



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

Prishtina, on 7 November 2016
Ref. No.:RK997/16

RESOLUTION ON INADMISSIBILITY

in

Case No. KI72/16

Applicant

Kosovo Insurance Bureau

**Constitutional Review of Judgment Rev. no. 264/2015, of the Supreme
Court of Kosovo, of 9 December 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 Kosovo Insurance Bureau, with address in Prishtina (hereinafter: the Applicant), represented by its authorized representative, Faik Sylejmani.

Challenged decision

2. The Applicant challenges Judgment Rev. no. 264/2015 of the Supreme Court of 9 December 2015, which was served to the Applicant on 31 December 2015.

Subject matter

3. The subject matter is the constitutional review of the Judgment of the Supreme Court, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 29 April 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 11 May 2016, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and the Review Panel, composed of Judges: Altay Suroy (Presiding), Bekim Sejdiu and Selvette Gërxhaliu-Krasniqi.
7. On 31 May 2016, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 15 September 2016, after having considered the report of the Judge Rapporteur, the Review Panel unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

9. On 17 June 2010, there was a serious car accident in which the person I. A. suffered severe bodily injuries leading to permanent consequences. The commission for damage assessment concluded that person I. A. was the victim of a traffic accident caused by a third person. As it pertains to the injuries sustained, the commission concluded that the person I. A. *"has severe bodily injuries that reduce his life activities for 100%"*.
10. On an unspecified date of 2013, I. A. filed a claim for compensation of damage with the Basic Court in Prishtina, against the Applicant (Kosovo Insurance Bureau).

11. On 23 October 2013, the Basic Court in Prishtina rendered Judgment [C. no. 2745/10], which approved in its entirety the claim for payment of compensation to I.A.
12. In its Judgment, the Basic Court approved the claims and the right for compensation for material and non-material damages for both, I. A. and his spouse, as well as the right for compensation on the name of spiritual pain for I. A., in the total amount of approximately 300,000 euro. According to the Applicant, this amount exceeded the maximum limit specified for the person "*in the case of bodily harm, health or death*", and therefore was in violation of Rule 3 for amending the Regulation on Compulsory Third Party Liability Motor Vehicle Insurance (hereinafter: the Regulation).
13. Within the legal deadline, the Applicant filed an appeal with the Court of Appeal against the Judgment of the Basic Court of 23 October 2013, on the grounds of violations of the procedural law, erroneous and incomplete determination of factual situation and erroneous application of the substantive law, recommending that the Court of Appeal decide to return the case for a retrial in the first instance court.
14. On 25 May 2015, the Court of Appeal rendered Judgment [Ac. no. 2115/2014], which only approved the part of the Applicant's appeal regarding the interest rates to be calculated in the awarded compensation, whereas it rejected the other parts of the Applicant's appeal as ungrounded and confirmed the Judgment of the Basic Court of 23 October 2013.
15. On 1 July 2015, the Applicant submitted a request for revision to the Supreme Court of Kosovo due to substantial violation of the procedural law and erroneous application of the substantive law.
16. On 9 December 2015, the Supreme Court rendered Judgment [Rev. no. 264/2015], which approved the Applicant's request for revision, and modified Judgment [Ac. no. 2115/2014] of the Court of Appeal, of 25 May 2015, and Judgment [C. no. 2745/2010] of the Basic Court, of 23 October 2013, in the part related to the amount of compensation awarded.
17. In its Judgment, the Supreme Court decreased the overall compensation amount and different from the interpretation of the Basic Court and the Court of Appeal, the Supreme Court endorsed the interpretation of the Applicant as it pertains to the Regulation.

Applicant's allegations

18. The Applicant alleges that the Judgment of the Supreme Court violated Article 31 [Right to Fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution and Article 6 (Right to fair trial) of ECHR. The Applicant emphasizes that it "*is only partially dissatisfied with the Decision of the Supreme Court, in the part related to the amount of compensation awarded for the material expenses.*"

Admissibility of Referral

19. The Court first examines whether the Referral fulfills the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.

20. In this respect, the Court refers to Article 113 of the Constitution [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

“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.”

21. The Court also states that in accordance with Article 21.4 of the Constitution which establishes 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 file a constitutional complaint, referring to fundamental rights which are applicable for individuals and legal persons (see *mutatis mutandis*, Resolution of 27 January 2010, case KI41/09, AAB-RIINVEST University L.L.C. Prishtina v. the Government of the Republic of Kosovo).

22. In addition, the Court also refers to Article 48 [Accuracy of the Referral] of the Law, which specifies that:

“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.”

23. The Court also takes refers to Rule 36 [Admissibility Criteria] (1) (d) and (2) (d) of the Rules of Procedure, which provides:

(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.”

[...]

24. The Applicant alleges that the maximum compensation limits as foreseen in the Regulation apply to the injured person only, and that the compensation cannot exceed the amount of 100,000 euro. The Applicant alleges that *“in the present case, Article 2, item a, of Rule 3 of CBK should be respected, in which it is specified that in case of bodily injury or affected health, or in the case of death, for a person, for all other vehicles, the company which is obliged to fulfill the obligation towards the injured party, shall not surpass the amount provided by the regulation.”*
25. The Court notes that in its reasoning, the Supreme Court upholds the Applicant’s allegations regarding the interpretation of the Regulation. The enacting clause of the Judgment of the Supreme Court reads:

“By Article 2, item (a) of Rule 3 of the CBK, of 25 June 2004, for modification of Rule 3 for Compulsory Liability Motor Vehicle Insurance of 27 February 2003, it results that in case of death, bodily injury and damage of health for a person the insurance cover is 100.000 Euros, whereas the amount of 300.000 Euros is insurance cover for all the vehicles, this amount is not related to the cases when in traffic accidents is injured only one person. Due to this reason the Supreme Court finds that the claim of the revision for erroneous application of the substantive law is grounded because the insurance cover was exceeded on the occasion of approving the statement of claim of the claimants. The Supreme Court of Kosovo finds that the judgments of the lower instance courts should necessarily be modified, so that the advance payment paid to the claimant I. A. should be deducted from the adjudicated amount, and when approving the statement of claim of the claimants the insurance coverage determined by the above mentioned provision of the Rule for Compulsory Liability Motor Vehicle Insurance, cannot be exceeded.”
26. The Court also notes that despite the fact that the reasoning of the Judgment of the Supreme Court upholds the interpretation of the Regulation by the Applicant, the latter alleges that the calculation of the amount of compensation by the Supreme Court still exceeds the maximal limit of €100.000, and as a result, this Judgment violates its right to fair and impartial trial, as foreseen with Article 31 of the Constitution.
27. As it pertains to the Applicant’s allegation that the calculation of the amount for compensation as determined by the Supreme Court of Kosovo contradicts its own reasoning, the Constitutional Court recalls that it is not a forth instance court nor a fact-finding court and that the correct and complete determination of the factual situation is within the full jurisdiction of the regular courts.
28. The Court reiterates 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).
29. In the present case, the Court notes that the Applicant tries to justify its allegations for a violation of Article 31 of the Constitution by the same

arguments that have already been presented and extensively treated before the regular courts during the regular court proceedings, and which have already been the subject of detailed analysis and reasoned in detail in the Judgment of the Supreme Court.

30. It is not the task of the Constitutional Court to substitute its own assessment of the facts with that of the regular courts and, as a general rule, it is the duty of these courts to assess the evidence made available to them. The Constitutional Court can only consider whether the regular courts' proceedings in general have been conducted in such a way that the Applicant had a fair trial (see: case *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
31. The Applicant's Referral does not substantiate that the regular courts of the Republic of Kosovo acted in an arbitrary or unfair manner. Accordingly, the Court considers that the regular courts have respected the Applicant's right to fair and impartial trial, in accordance with Article 31 of the Constitution in conjunction with Article 6 of the ECHR.
32. Moreover, the Court further notes that the regular courts have extensively addressed the issue of the interpretation of the Regulation, where the Supreme Court provided a final interpretation, modifying the Judgments of the Basic Court and of the Court of Appeal, by confirming the position held by the Applicant throughout the proceedings before the regular courts.
33. The Court reiterates that the fact that the Applicant is dissatisfied with the outcome of the proceedings cannot of itself raise an arguable claim for breach of the provisions of the Constitution (see: case *Mezotur-Tiszazugi Tarsulat vs. Hungary*, No. 5503/02, ECtHR, Judgment of 26 July 2005).
34. The Court notes that the Applicant also alleges a violation of its right to judicial protection of rights, as provided by Article 54 [Judicial Protection of Rights] of the Constitution. This Article provides:

„Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.“

35. The Court recalls that Article 54 of the Constitution concerns the judicial protection against violations of fundamental rights as protected by the Constitution. Having concluded that the Applicant's allegation of violation of the right to fair and impartial trial is ungrounded, the Court finds that the exercise of the right to an effective legal remedy cannot be applied.
36. In these circumstances, the Court considers that the Applicant has not substantiated, nor has sufficiently justified its claim for violation of human rights and fundamental freedoms guaranteed by the Constitution, specifically, violation of Article 31 [Right to fair and Impartial Trial] and Article 54 [Judicial Protection of Rights] of the Constitution, because the facts presented by it do

not in any way indicate that the regular courts have denied it the rights guaranteed by the Constitution.

37. Therefore, the Referral is manifestly ill-founded on a constitutional basis, and is to be declared inadmissible, as established by Article 113.7 of the Constitution, provided by Article 48 of the Law and as further specified by the admissibility criteria, Rules 36 (1) (d) and (2) (d) of the Rules of Procedure.

FOR THESE REASONS

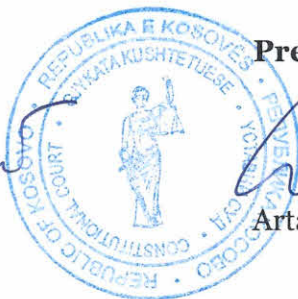
The Constitutional Court, pursuant to Article 48 of the Law, and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, in the session held on 15 September 2016, unanimously

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


Gresa Caka-Nimani



President of the Constitutional Court


Arta Rama-Hajrizi