



Tribunali i Përhershëm i Arbitrazhit
Permanent Tribunal of Arbitration

Tribunali i Përhershëm i Arbitrazhit
Oda Ekonomike e Kosovës
Permanent Tribunal of Arbitration
Kosova Chamber of Commerce

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SUMMARY OF THE ARBITRATION CASE

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1. STATEMENT OF FACTS

On 19 May 2006, the claimant “Company A” signed a contract with “Company B”, through which has undertaken to conduct construction works as specified in the documentation of tender from tendering process dated from 2005.

The contract has been based on the model of 1992 of *Federatin Internationale des Ingenieurs-Conseils* rregullat e (FIDIC). The arbitration clause has been based on chapter 67 of the “Settlements and Disputes”. The clause of this contract has been incorporated in references of the contract no. PEAP/CW/19-05, which derives as result of a tendering process dated from 2005.

The respondent agreed to pay the price for construction works in total amount of 14,297,886.87 €, including 16% in the name of VAT.

The parties used general conditions of the contract as envisaged in rules of the FIDIC (which can be found in the “Red Book”). They have changed these provisions with certain conditions that were determined in the provisions of contract. Based on provisions of the contract it was determined that in case of any dispute between the parties, the Arbitral Tribunal consisting by three arbitrators and place of arbitration will be Prishtina and language of arbitral proceeding will be conducted in English. Moreover, the governing law of contract was Law of England and Wales.

The claimant submitted the statement of claim with the Permanent Tribunal of Arbitration, by claiming payments for price of construction works in the International Airport of Prishtina, which included renovation and expansion of airport track, as it was determined in the contract.

The respondent in its statement of defense has not contested validity of contract or arbitration clause included in the contract. The respondent has challenged jurisdiction of the Permanent Tribunal of Arbitration, governed by Kosovo Arbitration Rules 2011, because arbitration clause incorporated in the contract determines that Arbitral Tribunal shall be governed by rules of procedures of the International Chamber of Commerce (ICC).

The respondent requested from the Arbitral Tribunal to decide whether it has jurisdiction of this case.

On 5 March 2013, the parties were agreed and reached agreement through which is determined that applicable law which will govern the settlement of this dispute will be applicable law of Kosovo. Moreover, in the contract it is specified that the respondent is entitled to challenge jurisdiction of the Arbitral Tribunal.

In the statement of claim submitted to the Tribunal, the claimant stated that the same claim was submitted with the Municipality Court of Pristina, whereas the court decided that this dispute is not under jurisdiction of the court.

In the appeal submitted from respondent with the Commercial Court in relation to decision of the Court of Municipality of Pristina, the Commercial Court decided that it does not have jurisdiction over this dispute. Conclusively, the Supreme Court of Kosovo, as court of third instance confirmed the decision of second instance court. Moreover, the Supreme Court decided that the Arbitration Tribunal have jurisdiction to decide over this dispute, because the parties were agreed to resolve any dispute through arbitration and not by regular courts, which means that they have excluded jurisdiction of regular courts and the decision was qualified as *res judicata*.

2. LEGAL ASSESSMENT

(a) The Jurisdiction of Permanent Tribunal of Arbitration

The Arbitral Tribunal concluded that based on Kosovo Arbitration Rules, the Permanent Tribunal of Arbitration under auspices of the Kosovo Chamber of Commerce does not have jurisdiction over this case. Based on facts that contract determines that this dispute will be settled within frames of International Court of Arbitration based on rules of the International Chamber of Commerce (ICC) in Paris. These rules are different from rules of Kosovo Rules of Arbitration. The respondent has challenged jurisdiction of the Permanent Tribunal of Arbitration under auspices of the Kosovo Chamber of Commerce, which is important to this procedure.

(b) Form of contract

The Arbitral Tribunal concluded that the contract signed by parties contains rules and FIDIC's clause, where it is determined that disputes that may arise out of this contract shall be settled from arbitration of the ICC.

The claimant in its response in relation of challenging of the PTA jurisdiction, stated that this Tribunal has jurisdiction and exclusive competence to decide over this dispute. The claimant agrees that the general conditions of contract are determined by the rules of FIDIC, which can be found in the "Red Book"). But, these provisions have been amended by them under certain conditions. Based on these provisions it was determined that in case of any dispute between the parties, the Arbitral Tribunal will consist from three arbitrators and place of arbitration will be Prishtina, and language of the arbitral proceedings will be conducted in English. Therefore, the Arbitral Tribunal in Kosovo has jurisdiction and exclusive competence to decide over this case.

The respondent has claimed that even that the parties agreed that place of arbitration will be Prishtina, this does not mean that the dispute will be resolved in the Permanent Tribunal of Arbitration in Kosovo and applicable procedural rules are the arbitration rules of Kosovo.

After interpreting rules and clause of FIDIC, the Arbitral Tribunal concluded that this tribunal does not have jurisdiction over this dispute, because parties were agreed that competent authority for resolving their dispute will be the Arbitral Tribunal of ICC, governed by rules of ICC. The abovementioned clause has been based on chapter 67 of the "Settlements and Disputes", particularly model of 1992 of *Federatin Internationale des Ingenieurs-Conseils* regulated by (FIDIC).

3. AWARD

The Arbitral Tribunal decided that the Permanent Tribunal of Arbitration under auspices of the Kosovo Chamber of Commerce does not have jurisdiction of this case. Moreover, it was decided that the decision over the procedural expenses will be rendered through special award.