



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

Prishtina, on 27 October 2017
Ref. No.: RK 1146/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI140/16

Applicant

Raiffeisen Bank Kosovo JSC

**Constitutional review of Judgment CN. No. 6/2016 of the Supreme
Court of Kosovo, of 23 August 2016**

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 Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicant is Raiffeisen Bank Kosovo JSC (hereinafter: the Applicant) based in Prishtina, represented by Ilir Tahiri, its legal representative.

Challenged decision

2. The Applicant challenges Decision CN. No. 6/2016 of the Supreme Court of Kosovo of 23 August 2016, which was served on the Applicant on 20 September 2016.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which has allegedly violated the Applicant's rights guaranteed by Article 31 [Right to Fair and Impartial Trial] and Article 116 [Legal Effect of Decisions] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) and Article 6 [Right to a fair trial] of the European Convention of Human Rights (hereinafter: the ECHR).

Legal basis

4. The Referral is based on Article 113.7 and 21.4 of the Constitution, Article 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 Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 1 December 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 6 January 2017, the President of the Court by Decision No. GJR. KI140/16, appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur. On the same date, the President of the Court by Decision No. KSH. KI140/16 appointed the Review Panel, composed of Judges: Almiro Rodrigues (Presiding), Ivan Čukalović and Bekim Sejdiu.
7. On 31 January 2017, the Court notified the Applicant about the registration of the Referral.
8. On 27 March 2017, the Court notified the Supreme Court about the registration of the Referral. By this notification the Court requested the Supreme Court to provide a copy of the acknowledgment of receipt, by which the Applicant was notified about the request of the opposing party for return to previous situation.
9. On 07 April 2017, the Supreme Court submitted complete case file, including acknowledgment of receipt which informed the Applicant of the claim of the opposite side, with the date of 14 January 2016.
10. On 06 September 2017, the Review Panel considered the report of the Judge Rapporteur, and recommended to the Court the inadmissibility of the Referral.

Summary of facts regarding the Judgment of the Constitutional Court KI10/14 of 26 June 2014

11. In 2002, the Applicant had dismissed an employee. That employee initiated judicial proceedings against the Applicant regarding the dismissal, the procedure was conducted through all instances of the regular judiciary.
12. On 21 January 2013, the Supreme Court rejected the employee's request for revision as being 'out of time'.
13. Thereafter, the employee filed a request with the Supreme Court for return to the previous situation deciding upon the request on the revision.
14. On 19 October 2013, by Judgment C. No. 7/2013, the Supreme Court approved the request of the employee for return to the previous situation.
15. On 28 January 2014, the Applicant submitted a referral to the Court claiming that the Supreme Court had decided on the request for return to the previous situation, without notifying the Applicant. The Applicant alleged a violation of the right to a fair hearing as protected by Article 31 of the Constitution and Article 6 of the ECHR, because the Applicant had not been able to present its legal arguments on the request for return to the previous situation. This referral was registered under number KI 10/14.
16. On 20 May 2014, the Court issued its Judgment, finding that the Supreme Court had violated the Applicant's rights to a fair trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. The Court declared Invalid the Supreme Court Judgment C.No.7/2013 of 19 October 2013, and remanded the case back to the Supreme Court for reconsideration in accordance with the Judgment of the Court.

Summary of facts after Judgment of the Constitutional Court KI10/14

17. On 22 March 2016, the Supreme Court by Judgment Rev. No. 85/2016 repeated the proceedings on the employee's request, allowed employee's request for return to the previous situation and quashed Decision [Rev. No. 333/2011] of the Supreme Court of Kosovo, of 21 January 2013.
18. On 27 April 2016, the Applicant submitted a request to the Supreme Court for return to the previous situation. On 23 August 2016, by Decision C.no.6/2016, the Supreme Court rejected the Applicant's request as out of time.

Applicant's allegations

19. The Applicant alleges that:
 - (i) The Supreme Court by Judgment [Rev. No. 85/2016] did not comply with Judgment KI10/14 of the Constitutional Court of the Republic of Kosovo, of 26 June 2014, because when rendering this judgment it did

not previously submit a request to return to the previous situation to the Applicant and did not invite the Applicant to present its arguments which seriously violated Article 116 [Legal Effect of Decisions] and

- (ii) The Supreme Court by Decision [C. No. 6/2016] also violated the right to fair and impartial trial, rejecting as out of time his proposal to return to the previous situation filed against Judgment Rev. No. 85/2016, of the Supreme Court of Kosovo, because according to the Applicant, he was not notified of the request to return to previous situation, and therefore, it was not given the opportunity to present its case, which seriously violated Article 31 of the Constitution and Article 6 of the ECHR.

20. The Applicant requests the Court:

- I. *To declare the Referral submitted by the Applicant admissible;*
- II. *To hold that there has been a violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo, in conjunction with Article 6 (1) [Right to a Fair Trial] of the European Convention for the Protection of Human Rights and Fundamental Freedoms.*
- III. *To hold that there has been a violation of Article 116.1 [Legal Effects of Decisions] of the Constitution of the Republic of Kosovo;*
- IV. *To declare invalid Judgment REV. No. 85/2016 of the Supreme Court of Kosovo of 22 March 2016 and Decision CN. No. 6/2016 of 23 August 2016, and to remand the case for retrial in accordance with the Judgment of the Constitutional Court.*
- V. *The Judgment is effective immediately.”*

Admissibility of the Referral

21. The Court first examines whether the Applicant has met the admissibility requirements established in the Constitution and as further specified in the Law and the Rules of Procedure.

22. In this respect, the Court refers to Article 113.7 of the Constitution which establishes:

“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.”

23. In addition, the Court also refers to Article 21.4 of the Constitution which stipulates:

“[...]
4. Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.”

24. The Court also refers to Article 48 of the Law, which provides:

*Article 48
Accuracy of the Referral*

“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.”

25. In addition, the Court takes into account Rule 36 [Admissibility Criteria] (2) (b) and (d) which foresees:

“(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

[...]

b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights,

d) the Applicant does not sufficiently substantiate his claim”.

26. In this case, the Court assesses that the Applicant has met the procedural requirements provided by Article 113.7 of the Constitution. However, in order to verify the admissibility of the Referral, the Court has to assess further whether the Applicant has met the requirements prescribed by Article 48 of the Law and the admissibility criteria provided by Rule 36 of the Rules of Procedure.
27. The Court recalls that the Applicant claims that the Supreme Court denied (i) the right to the legal effect of the decision and, consequently, (ii) the right to fair and impartial trial.

(i) Alleged violations of Article 116 of the Constitution

28. The Court refers to Article 116.1 of the Constitution, which establishes:

“1. Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.”

29. Regarding the first claim of the Applicant, the Court notes that the appealing allegations about violation of the rights are related to the manner the Supreme Court implemented the decision of the Constitutional Court no. KI10/14 of 20 May 2014.
30. On 18 April 2016, the Supreme Court notified the Constitutional Court that it acted in accordance with the constitutional judgment (see: Judgment Rev. no. 85/2016 of 22 March 2016).
31. The Court noted that the Supreme Court by Judgment Rev. No. 85/2016 of 22 March 2016 corrected violations of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR,

which the Court found in Decision CN. No. 7/13 of the Supreme Court of 19 October 2013, when it considered the Referral no. KI10/14 of 20 May 2014.

32. The Court further added that the Supreme Court submitted on 07 April 2017 to the Court a copy of the acknowledgment of receipt, which states that on 14 January 2016 it submitted to the Applicant Judgment KI10/14 of the Constitutional Court, as well as the request of the opposing party to return to previous situation.
33. With regard to the Applicant's allegation of violation of Article 116 of the Constitution, the Court notes that according to the documents included in the Referral, the Supreme Court submitted to the Applicant a copy of the request for return to the previous situation filed by the opposing party, as required by the relevant provisions of the procedural law; however, the Applicant did not give any response to the request submitted by the opposing party.
34. Accordingly, the Court notes that the Supreme Court by Judgment [Rev. no. 85/2016] corrected the aforementioned procedural violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR, and therefore complied with Judgment KI10/14 of the Constitutional Court of the Republic of Kosovo.

(ii) Alleged violation of Article 31 of the Constitution and Article 6 of the ECHR

35. The Court refers to Article 31 [Right to Fair and Impartial Trial] of the Constitution, which establishes:

“1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations [...] within a reasonable time by an independent and impartial tribunal established by law.”

36. The Court refers to Article 6.1 of ECHR, which provides:

“In the determination of his civil rights and obligations, everyone is entitled to a fair hearing by a [...] tribunal.”

37. As to the second claim of the Applicant, the Court notes that the appealing allegations about violation of the right to fair and impartial trial pertain to the way in which the Supreme Court rejected his request to return to previous situation. The Court points out that these claims of the Applicant were thoroughly reviewed by the Supreme Court.
38. In Decision C. No. 6/2016 of 23 August 2016, which rejected the Applicant's request to return to previous situation as out of time, the Supreme Court reasoned:

„[...] The Supreme Court of Kosovo submitted to the respondent the judgment of the Constitutional Court and request (proposal) to return to previous situation, which was served on the respondent on 14.01.2016 [...]

From the moment the proposer found out of the latter, a subjective time limit of 7 days began to run in which the respondent had to file a proposal to return to previous situation, while it filed it on 27.04.2016.

The provision of Article 130 para. 3 of LCP regulates the objective time limit - the running of a period of 60 days from the date of failure, in this case, the running of the time limit for submission of the request to return to previous situation. In this case, the respondent failed to take procedural action within the time limit prescribed by Article 130, para. 2 and 3 of LCP, and for this reason the Supreme Court decided as in the enacting clause of this decision [...].”

39. The Court considers that based on the facts of the case stemming from the presented documents and appealing allegations of the Applicant, the Supreme Court gave detailed and clear reasoning of its decision, including the grounds based on which it rejected the request to return to previous situation of the Applicant as being out of time.
40. In addition, the Court reiterates that it is not a fact finding court and correct and complete determination of factual situation is a full jurisdiction of the regular courts, while the role of the I Court is only to ensure compliance with the rights guaranteed by the Constitution and other legal instruments. Therefore, the Court cannot act as a fourth instance court (see case *Akdivar v. Turkey*, No. 21893/93, ECtHR, Judgment of 16 September 1996, para. 65; see also: case KI86/11, Applicant: *Milaim Berisha*, Resolution on Inadmissibility of 5 April 2012.
41. In this regard, the Court considers that the Applicant failed to prove that the regular courts acted in an arbitrary or unfair manner. It is not the role of the 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 Court can only consider whether the proceedings before the regular courts, 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 on Human Rights adopted on 10 July 1991).
42. The Court recalls in particular the fact that the Applicant in his Referral did not provide relevant arguments to justify its claims that there has been in any way a violation of the constitutional rights which he referred to, in addition to being dissatisfied with the outcome of the proceedings in which its request to return to previous situation was rejected (see: case *Mezotur - Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR Judgment of 26 July 2005).

43. The fact that the Applicant is not satisfied with the outcome of the proceedings cannot of 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 (1) [Right to Fair Trial] of the ECHR (see: case *Mezotur - Tiszazugi Tarsulat v. Hungary*, no. 5503/02, ECHR Judgment of 26 July 2005).

Conclusion

44. Bearing in mind the foregoing, as well as the consistent case law of the ECtHR and of the Court and also the points made in this decision, the Court considers that there is nothing to indicate that the allegations of the Applicant in the present Referral raise constitutional questions referred to by the Applicant.
45. In these circumstances, the Court considers that the Applicant has not substantiated by evidence nor has it sufficiently substantiated its claim of violation of human rights and fundamental freedoms guaranteed by the Constitution and the ECHR, because the presented facts do not in any way show that the regular courts had denied it those rights.
46. Therefore, the Referral is manifestly ill-founded on 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 further specified in the admissibility criteria of Rule 36 (2) (b) and (d) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 and 7 of the Constitution, Article 48 of the Law, and Rules 36 (1) (d) and (2) (b) of the Rules of Procedure, in the session held on 06 September 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


Selvete Gërxhaliu-Krasniqi

President of the Constitutional Court




Arta Rama-Hajrizi