



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

Prishtina, 3 November 2014
Ref.no.: RK717/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI106/14

Applicant

Company „Adler Com L.L.C.“

**Request for constitutional review of Judgment E. Rev. no. 47/2013 of the
Supreme Court of Kosovo, of 17 May 2014**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Company „Adler Com L.L.C.“, from village Gërçina, Municipality of Gjakova (hereinafter: the Applicant), represented by lawyer Mr. Bajram Morina from Gjakova.

Challenged decision

2. The Applicant challenges Judgment E. Rev. no. 47/2013 of the Supreme Court of Kosovo, of 17 May 2014.

Subject matter

3. The subject matter is the constitutional review of Judgment [E. Rev. no. 47/2013] of the Supreme Court of Kosovo, of 17 May 2014, which according to Applicant's allegation, violated Article 3 [Equality before the Law], Article 7 [Values], Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo.

Legal basis

4. Article 113.7 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo No. 03/121 (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 20 June 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 7 July 2014, the President of the Court by Decision no. GJR. KI106/14, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President of the Court by Decision no. KSH. KI106/14, appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 14 August 2014, the Court notified the Applicant and the Supreme Court of the registration of Referral.
8. On 15 September 2014, the President of the Court by Decision KSH. KI106/14, replaced Judge Robert Carolan with Judge Almiro Rodrigues.
9. On 18 September 2014, 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

10. On an unspecified date, the Applicant filed a claim with the District Commercial Court in Prishtina, against the Municipality of Gjakova, whereby it requested from the responding party to pay the amount of 1,319.057.67 € for the lost profit, which was a result of his exclusion from the municipal tenders.

11. On 15 October 2009, the District Commercial Court rendered Judgment [IV. C. no. 229/2009], by which was rejected the Applicant's request as ungrounded, with the reasoning:

„[...] the court considers that the Applicant is not entitled to compensation for the lost profit due to the fact that the publication of the tender does not constitute invitation for conclusion of the contract, but only the call for tender application. Even assuming that the claimant was not excluded from the tender competition, it is not certain that he would meet the requirements for the conclusion of the contract on the basis of the published tender. Thus, the basis of the statement of claim is conditioned with fulfillment of an unreliable requirement, on which the Court cannot base its decision ...”

12. On 28 December 2009, the claimant's authorized representative filed in time the appeal against the judgment, due to substantial violation of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the material law.

13. On 24 July 2013, the Court of Appeal rendered Judgment [Ae. no. 20/2012], by which rejected the Applicant's appeal as ungrounded, with the reasoning:

“[...] that the legal stance of the first instance court, which was stated in Judgment [IV. C. br. 229/2009], of 15 October 2009, is correct and based on legal provisions, so that the appealed judgment does not contain substantial violation of the contested procedure provisions, under Article 182.1 LCP, therefore the Court of Appeal accepts in entirety this stance as such“. In the conclusion of the Judgment, the Court of Appeal notes: ” [...] that by Article 189 paragraph 1 of the LOR, it is provided that a person sustaining damage shall be entitled both to indemnity of common damage and compensation of profit lost, whereas by paragraph 3 of the same Article it is provided that in assessing the amount of the profit lost, the profit which was reasonably expected according to the regular course of events or particular circumstances, and which realization has been prevented by an act of omission of the tort-feasor, shall be taken into account, which means that the compensation is assessed in the amount according to the value of profit which he would realize, setting from his ordinary way of living and work, if there was no act or omission by the tort-feasor, according to the prices at the time of the rendering court's decision. The claimant did not prove these facts during the entire proceedings, by which he would have legal basis to request compensation in the name of the lost profit.”

14. On 2 October 2013, against Judgment of the Court of Appeal [Ae. no. 20/2012] of 24 July 2013, the claimant's representative filed revision due to essential violation of the contested procedure provision and erroneous application of the material law, with the proposal that the Supreme Court quashes the judgments of the lower instance courts and remands the case for retrial.

15. On 13 March 2014, the Supreme Court rendered Judgment [E. Rev. no. 47/2013], whereby it rejected the Applicant's request as ungrounded, with the reasoning:

"[...] the Applicant's allegations that lower instance courts have erroneously applied the material law, namely provisions of Article 189 para 1 and 3 of Article 154 para. 1, Article 158 and Article 185 para. 1 and 4 of the Law on Obligational Relationship, are ungrounded, when they found that the claimant's statement of claim for payment of compensation for the lost profit is ungrounded, since the first and second instance courts took into account the fact that the claimant was excluded from the tender due to initiation of the proceedings against him..."

Applicant's allegations

16. In its referral, the Applicant alleged that the contested Judgment [E. Rev. no. 47/2013], of the Supreme Court violated his rights guaranteed by the Constitution, namely: Article 3 (Equality before the Law), Article 7 (Values), Article 21 (General Principles), Article 31 (Right to Fair and Impartial Trial), and Article 54 (Judicial Protection of Rights).

17. Applicant addresses the Court with the request :

"that the Court annuls Judgment [E. Rev. no. 47/2013] of the Supreme Court, Judgment [Ae. no. 20/2012] of the Court of Appeal, and Judgment [IV. C. no. 229/2009] of the District Commercial Court, in order to approve the Applicant's request for compensation of damage in the amount of 1,319.057.67 €."

Admissibility of the Referral

18. In order to be able to adjudicate the Applicant's referral, the Court examines beforehand whether the Applicant has fulfilled the admissibility requirements, laid down in the Constitution and further specified in the Law and Rule of Procedure.

19. In this respect, Article 113, paragraph 7, of the Constitution provides:

"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".

20. In this case, the Court refers to Rule 36 (1) c) of the Rule of Procedure, which provides:

"(1) The Court may only deal with Referrals if:

[...]

(c) the Referral is not manifestly ill-founded."

21. As it is stated above, the Applicant alleges that Judgment [E. Rev. no. 47/2013] of the Supreme Court of Kosovo, of 17 May 2014, violated its rights guaranteed by Article 3 [Equality before the Law], Article 7 [Values], Article 21 [General

Principles] Article 31 [Right to Fair and Impartial Trial], and Article 54 [Judicial Protection of Rights] of the Constitution.

22. In this respect, the Court notes that the Applicant did not explain in its referral how and why Judgment [E. Rev. no. 47/2013] of the Supreme Court violated its rights guaranteed by the Constitution, but only tried to justify its allegations for alleged violations, by claiming that: „[...] *due to violation of his constitutional rights he suffers significant material and moral damage ...*“.
23. The Constitutional Court reiterates that under the Constitution, it is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain* [GC], no. 30544/96, ECHR, Judgment of 21 January 1999, see also case 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
24. The Constitutional Court can only consider whether the evidence has been presented in such a manner and whether the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, case *Edwards v. United Kingdom*, no. 13071/87 Report of the European Commission on Human Rights, adopted on 10 July 1991)
25. Based on the case file, the Court notes that the reasoning provided in the Judgment of the Supreme Court is clear and, after reviewing the entire proceedings, the Court found that the proceedings before the Appeal Court and before the District Commercial Court, have not been unfair or arbitrary (See, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECHR, Decision of 30 June 2009).
26. Furthermore, the Supreme Court, in its Judgment, found that „[...] *the second instance court correctly applied the material law when it rejected the claimant's appeal as ungrounded and upheld the judgment of the first instance court, for what it provided sufficient reasons accepted by this Court too, so that the claimant's allegations from the revision that the challenged judgment was rendered with substantial violation of the contested procedure provisions, under Article 182.1 and 182.2 (n), and that it is contrary to Article 204 of the LCP, since it lacks valid reasons for rejecting the claimant's appeal and the decisive facts to uphold the first instance judgment, that in the reasoning were not given the reasons for the appealed allegations and that the enacting clause of the Judgment is in contradiction with the given reasons and facts stemming from the case file – are ungrounded.*“
27. The Court notes that 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 the provisions of the Constitution (see case, *Mezotur Tiszazugi Tarsulat v. Hungary*, No. 5503/02, ECHR, Judgment of 26 July 2005).

28. In sum, the Court finds that the Applicant does not meet the admissibility requirements, since the Applicant did not prove that the contested decision violates its rights guaranteed by the Constitution.
29. Therefore, the Referral is manifestly ill-founded and it has to be declared inadmissible, pursuant to Rule 36 (1) c) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law, and Rule 36 (1) c) of the Rules of Procedure, in the session held on 18 September 2014, unanimously:

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. This Decision is effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani

