



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

Prishtina, 6 October 2017
Ref. No.:RK 1134/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KI57/17

Applicant

„KLENAK – DOO“

Constitutional review of Judgment AC-I-16-0075-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters of 5 January 2017

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 Referral was submitted by the company „Klenak-DOO“ from Krusevac, Republic of Serbia (hereinafter: the Applicant), represented by Abit Asllani, a lawyer from Prishtina.

Challenged decision

2. The Applicant challenges Judgment AC-I-16-0075-A0001 of the Appellate Panel of the Special Chamber of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Appellate Panel) of 5 January 2017.
3. The challenged Judgment of the Appellate Panel was served on the Applicant on 17 January 2017.

Subject matter

4. The subject matter is the constitutional review of the challenged Judgment which has allegedly violated the Applicant's rights and freedoms guaranteed by Article 21 [General Principles], Article 22 [Direct Applicability of International Agreements and Instruments], Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property], Article 53 [Interpretation of Human Rights Provisions], Article 54 [Judicial Protection of Rights], Article 55 [Limitations on Fundamental Rights and Freedoms], Article 56 [Fundamental Rights and Freedoms During a State of Emergency], Article 57 [General Principles] and Article 58 [Responsibilities of the State] in conjunction with Chapter III [Rights of Communities and Their Members] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on Article 113.7 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 (hereinafter: the Rules of Procedure).

Proceedings before the Constitutional Court

6. On 16 May 2017, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 17 May 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
8. On 26 May 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Appellate Panel.
9. 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

10. The Applicant is the company, which until 2 December 1997, provided its services to „Social Enterprise LUX“ (hereinafter: SOE LUX :) from Mitrovica.

11. On 27 September 2013, the Applicant filed a request with the Privatization Agency of Kosovo (hereinafter: PAK), requesting payment of debt which „SOE LUX“ did not pay for the period from 4 February 1997 until 2 December 1997.
12. On 23 October 2013, the PAK Liquidation Authority „SOE LUX“ rendered decision [MIT 039-0011] rejecting the Applicant's request for payment of debt as ungrounded due to statute of limitation.
13. On 25 November 2013, the Applicant filed a complaint with the Special Chamber of the Supreme Court on the Privatization Agency of Kosovo Related Matters (hereinafter: the Special Chamber) against the decision of PAK of 23 October 2013.
14. On 14 May 2014, PAK filed a response to the Applicant's complaint with the Special Chamber, stating that the Applicant's complaint is statute barred.
15. On 23 March 2016, the Specialized Panel of the Supreme Court on Privatization Agency of Kosovo Related Matters (hereinafter: the Specialized Panel) rendered Judgment [C-IV-13-3274], rejecting the applicant's Appeal as ungrounded. The reasoning of the judgment reads:

„The challenged decision is fair, grounded, well-reasoned, it is clear and comprehensible to the parties, it does not contain procedural violations and it contains all crucial reasons on which is based.

[...]

„Pursuant to Article 374, paragraph 1 of the Law on Contracts and Torts (OG of SFRJ No.29/78) it is stipulates that: “the mutual contractual claims of legal persons (corporate bodies) in the sphere of sales of goods and services, as well as claims relating to reimbursement of expenses made in connection to such contracts, shall expire due to the statutory limitations after a three year period “

16. The Applicant filed a complaint with the Appellate Panel against the Judgment [C-IV-13-3274] of the Specialized Panel.
17. At the same time, PAK sent a response to the Appellate Panel.
18. On 5 January 2017, the Appellate Panel rendered Judgment [AC-I-16-0075-A0001], which rejected the Applicant's appeal as ungrounded. The reasoning of the judgment reads:

“The complainant, either in its complaint or in its response to the defence, failed to submit any evidence to the court that it filed with the respondent any claim before for the payment of this debt and that it addressed to the competent court, from December 1997, when the SOE terminated the regular payment of the debt; by this action there would have been interrupted the statutory limitation...”.

Applicant's allegations

19. The Applicant alleges: *“Judgments of both instances of this court, the factual situation – namely the existing debt owed by the Privatisation Agency of Kosovo towards the claimant in this case has not been contested, since all allegations have been rejected with justification that “the legally prescribed period of the claim in relation to this debt has elapsed”... and such a situation occurred because the courts have erroneously determined the factual situation and erroneously applied the substantive law”.*
20. The Applicant requests the Court *„to declare invalid Judgment of the Specialized Panel of the SCSC and Judgment of the Appellate Panel and to remand the subject matter for reconsideration and retrial”.*

Admissibility of Referral

21. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and foreseen in the Rules of Procedure.
22. The Court notes that, in accordance with Article 21.4 of the Constitution, which provides that *“Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable”*, the Applicant has the right to file a constitutional complaint referring to the fundamental rights applicable to individuals as well as to legal entities (see: *mutatis mutandis*, Resolution of 27 January 2010, case KI41/09, *AAB-RIINVEST University LLC, Prishtina v. Government of the Republic of Kosovo*).
23. In this respect, the Court refers to paragraphs 1 and 7, of Article 113 (Jurisdiction and Authorized Parties) of the Constitution, which establish:

“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.”

24. The Court notes that the Applicant is an authorized party; the Referral was filed in accordance with the deadlines prescribed in Article 49 of the Law and the Applicant has exhausted all legal remedies.
25. However, the Court further refers to Article 48 of the Law [Accuracy of the Referral], which provides:

“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.”

26. The Court further refers to Rule 36 (1) d) and (2) b) of the Rules of Procedure, which foresees:

“(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:

[...]

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

27. In the present case, the Applicant considers that the regular courts, deciding on his statement of claim, have erroneously determined the factual situation and have erroneously applied the substantive law, and consequently the courts dealt solely with the procedural issue concerning the statute of limitations of his statement of claim, rather than the substance itself that was related to the payment of debt. This allegedly violated his constitutional rights and freedoms.
28. In this regard, the Court reiterates that the European Court on Human Rights (hereinafter: the ECtHR) has established that *„it is the role of the regular courts to interpret and apply the rules of procedural and substantive law“* (see, *mutatis mutandis*, *García Ruiz v. Spain* [GC], No. 30544/96, paragraph 28, European Court of Human Rights [ECtHR] 1999-I).
29. In this regard, the Court reiterates that the complete determination of factual situation is within the full jurisdiction of the regular courts, while the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments, therefore, it cannot act as a *„fourth instance“* court (see: ECtHR case, *Akdivar v. Turkey*, No. 21893/93, Judgment of 16 September 1996, para. 65, see also: *mutatis mutandis* Constitutional Court KI86/11, Applicant *Milaim Berisha*, of 5 April 2012).
30. Based on this, the Court finds that the Applicant's allegations of erroneous application and inconsistent interpretation of the relevant legal provisions, as well as allegations of erroneous determination of factual situation allegedly committed by the Specialized Panel and the Appellate Panel, raise issues that fall within the scope of the regular courts (legality) and this is not in the domain of the Constitutional Court (constitutionality).
31. This Court will, therefore, particularly deal with examination of the manner in which the competent courts have established facts and applied the positive legal rules to such established facts, when it is clear that there has been an arbitrary treatment by the regular court in the particular proceeding, both in

the procedure of establishing facts, as well as in the procedure of application of relevant positive legal rules.

32. However, the Court notes that the Applicant in the Referral submitted to the Court raised the same questions related to procedural flaws allegedly committed by the Specialized Panel when its statement of claim was rejected due to statutory limitation, relying on current legal rules, more specifically on Article 374 paragraph 1 of the Law on Obligational Relationships.
33. In this regard, the Court notes that the Applicant filed identical objections before the Appellate Panel, which in Judgment [AC-I-16-0075-A0001] exhaustively dealt with it, and assessed these allegations as ungrounded, with the reasoning which does not seem arbitrary to the Court.
34. Furthermore, the Court does not either find arbitrary Judgment [AC-I-16-0075-A0001] of the Appellate Panel because it gave clear reasons for its decision which are legally grounded on the relevant legal provisions concerning the issue of the statutory limitation of the statement of claim.
35. Bearing in mind the above, as well as the circumstances of the present case, the Court does not see any arbitrariness in the application of the substantive law in the reasoning of the challenged decisions of the regular courts. It also cannot find elements that would indicate irregularity or arbitrariness in rendering the challenged decisions to the detriment of the Applicant.
36. Therefore, the Court considers that nothing in the case presented by the Applicant indicates that the proceedings before the regular courts were unfair or arbitrary in order for the Constitutional Court to be satisfied that the Applicant was deprived of any rights or obligations guaranteed by the Constitution.
37. The Court considers that it is the Applicant's obligation to substantiate its constitutional allegations and to submit *prima facie* evidence indicating a violation of its rights guaranteed by the Constitution and the ECHR. That assessment is in compliance with the jurisdiction of the Court (see: case of the Constitutional Court No. KI19/14 and KI21/14 Applicants *Tafil Qorri and Mehdi Sylja*, of 5 December 2013).
38. However, the Court finds that the Applicant did not substantiate its allegation, nor did it indicate that its rights have been violated.
39. Therefore, the Applicant's Referral is manifestly ill-founded on constitutional basis and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and (2) (b) of the Rules of Procedure.

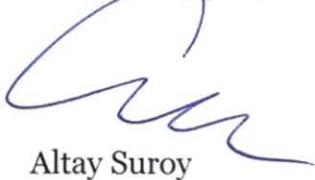
FOR THESE REASONS

The Constitutional Court of Kosovo, pursuant to Article 113 paragraph 7 of the Constitution, Article 47 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

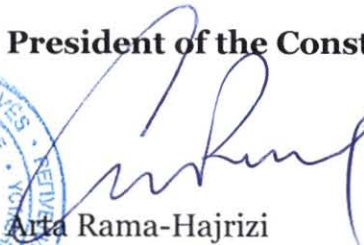
- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law; and
- IV. This Decision is effective immediately.

Judge Rapporteur



Altay Suroy

President of the Constitutional Court



Arta Rama-Hajrizi