

Bosnia and Herzegovina
FEDERATION OF BOSNIA AND HERZEGOVINA
CANTON HERZEGOVINA-NERETVA
CANTONAL COURT IN MOSTAR
No. 07 0 U 003505 09 U
Mostar, 08/12/2009

Cantonal Court in Mostar, with judge Mira Košarić, with court reporter Verica Džidić, in the administrative dispute of complainant JP Elektroprivreda Hrvatske zajednice Herceg Bosne d.d. Mostar, versus Act No. 01-07-1311-02/09 dated November 5th, 2009 of respondent Regulatory Commission for Electricity in Federation Bosnia and Herzegovina – FERK, in the case file of conducting the Fourth Tariff Proceeding for the complainant, on December 8th, 2009 has made the following

RULING

The complaint of the complainant has been dismissed.

Statement of Rational

With disputed act of the respondent (number and date specified in the preamble) the respondent has decided upon the conduction of the Forth Tariff Proceeding, meaning that in Article 1 of the disputed act it has been decided to start, on respondent's initiative, the Forth Tariff Proceeding for the complainant with the subject of revenue requirement determination for the activity of Power Supply I Tier (non-eligible tariff customers), on annual level, including the cost of electricity procurement for the needs of mentioned customers.

The complainant has filed the complaint to this Court based on the Article 12 of Law on Administrative Disputes. In accordance with allegations from the complaint, the complainant challenges the decision, in the first place, for the reason that decision was signed by illegally nominated FERK President. The complainant has proposed to the Court to accept its complaint, annul the disputed decision of the respondent and return the case file to repeated settlement or for Court to accept complaint, annul disputed decision and resolve, in the scope of its own jurisdiction, this administrative matter.

In considering allegations of the complainant, and the evidences in the dossier, the Court has decided as said in the ruling and without submitting complaint for the response in the sense of the provision of the Article 27, Law on Administrative Disputes (Official Gazette FBiH, No. 9/05) for the following reasons:

The provision of Article 25, paragraph 1, clause 2 of the Law on Administrative Disputes (Official Gazette FBiH, No. 9/05) prescribes that the Court shall reject the action by decision if it concludes that the act disputed by the action is not a final administrative act (Article 8). Article 8, paragraph 1 of the specified Law prescribes that an administrative dispute may only be conducted against the final administrative act. Article 8, paragraph 2 of the Law prescribes that final administrative act, in terms of this Law, shall be the act by which the competent institution referred to in Article 4 of this Law decides on a certain right or duty of a citizen or legal person in some administrative issue. Article 29, paragraph 1 of the Electricity Law (Official Gazette No. 41/02, 24/05, 38/05 and 61/09) prescribes

that individual enactments passed by the Regulatory Commission shall be final. Article 29, paragraph 2 of the same Law prescribes that a party may file, with a court of jurisdiction, an administrative dispute against an individual enactment of the Regulatory Commission.

In the specified case, with the disputed decision of the respondent, on the initiative of the respondent, the Forth Tariff Proceeding has been started for the complainant.

The Court considers that mentioned decision is not administrative act, against which the administrative dispute may be conducted, pursuant provisions of Law on Administrative Disputes. It is correct that Article 29, paragraph 2 of the Electricity Law, as special rule, is prescribed that a party may file an administrative dispute against final enactments of the respondent. Electricity Law has just generally prescribed that against final enactments of the Regulatory Commission one can start the administrative dispute, but it is not defined what those acts are, so in considering whether against all decision, no matter of the contents thereof, the administrative dispute can be started, this provision of Electricity Law should be judged pursuant provision of Article 8, paragraph 2 of Law on Administrative Disputes, the provision which defines the term of administrative act. For act to be administrative in the sense of provision of Article 8, paragraph 2 of the Law, against which the administrative dispute may be started, pursuant provision of Article 8, paragraph 1 of the Law, it is necessary that competent institution from the Article 4 of the Law decides upon certain right or obligation of the citizen or legal person in the administrative matter. From the provision of Article 39 of the Electricity Law it comes that respondent is to be considered the competent institution in the sense of provision of Article 4 of the Law on Administrative Disputes. However, regarding the definition of the administrative act in the sense of provision of Article 8, paragraph 2 of the Law on Administrative Disputes it is clear that administrative act cannot be started against all decisions of the respondent pursuant provisions of Article 8, regardless provision of Article 29, paragraph 2 of the Electricity Law, but only against those acts of the respondent that have decided upon certain right or obligation of the citizen or legal person, in the scope of jurisdiction of the respondent defined by the Electricity Law.

Therefore, the disputed decision of the respondent has no administrative act character in the sense of provisions of Article 8, paragraph 2 of Law on Administrative Disputes, and against it the administrative dispute cannot be started. From the name itself and the contents of the decision it is clear that this decision only starts the procedures in the Forth Tariff Proceeding for the complainant and with that decision no rights have been approved or no obligations have been determined for the complainant. In the content itself, the specified decision could be treated in the broader sense as the conclusion with which it has been decided about issues related to the proceeding analog to the application of the provision of Article 218, paragraph 1 of Law on Administrative Disputes, against which the administrative dispute cannot be started.

As the disputed act is not administrative act in the sense of provision of the Article 8 of the Law on Administrative Disputes, the Court has, applying provisions of Article 25, paragraph 1, clause 2 of Law on Administrative Disputes, decided as said in the ruling and has dismissed the complainant's complaint.

Regarding the fact that complainant has started the administrative dispute against act of the respondent, for which this Court has decided that it is not administrative act against which, in the sense of provision of Article 8 of the Law on Administrative Disputes the

administrative dispute can be started, the Court has not decided upon the request of the complainant from the deposition dated December 4th, requiring the delay of the enforcement of the disputed decision until the court decision is made, that complainant has filed based on the Article 17 of the Law on Administrative Disputes, because this may be requested, in the sense of Article 17 of the Law on Administrative Disputes, only for the administrative act against which the complaint has been filed.

Court Reporter

Verica Džidić

Judge:

Mira Košarić

LEGAL REMEDY:

This ruling cannot be appealed.

UNOFFICIAL TRANSLATION