



SUMMARY OF THE ARBITRATION CASE

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1. STATEMENT OF FACTS

The respondent is independent foundation that has received grants from an international organization for project called “Social Inclusion and Local Development”. The above international organization invited young and existing entrepreneurs to develop their businesses by applying for grants for developing businesses. The aim of grants was to finance machines, working equipment and any specialized training for developing business and jobs creation. Besides other qualifications to receive this grant from entrepreneurs was requested to meet among others following qualifications: (1) to contribute personally at least 20% of the cost of project and (2) the equipment shall be brand new, not used and with warranty period with minimum duration of 12 months.

On 28 September 2012, the “Company”, an enterprise specialized for manufacturing and installation of blinds, in capacity of beneficiary of grant has concluded a contract with provider of the grantor “Company B” for project “Production of blinds (Venice blinds)” with total value of price in amount of 11,787.93 EUR. In the total price, with 9,137.93 has contributed the respondent in form of grant, while the beneficiary has contributed with 2,650.00 EUR. In that day, the claimant has deposited its personal contribution for agreement in account of the respondent.

On 1st October 2012, the respondent, in capacity of buyer concluded supply contract with the Company C, as supplier to purchase one machine for manufacturing Venice Blinds, in total amount of 13,250.00 EUR.

On 13 November 2012, the Commission for admission of equipment inspected machine for manufacturing of Venice Blinds and founded that the machine is old and is used and as it is, the machine is not in compliance with signed contract dated 28 September 2012.

On 29 November 2012, the respondent has notified claimant in writing that terminates the contract dated 29 September 2012, by relying on article 2.12, which emphasize that: “in case that the beneficiary receives from supplier equipment that is old, then the Foundation will penalize with 10% of the amount co-financed deposited in bank accounts. On 18 January 2013, the respondent through a submission have requested from claimant number of bank account for return of paid contribution. The claimant have not been respond to this submission, by not indicating its bank account for returning of 10% of amount of personal contribution in value of 2,650.00 EUR, for purchasing machinery, as it was specified in the application and contract.

On 22 February 2013, the claimant has submitted the claim with the Permanent Tribunal of Arbitration (“PTA”), attached to the Kosovo Chamber of Commerce, against respondent for restitution of circumstances, before termination of the contract and for compensation of loss of profit expressed in amount of 3,000.00 EUR. Based on article 6, paragraphs 1, of the contract, parties have agreed that in case of any dispute in relation to this contract, the parties will settle it amicably through negotiations. In case of that negotiations are unsuccessful, competent to settle the dispute will be the arbitration attached to the Kosovo Chamber of Commerce.

On 22 May 2013, the claimant submitted the request to the PTA asking to allow Person A to be a part in this arbitral proceeding, by considering that the latter has been point of contact between the claimant and respondent. The respondent has objected request of Person A to join this arbitral procedure. The PTA, by relying on article 17, paragraph 5 of the Rules of Arbitration has rejected to allow person A to be a party to this arbitral procedure, because the person A, was not contracting party to the contract dated 29 September 2009.

2. LEGAL ASSESSMENT

a) Jurisdiction of the Permanent Tribunal of Arbitration

The Arbitral Tribunal concluded that it has jurisdiction to decide over the initiated claim submitted by the claimant, based on the Rules of Arbitration in Kosovo, 2011. Article 6,1 of the contract determines the position of the parties that for any dispute arising in relation to this contract, competent to resolve such disputes will be PTA. Also, the Arbitral Tribunal confirmed that language that will be used in the arbitral proceedings is Albanian Language and place of arbitration is Prishtina.

b) Contract Form

The Arbitral Tribunal concluded that claimant has not fulfilled its contract obligations envisaged in article 2.12 of the contract, by accepting the old and used machine, because the intention of contract and invitation for application for grants was that beneficiary shall accept only brand new and unused machine. In cases when contract becomes final, principle of *pacta sunt servanda*,

mandatory power of obligations for parties deriving from contract are equally binding with obligations deriving from law. In contractual relationships, when the parties that do not honor provisions of their final contract, the sanction for such breaches is termination of contract. Bearing in mind this fact, the Arbitral Tribunal does not accepted the claim that claimant breached conditions of the contract, by terminating contract, because based on article 3,5 of the contract it has been determined that Foundation is entitled to terminate this contract at any time by notifying in writing the beneficiary of grant in cases of breaching obligations envisaged with the contract. Moreover, the Arbitral Tribunal has relied on article 12 of the Law on Obligational Relationships. Pursuant to this article, in cases of establishing obligation relations and realizing rights and duties out of these relations, the parties shall adhere to the principles of good faith and honesty.

The Arbitral Tribunal has concluded that the respondent is obliged to return 10% of amount of 2,650.00 EUR paid as personal contribution of the claimant, because this obligation derives from article 2,12 of the contract concluded between the parties. Lack of cooperation by not indicating bank account of the claimant, does not discharge the respondent to return the deposit on behalf of claimant. Based on provisions of the Law on Obligational Relationships, it will be considered that the respondent has honored its obligation in case that respondent will deposit its personal contribution to the court. Considering the fact that the respondent has not undertaken such act and it continues to keep this amount in its bank account, thus it is considered that respondent has not fulfilled its obligation to return of amount of 2,650.00 EUR reduced by 10% on behalf of claimant, therefore the return of abovementioned amount is based on the applicable law.

However, the Arbitral Tribunal has not obliged through this award the respondent to return the abovementioned amount, due to the fact that the return of this amount has not been included in the claim of claimant. But, this fact does not exclude the right of claimant to realize return of this amount through agreement with respondent, as it is clear reediness for cooperation from the respondent during arbitral proceedings.

The Arbitral Tribunal accepted as fair and just conclusion of the actuarial expert that termination of the contract has affected the business of respondent and it has rejected claim for loss of profit in value of 3,000.00 EUR. The Arbitral Tribunal has not accepted the claim of claimant that respondent by terminating contract unilaterally caused material damage to claimant, in value of 3,000.00 EUR, in the name of loss of profit, because such claim has not been verified with relevant evidences and facts. The contract has not contained any provisions which will enable beneficiary to accept from supplier old and used machine.

c) Issues of payment

After deliberating whether the respondent fulfilled or not its contractual obligations envisaged in article 2,12 of the contract by accepting old and used machine, the Arbitral Tribunal concluded that the respondent should be sanctioned by 10% of amount of 2,650.00 EUR, paid in the name of contribution for purchase of machinery, because the machinery has not fulfilled criteria envisaged in the contract. Moreover, after deliberating whether the termination of contract from respondent has affected the business of respondent, the Arbitral Tribunal concluded that respondent is not obliged to pay 3,000.00 EUR as it is claimed by claimant, because immediate unilateral termination of the contract have not caused any damage in the business of claimant.

3. Award

The Arbitral Tribunal decided that respondent is not obliged for restitution of previous situation before termination of contract and reimbursement of loss of profit in amount of 3,000.00. Consequently, the claim is not legally founded and as it is, it has been rejected by the Arbitral Tribunal. The Arbitral Tribunal by relying on the fact that respondent has won the case against claimant, based on abovementioned provisions, has decided that procedural expenses are attributed to the claimant.