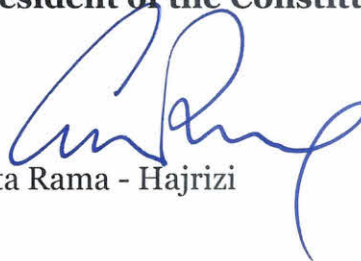
Judge Rapporteur



Snezhana Botusharova



President of the Constitutional Court



Arta Rama - Hajrizi