



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

Prishtina, 22 November 2013
Ref.no.:RK500/13

RESOLUTION ON INADMISSIBILITY

in

Case No. KI85/13

Applicant

NT SH Q D “Driloni Commerce” Prishtina

**Constitutional Review of the judgment of the Supreme Court of Kosovo,
Rev. E. no. 4/2010 dated 21 January 2013**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

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

The Applicant

1. The Applicant is N.T. SH Q D “Driloni Commerce” a private company from Pristina, represented by lawyer Sabri Kryeziu from Lipjan.

Subject matter

2. The subject matter of the Referral submitted to the Constitutional Court ("Court") is judgment of the Supreme Court of Kosovo, Rev.E.no.4/2010 dated 21 January 2013 which was served on the Applicant on 15 February 2013.

Legal basis

3. The Referral is based on Art. 113.7 of the Constitution; Articles 47, of the Law, No. 03/L-121, and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

Proceedings before the Constitutional Court

4. On 13 June 2013, the Applicant submitted the Referral to the Court.
5. On 20 June 2013, the President appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Snezhana Botusharova (Presiding), Kadri Kryeziu and Arta Rama-Hajrizi.
6. On 23 July 2013, the Court notified the Applicant that the referral had been registered with the Court.
7. Also on 23 July 2013, the Court notified the Supreme Court of the referral.
8. On 18 October 2013, after having considered the Report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

The Facts of the Case

9. On an unspecified date the Applicant submitted a petition to the District Commercial Court in Pristina against two private companies for compensation of damage in amount of 616, 478 Euro.
10. On 8 June 2009 the District Commercial Court in Pristina issued a judgment no II.C no 422/2008 and rejected the Applicant's petition as ungrounded. In its reasoning the District Commercial Court in Pristina stated, *inter alia*, that "*the court has not approved the proposal of the claimant [i.e. the Applicant] for taking an evidence of super expertise since the Applicant had not presented the invoices requested by the financial expert witness.*"
11. On 3 November 2009, the Applicant submitted an appeal against the above mentioned judgment, alleging among other things that its request for the super expertise examination "*was rejected without giving any reasoning...*".
12. On 18 May 2010 the Supreme Court issued a judgement no Ae. No. 200/2009 and rejected the Applicant's appeal of 3 November 2009 as ungrounded. In the reasoning the Supreme Court stated that "*On page 3 the last paragraph of the financial expertise examination, it was stated that on 28 January 2009 the*

expert witness has contacted the legal representative of the claimant and that the legal representative claimed that he does not possess any other documentation related to the dispute. The legal representative has not presented such documentation requested from the expert witness ... and has neither presented objections with regard to the documentation the Court received from the first respondent”.

13. On 17 June 2010, the Applicant submitted a request for revision against judgement of the Supreme Court judgment of 18 May 2010. The Applicant reiterated that it's request for the super expertise examination submitted to the District Court was unlawfully rejected.
14. On 21 January 2013 the Supreme Court issued a judgement Rev. E. No 4/2010 and rejected the Applicant's request for the revision of the Supreme Court judgement of 18 May 2010, as ungrounded. The Supreme Court confirmed that *“the allegations of the revision do not standaccording the assessment of this court, the appealed judgement is clear, the reasoning contains reasons for the crucial facts, while the enacting clause is not in contradiction with the reasoning, and that the court of second instance in its reasoning has given sufficient responses ...which this court also admits.”*

Applicant's Allegation

15. The Applicant alleges that its right to Equality before Law guaranteed by Article 3 of the Constitution has been violated since its request for an additional expert examination was refused.

Assessment of the admissibility of the Referral

16. In order to be able to adjudicate the Applicant's Referral the Court needs to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, further specified in the Law on the Constitutional Court and the Rules of Procedure.
17. The Court notes that in substance the Applicant complains that it's right to fair and impartial trial guaranteed by Article 31 of the Constitution in conjunction with Article 6 paragraph 1 of the European Convention on Human Rights (“the Convention”) has been violated.
18. Article 31.1 of the Constitution reads:

“1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.”
19. The Court reiterates that the principle of equality of arms is part of the wider concept of a fair hearing within the meaning of Article 6 paragraph 1 of the Convention. It requires a “fair balance” between the parties: each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a disadvantage vis-à-vis their opponent or opponents (see

the ECHR judgment in the case of Gorraiz Lizarraga and Others v. Spain, no. 62543/00, para. 56, ECHR 2004-III).

20. The Court finds that the principle of equality of arms was not violated in the instant case. The regular courts thoroughly examined Applicant's claim and made specific findings that the Applicant never presented any evidence that would justify having the testimony of another expert witness. Therefore, there is no evidence to support Applicant's claim.
21. Furthermore, the Constitutional Court is not to act as a court of fourth instance, when considering the decisions taken by regular courts. It is the role of regular courts to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, para. 28, European Court on Human Rights [ECHR] 1999-I, see also Resolution on Inadmissibility in case no 70/11, Applicants Faik Hima, Magbule Hima and Bestar Hima, Constitutional review of the Judgment of the Supreme Court, A. No 983/08 dated 7 February 2011).
22. In conclusion, the Applicant has neither built a case on a violation of any of its rights guaranteed by the Constitution nor has it submitted any *prima facie* evidence on such a violation (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
23. It follows that the Referral is manifestly ill-grounded pursuant to Rule 36 1. (c) of the Rules of Procedure which provides that "The Court may only deal with Referrals f: c) the Referral is not manifestly ill-founded."

FOR THESE REASONS

The Constitutional Court pursuant to Article 113 (7) of the Constitution and Rule 36 of the Rules of the Procedure, unanimously:

DECIDES

- I. TO REJECT the Referral as 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; and
- IV. TO DECLARE this Decision immediately effective.

Judge Rapporteur



Robert Carolan



President of the Constitutional Court



Prof. Dr. Enver Hasani