



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

Prishtina, 7 July 2014
Ref. no.:RK666/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI53/14

Applicant

N.P.T “Llabjani”, Klina

**Request for constitutional review of Judgment Rev. No. 22/2013 of the
Supreme Court of Kosovo of 13 November 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Enver Hasani, President
Ivan Čukalovič, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Applicant is NPT “Llabjani” from Klina (hereinafter: the Applicant), represented by Mr. Sahit Bibaj, a practicing lawyer from Prishtina.

Challenged decision

2. The challenged decision is Judgment Rev. No. 22/2013 of the Supreme Court of Kosovo of 13 November 2013, served on the Applicant on 16 December 2013.

Subject matter

3. The subject matter is the constitutional review of the challenged Judgment, which allegedly violated the Applicant's rights as guaranteed by Articles 22 [Direct Applicability of International Agreements and Instruments], 24 [Equality Before the Law], paragraph 2, and 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 6 [Right to a fair trial] of the European Convention for the Protection of Human Rights and Fundamental freedoms (ECHR) and Article 10 [Right to a public hearing] of the Universal Declaration of Human Rights.

Legal basis

4. Article 113.7 in conjunction with Article 21.4 of the Constitution, Article 47 of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 56 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 23 March 2014 the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 2 April 2014 the President of the Court, by Decision No. GJR. KI53/14, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same day the President appointed the Review Panel composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Enver Hasani.
7. On 23 April 2014 the Court notified the Applicant and sent a copy of the Referral to the Supreme Court.
8. On 13 May 2014 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 the facts

9. In 2006 the Applicant signed two contracts for performing construction works on behalf of the Joint Stock Company Post and Telecommunication of Kosovo (PTK), which were to be carried out under the conditions foreseen by the project and the contract. Upon the completion of the works, the contracted company would be paid the amount specified in the contract.

10. According to the Applicant during the execution of the ground works additional construction works were necessary. As it was not foreseen by the project or the original contracts, the company obtained the consent of the PTK supervisory body (committee) to perform the additional work needed. Despite the submission of several claims, the Applicant was not compensated by PTK.
11. On 20 June 2008 the Applicant filed a claim with the Special Chamber of the Supreme Court of Kosovo (hereinafter: the Special Chamber) against the debtor, the Post and Telecommunication of Kosovo (PTK) J.S.C in Prishtina, for the payment of the additional works in the amount of € 87,504.90.
12. On 31 July 2008 the Special Chamber, by Decision SCC-08-200, referred the case to the District Commercial Court in Prishtina to decide on the claim.
13. On 13 October 2009 the District Commercial Court in Prishtina, by Judgment II.C.no.228/2009, rejected the claim as ungrounded.
14. In the reasoning of the Judgment, the District Commercial Court in Prishtina held:

“Article 630 LOR (Law on Obligations) provides that a construction contract should be in written form, otherwise the construction of a telephone cable sewage in Peja and in Deçan, not covered by the abovementioned contracts, has the effect that the performance of non-contracted works is made at the claimant’s own risk, and, therefore, the contract which is not in written form does not produce legal effects and no judicial protection can be requested for the investments made. In addition, Article 633 LOR provides that for any departure from the construction project, respectively from the contracted works, the performer of the works shall need the written approval from the party ordering the works”.

15. On 18 March 2010 the Applicant filed an appeal with the Special Chamber claiming a *“serious violation of civil procedure provisions and erroneous application of substantive law”*.
16. On 14 May 2013 the Appellate Panel of the Special rendered Decision AC-II-12-0163, declaring itself incompetent to review the Applicant’s appeal and referred the case to the Court of Appeals in Prishtina.
17. On 18 June 2013 the Court of Appeals rejected as ungrounded the appeal (Judgment Ae. No. 508/2012), and upheld the Judgment of the District Commercial Court in Prishtina, II. C. no. 228/2009, of 13 October 2009.
18. The Court of Appeals held:

“Based on this state of the matter, the Court of Appeals of Kosovo assesses that the first instance court in administering the necessary evidence determined the factual situation in a correct and complete manner and based on such determined situation, it correctly applied the contested procedure provisions and the substantive law when it found that the claimant’s statement of claim is ungrounded”.

19. On 23 July 2013 the Applicant submitted to the Supreme Court a request for revision against the Judgment of the Court of Appeals.
20. On 13 November 2013 the Supreme Court, by Judgment Rev. No. 22/2013, rejected as ungrounded the revision submitted by the Applicant.
21. The Supreme Court held:

“Based on this state of the matter, the Supreme Court of Kosovo assesses that on the determined factual situation, the first and second instance court have correctly applied the substantive law when they found that the claimant’s statement of claim is ungrounded”.

Applicant’s allegations

22. The Applicant claims that the challenged Judgment constitutes a violation of the Constitution, the ECHR and the Universal Declaration of Human Rights (as mentioned in Paragraph 3 of this Resolution) and requests from the Court to annul the challenged Judgment of the Supreme Court.

Admissibility of the Referral

23. Before adjudicating the Referral the Court needs first to determine whether the Applicant’s Referral has met the admissibility requirements, laid down in the Constitution and further specified in the Law and the Rules of Procedure.
24. In this respect the Court refers to Article 113.7 of the Constitution, which stipulates:

“Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law”.

25. The Court notes that the Applicant's Referral was filed with the Court by a legal person within the time limit of 4 months as provided by the Law, and the Applicant has exhausted the legal remedies.
26. The Court also refers to Rule 36 of the Rules of Procedure, which provides:

(1) The Court may only deal with Referrals if: [...]

(c) the Referral is not manifestly ill-founded.

(2) The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: [...]

(b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or [...]

(d) when the Applicant does not sufficiently substantiate his claim.

27. The Court notes that the Applicant challenges the constitutionality of Judgment Rev. No. 22/2013 of the Supreme Court of 13 November 2013, due to erroneous and incomplete determination of the factual situation and unequal treatment of the parties by the courts during the proceedings. The Applicant states that, as a result, the challenged Judgment violated its “*guaranteed rights to equality before the law and to a fair trial*”.
28. As to the Applicant’s complaint, the Court recalls that in accordance with the principle of subsidiarity it is the task of the Applicant to raise any alleged constitutional violation before the regular courts in order for them to primarily ensure observance of the fundamental rights enshrined in the Constitution.
29. In this respect the Court notes that the Applicant has not raised the alleged constitutional violation of its *guaranteed rights to equality before the law and to a fair and impartial trial* before the Supreme Court.
30. Moreover, the Applicant has not presented to the Court any facts showing as to how the alleged violation of the constitutional provisions occurred and at what stage of the judicial proceedings. Furthermore, it has not proven that the challenged judgments and decisions contained possible elements of arbitrariness or that during the procedures it received unequal treatment.
31. The Court recalls that the Supreme Court rejected the Applicant’s revision, stating that “[...] *based on the factual situation, as determined, the first and second instance courts have correctly applied the substantive law, when they found that the statement of claim of the claimant is ungrounded*”. However, the Applicant does not substantiate why and how the decision that “*a contract which is not in written form does not produce legal effects and that judicial protection cannot be requested for the investments made*”. Violated its rights to equality before the law and to a fair and impartial trial or constituted any kind of discrimination.
32. Moreover, the Court considers that Judgment Rev. 22/2013 of the Supreme Court as well as the judgments of the lower instance courts provided extensive and comprehensive description of the facts of the case and gave ample reasons for their legal findings when answering the allegations made by the Applicant. Thus, the Court finds that the proceedings before the lower instance courts have been fair and that their findings have been well reasoned (see, *mutatis mutandis*, *Shub v. Lithuania*, No. 17064/06, ECtHR Decision of 30 June 2009).
33. In this respect, the Court reiterates that it is not its task under the Constitution to act as a court of fourth instance in respect of 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, *mutatis mutandis*, *García Ruiz v. Spain*, No. 30544/96, ECtHR Judgment of 21 January 1999, para. 28 as well as Case No. KI 70/11, Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).

34. The Court can only consider whether the evidence has been presented in such a manner that the proceedings, viewed in their entirety, have been conducted in such a way that the Applicant has had a fair trial. (see, *inter alia*, *Edwards v. United Kingdom*, No. 13071/87, Report of the European Commission of Human Rights of 10 July 1991).
35. In sum, the Court cannot find arguments and evidence that Judgment Rev. No. 22/2013 of the Supreme Court of Kosovo of 13 November 2013 was rendered in a manifestly unfair and arbitrary manner.
36. Therefore, the Court concludes that the Applicant has not substantiated its allegations nor has it provided any *prima facie* evidence showing a violation of its rights under the Constitution, the ECHR and its protocols or the Universal Declaration of Human Rights.

It follows that the Referral must be rejected as manifestly ill-founded .

FOR THESE REASONS

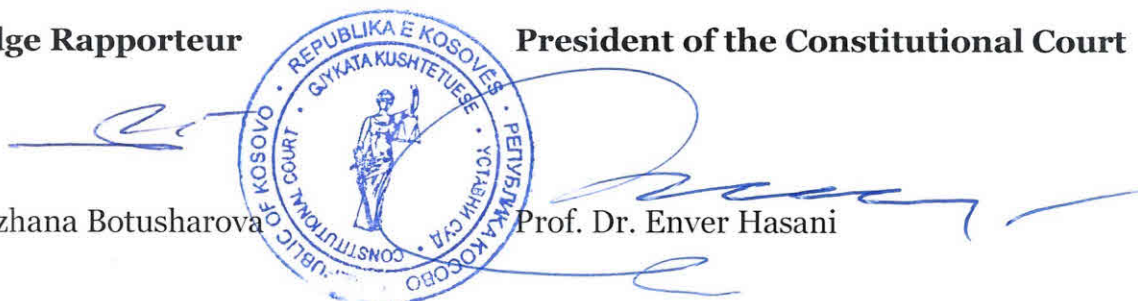
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rules 36 and 56 (2) of the Rules of Procedure, on 13 May 2014, unanimously

DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- 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

Snezhana Botusharova



President of the Constitutional Court

Prof. Dr. Enver Hasani