



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Pristina, 21 March 2011
Ref. No.: RK 103/11

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 40/10

Applicant

NLB Bank Pristina sh.a.

**Constitutional Review of the Judgment of the Supreme Court of the Republic of
Kosovo, Mle-Rev.no. 19/2009, dated 16 March 2010**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Kadri Kryeziu, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Čukalović, Judge
Gjyljeta Mushkolaj, Judge and
Iliriana Islami, Judge

Applicant

1. The Applicant is NLB Bank Pristina sh.a. represented by Mr. Albert Lumezi as President of the Managing Board.

Challenged decision

2. The decision challenged by the Applicant is the Judgment of the Supreme Court of the Republic of Kosovo (hereinafter: the "Supreme Court"), Mle-Rev.no. 19/2009, of 16 March 2010.

Subject matter

3. The Applicant claims violation of Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution").
4. The Applicant also requests the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court") to decide on his request for interim measures against the execution of the Judgment of the Commercial District Court of Pristina, E.no. 382/09, of 18 November 2009 until the final decision of the Court. The Applicant alleges that irreparable damage will be caused, since the Applicant would be unable to return the money concerned taking into consideration that the Applicant entered into a loan agreement with a third party (hereinafter: the "Debtor") and the debtor has a responsibility to pay the amount of 269.686,04 Euros.

Legal basis

5. Article 113.7 of the Constitution, Articles 22 and 27 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law") and Rules 54, 55 and 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

6. On 2 June 2010, the Applicant submitted the Referral to the Court.
7. On 24 August 2010, the Referral was forwarded to the Commercial District Court of Pristina and to the Supreme Court.
8. On 22 February 2011, the Review Panel consisting of Altay Suroy (Presiding), Almiro Rodrigues and Gjyljeta Mushkolaj considered the report of the Judge Rapporteur Ivan Čukalovič and made a recommendation to the Court..

Summary of the facts

9. On 22 October 2001, the Applicant entered into a loan agreement with the Debtor. The loan was paid to the debtor immediately after signature of the Contract.
10. On 30 September 2002, the Applicant filed a claim with the Municipal Court of Lipjan after the debtor failed to respect the credit agreement. On the same date, the Municipal Court of Lipjan declared itself not competent in the matter. The competent Court is the Commercial District Court of Pristina.
11. On 18 December 2002, the Commercial District Court of Pristina approved the claim of the Applicant and ordered the debtor to pay its debts to the Applicant. On 14 December 2004, this Judgment became final.
12. On 13 January 2004, the debtor filed a claim, for unjust enrichment by the Applicant, with the Municipal Court of Lipjan. The Municipal Court declared itself not competent in

the matter, but indicated that the competent Court was the Commercial District Court of Pristina.

13. On 23 December 2004, the Commercial District Court of Pristina approved the claim of the debtor and ordered the Applicant to reimburse the debtor the unjust enrichment. The Applicant filed a complaint to the Supreme Court against this judgment.
14. On 30 November 2005, the Supreme Court granted the complaint of the Applicant and returned the case to the Commercial District Court of Pristina for retrial.
15. On 14 June 2007, the Commercial District Court of Pristina ruled that the claim of the debtor was founded and obliged the Applicant to pay the debtor the unjust enrichment. The Applicant complained to the Supreme Court, which on 17 September 2009 ruled that the complaint of the Applicant was unfounded and upheld the Judgment of the Commercial District Court of Pristina.
16. On 26 October 2009, the Applicant submitted a request for protection of legality to the Public Prosecutor against the judgment of the Commercial District Court of Pristina of 14 June 2007. Further, on 5 November 2009, the Applicant also filed a claim with the Supreme Court, requesting the revision of the judgment of the Commercial District Court of Pristina of 14 June 2007 and the Supreme Court's Judgment of 17 September 2009.
17. On 26 October 2009, the debtor requested the Commercial District Court of Pristina to execute its Judgment. On 28 October 2009, the Court allowed the execution of its judgment. On 17 November 2009, the Applicant filed an objection against the execution decision of the Commercial District Court in Prishtina of 28 October 2009. On 19 November 2009, the Commercial District Court of Pristina rejected the Applicant's objection as unfounded and upheld the execution decision.
18. On 1 December 2009, the Applicant filed a complaint with the Supreme Court against the execution decision, which so far has not decided in the matter.
19. On 18 December 2009, the Commercial District Court of Pristina issued a judgment ordering the Applicant to comply with the execution decision. The Applicant requested the Commercial District Court to postpone the execution decision, whereupon it postponed the execution until the request for protection of legality of the Public Prosecutor was decided upon (Commercial District Court of Pristina, E.no. 382/2009 of 24 December 2009). No further information has been submitted.
20. On 16 March 2010, the Supreme Court ruled that the claim of the Applicant on 26 October 2009 for protection of legality and revision was unfounded.

Applicant's allegations

21. The Applicant alleges a breach of Article 54 of the Constitution in that the claim of unjust enrichment filed against it by the debtor has no legal basis, because it was approved by the Commercial District Court of Pristina on 23 December 2004, in contradiction of the final Judgment of the Commercial District Court Pristina, II. C.no. 206/2002. Accordingly, the final judgment should have been observed, otherwise the constitutional principle of guaranteed legal rights of any legal entity, be that a natural or legal person, would be violated.
22. In his opinion, the issue is that the credit agreement has been violated, because it was signed with the full and free will of the contractual parties without any legal flaw. Hence, the credit agreement had to be respected.

23. Further, the Applicant complains that the Commercial District Court of Pristina had decided on the execution despite the fact that the Supreme Court had not decided upon the complaint of the Applicant against the Decision E.no. 382/2009 of 19 November 2009.
24. Hence, the Applicant requests the Constitutional Court to annul all decisions taken in the civil and executive procedures, so that the judgment of the Commercial District Court of 18 December 2002 (which became final on 14 December 2004) remains in force.

Assessment of the request for interim measures

25. In the light of the submissions of the Applicant, the Court finds that the Applicant has failed to establish that there exists a *prima facie* case as required by Article 27 of the Law. The Applicant has not submitted any convincing arguments that he might sustain irreparable damage, if his request for interim measures would not be granted or that there exist a public interest to grant interim measure.
26. The Court, therefore, concludes that the request for interim measures has not been substantiated and must therefore be rejected.

Assessment of the admissibility of the Referral

27. As to the Applicant's allegation that his right guaranteed by Article 54 [Judicial Protection of Rights] of the Constitution has been violated, the Court observes that, in order to be able to adjudicate the Applicants' complaint, it is necessary to first examine whether it has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
28. The Applicant can complain only, if the regular courts have committed errors of fact or law, unless and in so far as they may have infringed rights and freedoms protected by the Constitution.
29. In this connection, the Court maintains that it is not a court of fourth instance, when considering the decisions taken by the regular courts. It is the role of the regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, Resolution on Inadmissibility in Case No. KI 13/09, Sevdail Avdyli, of 17 June 2010 and *mutatis mutandis*, *García Ruiz v. Spain* [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I).
30. 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 has had a fair trial (see, *mutatis mutandis*, Report of the Eur. Commission on Human Rights in the case *Edwards v. United Kingdom*, App. No. 13071/87 adopted on 10 July 1991).
31. In this respect, it is noted that the Applicant not only has not built a case on a violation, but also has not submitted any evidence showing that the Judgment of the Supreme Court was unfair or tainted by arbitrariness, when it rejected the Applicant's claim as ungrounded (see, *mutatis mutandis*, *Shub v. Lithuania*, ECHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009 and *Vanek v. Slovak Republic*, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).

32. It follows that the Referral is manifestly ill-founded, pursuant to Rule 36 (1.c) of the Rules of Procedure which provides: *"The Court may only deal with Referrals if: c) the Referral is not manifestly ill-founded."*

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56 (2) of the Rules of Procedure, unanimously, on 22 February 2011,

DECIDES

I. **TO REJECT** the Referral as Inadmissible.

This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law.

This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Ivan Čukalović

Prof. Dr. Enver Hasani

