



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

Prishtina, 20 January 2017
Ref. No.:RK 1033/17

RESOLUTION ON INADMISSIBILITY

in

Case no. KI88/16

Applicant

N. T. SH. „ELING“

Constitutional review of Decision CN no. 3/2016, of the Supreme Court of Kosovo, of 14 April 2016

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 was submitted by the Company N.T.SH. „ELING“ (hereinafter: the Applicant) from Prishtina, which is represented by the authorized representative Muhamet Shala.

Challenged decision

2. The Applicant challenges Decision [CN no. 3/2016] of the Supreme Court of 14 April 2016, which was served to it on 25 May 2016.

Subject matter

3. The subject matter is the constitutional review of the abovementioned decision of the Supreme Court, which allegedly violated the Applicant's rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with 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 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 2 June 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 12 July 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 Selvete Gërxhaliu-Krasniqi.
7. On 28 July 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 15 November 2016, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

9. From the case files it results that the Applicant was in a business relationship with another legal entity (the supplier) from which it purchased certain goods.
10. Due to the unpaid receivables, the supplier filed a statement of claim against the Applicant with the Municipal Court in Prishtina.
11. On 4 December 2012, the Municipal Court rendered Judgment [C. No. 18/2012], which approved the statement of claim of the claimant (the supplier) and obliged the respondent (the Applicant) to pay the debt under the contract, including the annual interest as specified in the same judgment.

12. Within legal deadline, the Applicant filed an appeal against the Municipal Court judgment, alleging essential violation of the contested procedure provisions, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
13. On 2 September 2014, the Court of Appeal rendered Judgment [Ac. no. 16/2013], which rejected the Applicant's appeal as ungrounded. The enacting clause of the Judgment of the Court of Appeal, among others, reads:

„The first instance court has correctly assessed that the litigating parties were in the contractual relations based on the sale-purchase agreement of goods and also according to the conclusion and assessment of the financial expert it was proved that based on this, the respondent owes to the claimant the amount of 13.746.25 €. The expert by expertise in tabular form, found and proved the number of receipts based on which the debt was created, its amount, the date of payment, the total amount of the debt paid, and the amount which the respondent still owes to the claimant. Therefore, according to the opinion of this court, and taking into account Article 17 and Article 262 of LOR, the respondent is obliged to fulfill completely its obligation.“
14. On 16 January 2015, the Applicant filed a request for revision with the Supreme Court against the Judgment of the Court of Appeal, on the grounds of essential violation of the contested procedure and erroneous application of the substantive law.
15. On 27 January 2016, the Supreme Court rendered Decision [Rev. E. no. 5/2016] which rejected the Applicant's request for revision as out of time.
16. On 13 February 2016, the Applicant submitted to the Supreme Court the request for return to previous situation, alleging that the decision of the Supreme Court on rejection of the revision was unfair, because according to the Applicant, the Judgment of the Court of Appeal was served to the Applicant on 18 December 2014, and not on 15 December 2014, as the Supreme Court stated, and that, accordingly, the request for revision submitted to the Supreme Court on 16 January 2015, was within the legal time limit of 30 days. In addition, the Applicant challenges the authenticity of signature in the acknowledgment of receipt which shows the date of receipt of the Judgment of the Court of Appeal, and thus also challenges the date from which the Supreme Court calculated the running of the legal deadline for the request for revision.
17. On 14 April 2016, the Supreme Court, having taken into account the Applicant's allegations, rendered Decision [CN. no. 3/2016] which rejected his request for return to previous situation.

Applicant's allegations

18. The Applicant requests from the Court the annulment of the decisions of the Supreme Court, *“because I consider that it violates human rights provided by the Constitution and the European Convention on Human Rights and Fundamental Freedoms and its Protocols and more specifically Article 6 (1) –*

The Right to a fair trial, of ECHR and Article 31 of the Constitution of the Republic of Kosovo - The Right to Fair and Impartial Trial, because as such it is also contrary to the legal stances of the ECtHR case law.”

Admissibility of the Referral

19. The Court first examines whether the Referral has fulfilled 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 paragraphs 1 and 7 of Article 113 of the Constitution [Jurisdiction and Authorized Parties] 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 reiterates 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, as a legal person, is entitled to file 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. The Court further refers to Article 48 [Accuracy of the Referral] of the Law, which establishes:

“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 refers to Rule 36 [Admissibility Criteria] (1) (d) and (2) (d) of the Rules of Procedure, which foresees:

(1) “The Court may only deal with Referrals 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. Firstly, the Court recalls that the Applicant challenges the decisions of the regular courts, alleging that the latter violate his rights provided by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR.
25. The Court also notes that the allegations of violation of the Applicant’s right to fair and impartial trial pertain specifically to the manner the Supreme Court initially rejected its request for revision as out of time, and later its request to return to the previous situation. The Court notes that these Applicant’s allegations were addressed in detail by the Supreme Court.
26. In Decision [Rev. no. 5/2016] of 27 January 2016, which rejected the Applicant’s revision as out of time, the Supreme Court, *inter alia*, reasoned:

“Based on the case files, it follows that the respondent received the Judgment of the second instance court on 15 December 2014, whereas he filed the revision (sent by priority mail express through Post – no. 2151228 – see the case) on 16 January 2015, Friday, after expiry of the time limit of 30 days provided by provisions of Article 211.1, of the LCP, whereas, the last day for filing the revision was 14 January 2015, Wednesday.

In this state of the matter, pursuant to the provisions of Article 211.1 of the LCP, the Supreme Court of Kosovo rejected as out of time the revision filed after the expiry of the legal time limit.”

27. As it pertains to the Applicant’s request to return to previous situation, the Supreme Court through its Decision [CN. no. 3/2016] of 14 April 2016, provided a clear response and a detailed reasoning, as it follows:

“By deciding according to the proposal to return to previous situation, the Supreme Court of Kosovo, based on the case file, ascertained that the representative of the respondent received the Judgment of the court of the second instance on 15 December 2014, whereas he filed the revision (sent by priority mail express through the post office – no. 2151228 – see the case file, the copy of the letter of the receipt and stamp) on 16 January 2015, Friday, after the expiry of the time limit of 30 days provided by provisions of Article 211.1, of the LCP, whereas, the last day for filing the revision was 14 January 2015, Wednesday. It means that by putting his signature on the copy of the acknowledgment of receipt he confirmed that on 15 December 2014 (that was written by letters, in writing), received the Judgment of the second instance court. “

“Setting from this situation of the case, the Supreme Court of Kosovo found that in the present case, there are no conditions to allow this procedural institute, the reasons and causes which would justify the allowance to return to previous situation, do not exist, because the relevant party, its representative, did not prove the fact that it was, by any unanticipated

and inevitably event, prevented from undertaking in time the relevant procedural action – filing the legal remedy, the revision.”

28. The Court considers that based on the facts of the present case arising from the documents presented and from the Applicant's allegations, the Supreme Court provided detailed and clear reasons for its decision, including the reasons based on which it rejected the Applicant's requests, through the first Decision [Rev. E. No. 5/2016 dated 27.01.2016], as well as through the second Decision (CN.nr. 3/2016 dated 14.04.2016).
29. The Constitutional Court further reiterates that it is not a fact-finding court and that the correct and complete determination of factual situation is within the jurisdiction of the regular courts, while 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 a fourth instance court (See case, *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65, also *mutatis mutandis* see case KI86/11, Applicant *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012).
30. In this respect, the Court considers that the Applicant's Referral fails to substantiate that the regular courts acted in an arbitrary or unfair manner. It is not the task of the Constitutional Court to substitute its own assessment of 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 were 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. In addition, the Court notes 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 the rights and freedoms protected by the Constitution (constitutionality).
32. The Court highlights in particular the fact that the Applicant in its Referral did not provide relevant arguments to justify its allegations that there has been a violation of the constitutional rights invoked by it in any way, in addition to being dissatisfied with the outcome of the proceedings in which, firstly, the request for revision was rejected, and subsequently, its request for return to previous situation (*see: case Mezotur-Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECtHR Judgment of 26 July 2005).
33. The fact that the Applicant is not satisfied with the outcome of the proceedings cannot in itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECtHR (see case *Mezotur - Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR, Judgment of 26 July 2005).

34. In view of the foregoing, and the consistent case law of the ECtHR and of the Constitutional Court, as well as the views stated in this decision, the Court considers that there is nothing to indicate that the Applicant's allegations in the present Referral raise constitutional questions which it referred to.
35. In these circumstances, the Court considers that the Applicant has not substantiated nor it has sufficiently justified its allegations for violation of human rights and fundamental freedoms guaranteed by the Constitution and ECHR, because the facts presented by it do not show in any way that the regular courts may have denied him these rights.
36. Therefore, the Referral is manifestly ill-founded on a constitutional basis and is to be declared inadmissible, as established in Article 113.7 of the Constitution, provided for in Article 48 of the Law and as further specified in the admissibility requirements in Rule 36 (1) (d) and (2) (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (d) of the Rules of Procedure, in the session held on 15 November 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 effective immediately;

Judge Rapporteur

Gresa Caka-Nimani
Gresa Caka-Nimani



President of the Constitutional Court

Arta Rama-Hajrizi
Arta Rama-Hajrizi