



REPUBLIKA E KOSOVËS – РЕПУБЛИКА КОСОВО – REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 8 February 2016
Ref. No.:MM888/16

Case KI135/14

Applicant

IKK Classic

**Constitutional review of Judgment E. Rev. Nr. 21/2014 of the Supreme
Court of Kosovo of 8 April 2014**

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge

Dissenting Opinion

I respectfully dissent from the judgment and conclusions of the majority with respect to this Referral.

The majority decided that the Supreme Court of Kosovo in its judgment, E. Rev. No. 21/2014, dated 8 April 2014, violated the Applicant's right to a fair trial guaranteed by Article 31 of the Constitution of the Republic of Kosovo, hereinafter referred to as the "Constitution," and Article 6, paragraph 1, of the European Convention on Human Rights, hereinafter referred to as the "Convention," by concluding that the decision of the Supreme Court was not reasoned with respect to why, as a matter of law, the Supreme Court rejected the Applicant's claim for re-imbursement from Sigma Insurance Company for the money that Applicant paid to its insured, hereinafter referred to as "DH," pursuant to a contract of insurance it had with DH.

The majority concludes that the Supreme Court gave an inadequate answer in support of its decision thereby denying the Applicant the right to a fair trial pursuant to Article 31 of the Constitution and Article 6 of the Convention.

Article 31, paragraph 2 of the Constitution provides:

Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.

Article 6, paragraph 1 of the Convention provides:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

It is generally accepted that both Article 31 of the Constitution and Article 6 of the Convention require that a court give a reason or reasons for its decision. In the instant case the Supreme Court of Kosovo in its decision gave a reasoned decision by stating:

... the courts of lower instance have erroneously approved as grounded the claimant's statement of claim due to the fact that the insured of the claimant was indemnified by the respondent for the contested damage, based on the agreement of 03.02.2009 in the amount of €2.729. In this agreement in Article 3 the injured, namely the injured representative stated freely that with payment of the amount mentioned above all claims for this damage current and the future ones, regarding the case that is the subject of this agreement towards the insurance companies SIGMA in Kosovo the driver and the owner of vehicle that was insured in this insurance company and towards all other persons were completely fulfilled and there is no further financial claim towards this insurance company regarding this legal matter for compensation of damage. The respondent pursuant to Article 940 of the LOR was obliged to compensate to the insured of the claimant the damage and it is indisputable that after concluding the agreement mentioned above, the respondent paid for the damage. Likewise, the insured of the claimant pursuant to Article 941 of the LOR according to the guilt of the insured of the respondent was entitled to directly requests from the respondent the compensation of damage. For these reasons the Supreme Court of Kosovo finds that the revision of the respondent is grounded since for the traffic accident mentioned above where was injured the insured of the claimant Driton Hasanmetaj the respondent fulfilled the obligation of indemnification the payment of €2.729,00, for which the injured as it was said above has concluded directly with the respondent the indemnity agreement. From this ground, the Supreme Court of Kosovo finds that the

claimant cannot claim regress of the debt although it is indisputable that the claimant paid the contested debt to the injured Driton Hasanmetaj as its insured.

In this case the Applicant, Ikk, as an insurance company, brought a legal claim against Sigma Insurance Company for re-imbursement of the €18. 935.36 it had previously paid to DH, it's insured, for the medical expenses DH allegedly incurred as a result of an automobile accident with a person insured by Sigma where it was claimed that Sigma's insured person was legally responsible for the accident and the injuries that DH suffered. Sigma, on behalf of its insured, the other party involved in the automobile accident, negotiated with DH and reached an agreement with DH to pay DH € 2. 729,00 as a full and complete settlement for all injuries that DH suffered as a result of the accident. As an express condition of this settlement agreement, DH agreed that Sigma's payment of € 2. 729 fully and completely satisfied any legal obligation that Sigma or Sigma's insured had towards DH as a result of the accident. Sigma had no contractual or legal obligation to the Applicant insurance company. Applicant, however, brought a legal claim against Sigma for re-imbursement of all of the money that it had paid to DH, its insured. The Supreme Court of Kosovo in dismissing Applicant's claim reasoned that Sigma had no legal obligation to the Applicant and that Sigma could legally rely upon it's settlement agreement with the DH as a legal bar to it having to pay any more money to either DH or the Applicant. It effectively reasoned that to decide in any other manner would result in not honoring the valid legal settlement that Sigma had negotiated with DH whereby it gave up it's right to a trial on the merits of the claim against its insured both with respect to who was responsible for the accident and the nature and extent of the DH's injuries. It implied that to rule in any other manner would have required Sigma to be responsible for all of the money that Applicant paid to it's insured without any opportunity for Sigma to contest whether those payments to Applicant's insured were lawfully appropriate or in the lawfully appropriate amount. The Supreme Court by it's decision implied that the Applicant's claim could be made against DH, it's own insured, not Sigma, for re-imbursement of the € 2. 729 that DH received from Sigma.

Nonetheless, the majority concludes that the Supreme Court's judgment was not reasoned because it arguably did not explain the following legal issues:

1. Whether the extra-judicial agreement struck between SIGMA and the insured DH barred the Applicant from the right to compensation;
2. How the compensation paid for by SIGMA to the insured DH absolved the former to pay compensation to the Applicant as well;
3. How the extra-judicial agreement struck between SIGMA and DH can affect the rights of the Applicant-where it is clear-that the latter was not party to that agreement;
4. In what way the payment of €2.729,00 paid to the insured DH supplants the medical expenses in the value of € 18. 985, 36 paid for by the Applicant; and,
- (v) If not by SIGMA, then, who must ultimately reimburse the Applicant the amount it paid for medical costs of its insured DH.

A careful reading of the Supreme Court's decision will demonstrate that the Supreme Court of Kosovo:

- (1) did not expressly address question # 1, but it implied that Applicant was not barred from making a legal claim against DH, it's own insured;
- (2) clearly answered questions # 2 and 3 by reasoning that Sigma had no legal obligation to the Applicant; and,
- (3) never answered question # 4 because it was not asked to answer it, and it had never been proven that any one was required to re-imburse the Applicant for the voluntary payments that the Applicant made to DH, it's insured.

Answers to all of these questions are legal in nature requiring a legal interpretation of the law of Kosovo, not the Constitution. The Supreme Court of Kosovo, not the Constitutional Court, is the final interpreter of Kosovo law. The Supreme Court of Kosovo in this case gave a detailed legal answer for its conclusions and judgment. Neither Article 31 of the Constitution nor Article 6 of the Convention require more of the Supreme Court. Although, one may question the legal reasoning of the Supreme Court in this judgment, there is no question that the Supreme Court gave a reason for it's conclusions and judgment in this case. Neither Article 31 of the Constitution nor Article 6 of the Convention require more. Therefore, there is no evidence that Applicant's constitutional rights to a fair trial were violated.

Respectfully submitted,



Robert Carolan

Judge

