



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

Prishtina, on 23 April 2018  
Ref. No.: RK 1220/18

## **RESOLUTION ON INADMISSIBILITY**

in

**case No. KI83/17**

Applicant

**Blerim Rudi**

**Constitutional review of non-execution of  
Decision A. no. 02/371/2013/R of the Independent Oversight Board for  
Civil Service of Kosovo, of 11 November 2013 and Decision AC. No.  
1339/2016, of the Court of Appeals, of 20 April 2017  
by the Financial Intelligence Unit**

### **THE 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 Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

#### **Applicant**

1. The Referral was submitted by Blerim Rudi, residing in Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the non-execution of Decision A. No. 02/371/2013/R of the Independent Oversight Board for Civil Service of Kosovo (hereinafter: the IOBCSK), of 11 November 2013 and Decision AC. No. 1339/2016 of the Court of Appeals, of 20 April 2017 by the Financial Intelligence Unit (hereinafter: the FIU).

## **Subject matter**

3. The subject matter of the Referral is the constitutional review of the abovementioned decisions, which have allegedly violated the Applicant's rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: ECHR).

## **Legal basis**

4. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing of the Referrals] and 47 [Individual Requests] of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rule 29 [Filing of Referrals and Replies] 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 18 July 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 19 July 2017, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Ivan Čukalović.
7. On 25 July 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Court of Appeals.
8. On 26 July 2016, the Applicant submitted additional documents to the Court, namely two judgments of the Constitutional Court, which allegedly are similar to his case.
9. On 10 August 2017, the Court notified the IOBCSCK and the FIU about the registration of the Referral and sent them a copy of the Referral.
10. On 23 August 2017, the FIU submitted to the Court a reply to the Court's notification and some additional documents, where among others it informed the Court that a settlement had been reached between the Applicant and the FIU.



11. On 29 August 2017, the Court notified the Applicant about the reply and additional documents submitted by the FIU, and requested the Applicant to notify the Court about the next steps to be taken in connection with his Referral after the settlement had been reached. The Applicant did not reply to the Court's request.
12. On 26 September 2017, the Court requested again the Applicant to notify the Court about the next steps to be taken in connection with his Referral.
13. On 4 October 2017, the Applicant submitted his reply to the Court stating that he maintains his request for the Court to oblige FIU to compensate the salaries and other benefits deriving from the employment relationship.
14. On 17 October 2017, the Court notified the FIU about the Applicant's reply and asked him to submit comments regarding the Applicant's allegations.
15. On 1 November 2017, the FIU submitted to the Court the requested reply.
16. On 24 November 2017, the Court requested the Applicant to submit to the Court Judgment E. No. 1827/2013, of the Basic Court in Prishtina, of 17 April 2014.
17. On 5 December 2017, the Applicant submitted the requested document to the Court.
18. On 16 March 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously made a recommendation to the Court on the inadmissibility of the Referral.

### **Summary of facts**

19. The Applicant was employed at the Financial Intelligence Center (hereinafter: FIC), in the position of "*Deputy Director of the Financial Intelligence Center*" from 1 September 2008 until 28 January 2010. From December 2008, the FIC was under the responsibility of the EULEX Department of Executive Police.
20. On 27 January 2010, the FIC, through the Disciplinary Commission Decision No. 14/2010, terminated the Applicant's employment relationship due to "*numerous violations of the Code of Conduct for Civil Servants*" committed by the Applicant.
21. On 19 February 2010, the Applicant filed a complaint with the IOBCSK against Decision No. 14/2010 of the Disciplinary Commission of 27 January 2010.
22. On 27 April 2010, the IOBCSK remanded the case to the Appeals Council within the FIC as the first instance for the review of complaints.
23. On 3 June 2010, as the FIC did not review the case, according to the IOBCSK recommendations, the Applicant again filed appeal with the IOBCSK against Decision No. 14/2010 of the Disciplinary Commission of 27 January 2010.

24. On 10 August 2010, IOBCSK (Decision A. No. 02/137/2010) obliged the FIC to reinstate the Applicant within 15 (fifteen) days to his working place, with all rights and obligations deriving from the employment relationship.
25. On 8 September 2010, the Applicant filed a complaint with the Human Rights Review Panel, within EULEX, complaining about the non-execution of Decision A. No. 02/137/2010 of the IOBCSK of 10 August 2010 by the Financial Intelligence Center.
26. On 8 June 2011, the Human Rights Review Panel (Decision 2010-07) approved the Applicant's request.
27. On 26 August 2011, the FIC (Decision 82/2011), following the Decision of the Human Rights Review Panel (2010-07, of 8 June 2011), decided to implement the IOBCSK Decision, A. No. 02/137/2010 of 10 August 2010 and reinstated the Applicant to work.
28. On 23 November 2011, the Human Rights Review Panel (Decision 2010-07) confirmed that its Decision (2010-07) of 8 June 2011 was implemented.
29. By Decision 82/2011 of 26 June 2011, which reinstated the Applicant to work, the FIC also notified that his employment contract would not be extended after 31 August 2011, with the reasoning that "*The new Law No. 03/L-196, on the Prevention of Money Laundering and Terrorist Financing does not foresee the position of Deputy Director*". The Law also stipulated the Financial Intelligence Center as a part of the Ministry of Finance, entitled "*Financial Intelligence Unit*".
30. On 29 September 2011, the Applicant appealed to the IOBCSK against Decision No. 82/2011 of 26 August 2011 of the FIU, alleging that the decision to terminate the employment relationship was taken on the grounds of erroneous application of the procedure on termination of the employment relationship.
31. On 11 November 2013, IOBCSK (Decision A. No. 02/371/2013/R) approved as grounded the Applicant's appeal, annulling Decision 82/2011 of 26 August 2011 of the FIU and obliged the latter to reinstate the Applicant to his work place with all rights and obligations, arguing that "*the failure to employ the complainant on behalf of reorganization and structuring is ungrounded and not based on law*".
32. On 16 December 2013, the Applicant in the enforcement procedure filed a proposal for execution of IOBCSK Decision A. No. 02/371/2013/R of 11 November 2013, with the Basic Court in Prishtina (hereinafter: the Basic Court).
33. On 17 April 2014, the Basic Court (Judgment E. No. 1827/2013) allowed the execution required by the Applicant. In addition, the Decision states that "*the execution is assigned to the debtor Financial Intelligence Center now the Financial Intelligence Unit [...], is obliged by the debtor that the creditor Blerim Rudi from Prishtina Str. "Isa Kastrati". n.n., to reinstate to*



*his working place at the Financial Intelligence Center now the Financial Intelligence Unit, with all rights under employment relationship [...]*".

34. On 12 May 2014, the FIU filed an objection against Decision E. No. 1827/2013, of the Basic Court, of 17 April 2014.
35. On an unspecified date, the FIU filed a claim in an administrative procedure for annulment of Decision A. No. 02/371/2013/R of 11 November 2013 of the IOBCSCK, alleging erroneous application of substantive law and essential violations of the procedural provisions. Based on the case file, the Court is not informed whether a decision regarding the administrative claim filed by the FIU was rendered.
36. On 25 February 2016, the Basic Court (Decision PPP No. 1827/2013) in an enforcement procedure rejected as ungrounded the objection filed by the FIU against Decision E. No. 1827/2013, of the Basic Court, of 17 April 2014.
37. On an unspecified date, the FIU filed an appeal with the Court of Appeals of Kosovo against Decision PPP. No. 1827/2013 of the Basic Court of 25 February 2016, alleging erroneous application of the substantive law.
38. On 20 April 2017, the Court of Appeals of Kosovo (Decision AC No. 1339/2016) rejected the appeal and upheld Decision PPP. No. 1827/2013 of the Basic Court, of 25 February 2016. The decision further reasons that "*the first instance court acted fairly by rejecting the objection of the debtor, because by Decision A. no. 02/371/2013, of IOBCSK, of 11.11.2013, the matter of the claimant was decided on merits [...]. The fact that the debtor filed a claim in the administrative procedure for annulment of this decision of the IOBCSCK by which the case of the creditor Rudi regarding unlawful termination of his employment contract was decided has no suspensive effect and does not postpone its execution [...]*".
39. On 13 July 2017, the Basic Court (Judgment E. No. 1827/2013) in an enforcement procedure assigned the order for execution of Decision E. No. 1827/2013, of the Basic Court, of 17 April 2014.
40. On 17 August 2017, the Applicant and the FIU reached the reconciliation, based on which the Applicant is reinstated to the working place, in the position of the "*Intelligence Analyst*".

#### **Comments submitted by the Financial Intelligence Unit**

41. In its reply of 23 August 2017, the FIU informed the Court that after having received Decision AC. No. 1339/2016 of the Court of Appeals, of 20 April 2017, and after receiving the Execution Order, by the Basic Court, E. No. 1827/2013 of 13 July 2017, on 17 August 2017, the reconciliation was reached between the Applicant and the FIU, in which case the Applicant was assigned in the position of the "*Intelligence Analyst*".

## Comments submitted by the Applicant

42. In the reply of 4 October, the Applicant, among others, alleged that the FIU has partially implemented Decision No. 1339/2016 of the Court of Appeals of 20 April 2017, reinstating the Applicant to work, but did not apply the abovementioned decision in entirety with respect to the retroactive compensation part of the personal income.

## Comments submitted by the Financial Intelligence Unit

43. In reply of 1 November 2017, the FIU informed the Court that "*Decision A. No. 02/371/2013R of Independent Oversight Board for Civil Service of Kosovo (IOBCSK) is still subject to review before the Court of Appeals of the Republic of Kosovo [...], the FIU has implemented the Decision of the Court of Appeals and the Execution Order of the Basic Court in Prishtina, and reinstated to work Mr. Blerim Rudi. The FIU is awaiting the Decision of the Court of Appeals in respect of a claim filed in an administrative procedure*".

## Applicant's allegations

44. The Court recalls that the Applicant alleges that the failure to implement the IOBCSK Decision, A. No. 02/371/2013/R of 11 November 2013 and of Decision AC. No. 1339/2016 of the Court of Appeals of 20 April 2017, the FIU violated his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution and Article 6 (Right to a fair trial) of the ECHR.
45. The Applicant also alleges that his case is similar to the cases decided by the Court: "*1. Case No. KI50/12 - Applicant: Agush Lolluni, of 16 July 2012. Ref. No. AGJ/279/12, and 2. Case No. KI129/11 - Applicant: Viktor Marku, of 17 July 2012. Ref. No. AGJ/282/12*" by not further elaborating his allegation.
46. The Applicant initially requested the Court "*to comply with the legal provisions and the decisions of the IOBCSK and of the Court of Appeals of Kosovo as soon as possible to reinstate me to my job position [...]*" and to compensate me for other salaries and benefits arising from the employment relationship.
47. After the settlement between the Applicant and the FIU had been reached, the Applicant alleges that the FIU had partly implemented IOBCSK Decision A. No. 02/371/2013/R of 11 November 2013 and Decision AC. No. 1339/2016 of the Court of Appeals of 20 April 2017. The Applicant states that he was reinstated to his work place, but the abovementioned decisions were not fully implemented with regard to the part on retroactive compensation of the personal income.
48. The Applicant requests the Court to oblige the FIU to compensate him for salaries and other benefits arising from the employment relationship.



## Admissibility of Referral

49. The Court first examines whether the Referral has fulfilled the admissibility requirements laid down in the Constitution and as further specified in the Law and foreseen in the Rules of Procedure.

50. 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.”*

51. The Court also refers to Article 47.2 of the Law, which provides that:

*“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law.”*

52. The Court shall further assess whether the Applicant has fulfilled the requirements of the Rules of Procedure, namely of Rule 36 (1) (b) of the Rules of Procedure, which foresees that:

*“(1) The Court may consider a referral if:*

*(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted”.*

*[...]*

53. The Court recalls that the Applicant initially alleged that the FIU did not execute Decision A. No. 02/371/2013/R of 11 November 2013 of the IOBCSK and Decision AC. No. 1339/2016 of the Court of Appeals of 20 April 2017 concerning the reinstatement to his working place and compensation of salaries for the period the Applicant was dismissed from work.

54. As to the Applicant's allegation for reinstatement to the working place, the Court finds that the FIU and the Applicant based on Decision A. No. 02/371/2013/R, of 11 November 2013 of the IOBCSK and Decision AC. No. 1339/2016, of the Court of Appeals of 20 April 2017, have reached the reconciliation act on reinstatement to the working place of the “*Intelligence Analyst*”.

55. The Court finds that through this settlement the Applicant's allegation for reinstatement to the working place was addressed and that the subject matter of the referral as to the Applicant's allegation for reinstatement to the working place does not any longer present a case and there is no special circumstance with respect to human rights and/or the public interest so that the Court may review the Referral.

56. The Court recalls that the Applicant remains behind the allegation that the FIU did not execute Decision A. No. 02/371/2013/R, of 11 November 2013 of the IOBCSK and Decision AC. no. 1339/2016 of the Court of Appeals of 20 April 2017 regarding compensation of salaries for the period the Applicant was dismissed from work.
57. Regarding the allegation of non-payment of personal income retroactively, the Applicant specifies that *“the FIU has partially implemented the decisions of the Court, and [...] the IOBCSK because they have only reinstated me to work, and according to the FIU, the Court should have stated the fact that I have also be compensated with salaries [...]”*.
58. Regarding this allegation of the Applicant, the Court notes that the reconciliation reached on 17 August 2017 between the Applicant and the FIU, refers only to the reinstatement to the workplace, while it does not refer at all to the issue of execution of personal income.
59. The Court considers that regarding the issue of compensation of remained salaries in accordance with the provisions of the executive procedure, the creditor who has submitted the proposal for reinstatement to work has the right to request that the regular court renders a decision ordering that the debtor is obliged to pay on his behalf the monthly amounts that have were claimed, from the date on which the decision became final until the date of reinstatement to work.
60. In this regard, the Court refers to the relevant legal provisions which foresee:

### **Applicable legal provisions**

#### **Article 292**

##### ***Time-limit for presentation of execution***

*292.1 Execution proposal in the base of executive document, by which the employer is obliged to return the worker to work might be presented in 30 days time-limit from the day in which the execution proposer has obtained the right to present this proposal.*

*292.2 It is considered that the worker has obtained the right for presentation of execution proposal after the expiration of time-limit for voluntary fulfillment of obligation assigned in execution document.*

#### **Article 294**

##### ***Reward of payment in case of return of worker to work***

*294.1 Execution proposer who has submitted the proposal for return to work, has the right to request from the court the issuance of the decision by which will be assigned that, the debtor has a duty to pay to him, in behalf of salary the monthly amounts which has become requested, from the day when the decision has become final until the day of 105 return to work. By the same decision, the court assigns execution for realization of monthly amounts assigned.*



*294.2 Proposal for reward might be attached with the execution proposal, or might be presented latter until the conclusion of the execution procedure.*

*Article 295*

*The effect of execution proposal*

*295.3 Reward of monthly salary is assigned in amount which the worker would realize if at work.*

61. The Applicant did not submit evidence to the Court that he had filed such a claim with the regular courts or whether the execution decisions specifically include the monthly amounts of salaries the Applicant is entitled to.
62. In this case, the Court reiterates that the regular courts are independent in exercising their judicial powers and it is their constitutional duty to interpret factual and law issues that are relevant to the cases brought before them.
63. In this respect, the Court reiterates that the exhaustion rule of legal remedies under Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure obliges those who want to bring their case to the Court, to use before the effective legal remedies that are available by law. In fact, the rule is based on the assumption that there is an effective remedy available in respect of the alleged breach in the regular courts. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the regular court system safeguarding human rights. See: *mutatis mutandis*, ECtHR cases *Akdivar and others v. Turkey*, 16 September 1996, paragraph 51; *Handyside v. the United Kingdom*, ECtHR case of 7 December 1976, § 48; see also, Constitutional Court case KI42/15, of 4 July 2016, paragraph 34 and 35).
64. Therefore, as to the Applicant's allegation regarding retroactive salary compensation, the Court finds that the Applicant has not exhausted all legal remedies provided by law and assesses that he did not meet the admissibility requirements established in the Constitution, and further foreseen in the Law and specified by the Rules of Procedure.
65. In sum, pursuant to Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure, the Court finds that with regard to the Applicant's allegation of retroactive payment, the Referral is inadmissible because the Applicant has not exhausted available legal remedies.

## FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 47 of the Law and Rule 36 (1) (b) of the Rules of Procedure, on 16 March 2018, 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. TO DECLARE this Decision effective immediately;

**Judge Rapporteur**

Selvetë Gërxhaliu-Krasniqi

**President of the Constitutional Court**

Arta Rama-Hajrizi

