



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

Pristina, 21 August 2017
Ref.No.: RK 1117/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 57/16

Applicant

**Water and Waste Regulatory Office
(Water Service Regulatory Authority)**

**Constitutional review of Judgment ARJ -UZVP.no.37/2015 of the
Supreme Court of 30 November 2015**

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 is submitted by the Water and Wastewater Regulatory Office, now called Water Services Regulatory Authority, under Law No. 05/L-042 for Regulation of Water Services of 14 January 2016 (hereinafter: the Applicant). In the proceedings before the Constitutional Court the Applicant is represented by Mejrem Černobregu, Head of the Department of Law and Licenses of the Applicant.

Challenged decision

2. The Applicant challenges Judgment [ARJ LNG-No. 37/2015] of the Supreme Court of 13 November 2015, which was served on it on 14 January 2016.

Subject matter

3. The subject matter is the constitutional review of the abovementioned Judgment of the Supreme Court, which, allegedly violated the Applicant's rights and freedoms guaranteed by Chapter IX [Economic Relations], Article 119 [General Principles], paragraph 8 [Every person is obliged to pay taxes and other contributions as provided by law], of the Constitution of the Republic of Kosovo (hereinafter Constitution).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Court (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 24 March 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 13 April 2016, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Arta Rama-Hajrizi.
7. On 29 April 2016, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court
8. On 02 November 2016, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur, replacing Judge Robert Carolan, who resigned on 9 September 2016. The composition of the Review Panel remained unchanged.
9. On 04 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

10. The regional waste company "Pastrimi" JSC Prishtina (hereinafter Pastrimi) was authorized to provide utility services on the basis of the service license [No. 571/DL] issued by the Applicant.
11. Due to non-payment of the annual fee for the license [No. 571/DL], on 20 July 2012, the Applicant initiated court proceedings against Pastrimi with the

District Commercial Court in Prishtina, requesting the payment of the license fees.

12. On 1 January 2013, the new law on courts entered into force, which provided a different organizational structure and jurisdiction of the courts. The case was transferred from the old District Court to the new Court of Appeals.
13. On 18 July 2014, the Court of Appeals rendered Decision [AN. No. 4/2014] which stated, *inter alia*, that, *"For the adjudication of this case is competent the Basic Court in Prishtina - Department for Administrative Matters, as a court with territorial and subject matter jurisdiction. The case file to be sent to this court for further proceeding."*
14. On 18 September 2014, the Basic Court rendered Decision [A. No. 1645/2013] which rejected the Applicant's claim as inadmissible. The Decision reasons that,

"To assess the admissibility of the claimant's claim, the court based itself on the provisions of the Law on Administrative Disputes, namely on Article 13, paragraph 1, [...].
[...]
"In the concrete case, the Claimant has filed a claim for the payment of the debt for the damage caused due to the use of the license, but the Court observes that in the contested matter, there is no final decision in the administrative procedure or silence of an administrative body, except for the bills for payment which do not constitute a final administrative act in the administrative procedure, as provided by the aforementioned legal provision, meaning that against the same contest, neither can a claim be filed, nor can the administrative conflict be initiated."
15. The Applicant filed an appeal with the Court of Appeals-Department for Administrative Matters (hereinafter: the Court of Appeals) against this Decision of the Municipal Court.
16. On 2 July 2015, the Court of Appeals rendered a Decision [AA. No. 444/2014], which rejected the Applicant's appeal as inadmissible. In the reasoning of the decision it is stated that,

"In the present case, [...] the court noted that in this disputed matter there is no final decision in an administrative procedure nor a silence of an administrative authority, except the bills for payment, which are not final administrative acts in the administrative procedure as provided by the abovementioned legal requirements."
17. The Applicant filed with the Supreme Court a request for an extraordinary review of this Decision of the Court of Appeals.
18. On 29 July 2015, the Supreme Court rendered Judgment [ARJ-UZP- No. 37/2015] which rejected the Applicant's request as ungrounded. The Supreme Court reasoned that,

“The Supreme Court concluded that the second instance court has applied completely and correctly the provisions of the law, the provisions of the administrative procedure, as well as those of the Law on Administrative Conflicts. The claimant’s allegations regarding violations are ungrounded, because the challenged decision was clear and understandable. The reasoning of the decision contains sufficient reasons and decisive facts for rendering legal decisions. Similarly, the Supreme Court held that there has been a correct application of the substantive law.”

Applicant’s allegations

19. The Applicant alleges that, “no court entered the assessment of the grounds of appeal (debt), but exclusively dealt with “strictly formal legal requirements that must be considered *ex officio*.”
20. The Applicant requests that, “The Constitutional Court considers the case under the applicable laws and grounds of appeal - payment of debt - within the meaning of Article 119, paragraph 8, of the Constitution of the Republic of Kosovo, or that the Supreme Court remands the case for retrial - decision to the Basic Court-Department for Commercial Matters.”

Relevant Law

21. The provision of water and waste water services is regulated by Law no. 05/L-042 for the Regulation of Water Services. This Law provides, *inter alia*, that,

“Article 4

Water Services Regulatory Authority

1. The Authority is an independent institution in performing its functions according to this Law.
 2. The Authority is responsible for regulating the activities of all Service Providers.
 3. The Authority has competencies for:
 - 3.1. licensing service providers and supervision of application of conditions defined with service license;
- [...]

Article 14

Authority Fees

1. The Service Provider shall pay a non-refundable application fee to the Authority, on the date that the application form applying for the issuance or renewal of a Service License is submitted to the Authority.
 2. A Service Provider shall pay an annual license fee to the Authority in an amount of one and a half per cent (1.5%) of gross annual billing reported in its income statement for the previous year. Licensing annual fee shall be paid in twelve (12) equal installments. The first installment is due and payable on the first day of the calendar month following the month in which the Service License was issued to that Service Provider or renewed, and each subsequent installment becomes due on the first day of each subsequent calendar month.
- [...]”

Assessment of the Admissibility of the Referral

22. 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.
23. 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.*
24. The Court first considers that, pursuant to Article 21.4 of the Constitution, which provides that "*fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable*", the Applicant is entitled to submit a constitutional complaint, invoking fundamental rights which are valid for individuals as well as for legal persons (See, *mutatis mutandis*, Resolution of 27 January 2010, Referral KI41/09, AAB-RIINVEST University L.L.c., Pristina vs. Government of the Republic of Kosovo).
25. 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.*
26. The Court considers that the Applicant is an authorized party, has exhausted the available legal remedies and submitted the Referral in due time.
27. 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.*
28. 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.

29. In that respect, the Court recalls that the Applicant claims that the Supreme Court violated its right to a fair trial by only deciding on procedural aspects and refusing to decide on the merits of its claims against the licensed service provider in administrative proceedings.
30. 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 Basic Court and the Court of Appeals.
31. 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).
32. 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).
33. 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).
34. 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).
35. The Court notes that the Applicant also alleges that the regular courts have violated Article 119(8) of the Constitution.
36. The Court recalls that Article 119 [General Principles] falls within Chapter IX [Economic Relations] of the Constitution. Article 119 (8) states that, “8. Every person is required to pay taxes and other contributions as required by law.”

37. However, the Court notes that the Applicant has not submitted any *prima facie* evidence nor has it substantiated its allegations indicating how and why the Supreme Court has violated its rights under this provision.
38. 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.
39. Consequently, the Referral is manifestly ill-founded on a constitutional basis and it should be declared inadmissible pursuant to Rule 36, paragraphs (1) (d) and (2) (d), of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113, paragraphs 1 and 7, of the Constitution, Articles 46 and 48 of the Law and Rules 36 (1)(d) and 36(2)(d) of the Rules of Procedure, at its session held on 04 July 2017, 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

Selvetë Gërxhaliu-Krasniqi

President of the Constitutional Court

Arta Rama-Hajrizi

