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

Prishtina, on 12 May 2020
Ref. no.:AGJ 1560/20

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JUDGMENT

in

Case No. KI193/18

Applicant

Agron Vula

Constitutional review of Decision Ac. No. 227/18 of the Court of Appeals of 18 September 2018, regarding non-enforcement of Decision A02 158/07 of the Independent Oversight Board of Kosovo of 25 February 2008

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by Agron Vula (hereinafter: the Applicant) from Gjakova.

Challenged decision

2. The Applicant requests the constitutional review of Decision Ac. No. 227/18 of the Court of Appeals, of 18 September 2018, regarding the non-enforcement of Decision A02 158/07 of the Independent Oversight Board of Kosovo (hereinafter: the IOBK), of 25 February 2008 and the respective decisions of the first and second instance courts, which upheld the Decision of the IOBK.

Subject matter

3. The subject matter is the constitutional review of Decision Ac. No. 227/18 of the Court of Appeals, of 18 September 2018, regarding the non-enforcement of Decision A02 158/07 of the IOBK, of 25 February 2008, by the Municipality of Gjakova.

4. The Applicant alleges that the challenged decision of the Court of Appeals, regarding the non-enforcement of abovementioned Decision of the IOBK by the Municipality of Gjakova, violates his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights], of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Articles 6 (Right to a fair trial] and 13 [Right to an effective remedy], of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

5. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 [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

6. On 17 December 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

7. On 20 December 2018, the President of the Court appointed Judge Bekim Sejdiu, as Judge Rapporteur and the Review Panel composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha (members).

8. On 27 February 2019, the Court notified the Applicant about the registration of the Referral and a copy of the Referral was sent to the Court of Appeals.

9. On 25 June 2019, the Court requested the complete case file from the Basic Court in Gjakova.

10. On 5 July 2019, the Basic Court in Gjakova submitted to the Court the case file, which contained only some of the court decisions rendered by the regular courts on the case in question.

11. On 27 November 2019, the Review Panel considered the report of the Judge Rapporteur and decided that the Referral should be reviewed at a later date, after receiving additional documents and clarifications from the Municipality of Gjakova.

12. On 5 December 2019, the Court requested the Municipality of Gjakova to notify it if any disciplinary proceedings was conducted against the Applicant, taking into account Decision A 02 158/07 of the IOBK, of 25 February 2008.

13. On 13 December 2019, the Municipality of Gjakova submitted a summary of various documents related to the case, as well as its comments regarding the allegations of the Applicant.

14. On 11 March 2020 and 22 April 2020, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.

15. On 22 April 2020, the Court unanimously voted and decided that: (i) the Referral is admissible; and, (ii) the non-enforcement of IOBK Decision A 02 158/2005 of 25 February 2008, which was upheld in the enforcement proceeding by the Court of Appeals, as a last instance, by Decisions Ac. No. 1459/15 and Ac. No. 516/16, of 26 October 2015, namely 4 December 2017, caused violation of Articles 31, 32 and 54 of the Constitution, in conjunction with Articles 6 and 13 of the ECHR.

Summary of facts

16. The Applicant submits for the third time to the Constitutional Court the Referral for non-enforcement of the IOBK Decision, of 25 February 2008. In the first two Referrals, the Court rendered two resolutions on inadmissibility, namely Resolution No. KI57/09, of 14 December 2010 and Resolution No. KI216/13, of 23 January 2014.

17. In Resolution No. KI57/09, the Court found that the Applicant's Referral was premature, because the Municipality of Gjakova appealed to the District Court in Peja and that the case had not yet been resolved by a final decision. Consequently, the Court rejected the Referral No. KI57/09 as inadmissible, due to non-exhaustion of all legal remedies (in accordance with Article 113.7 of the Constitution).

18. In Resolution No. KI216/13, the Court declared the Applicant's Referral as manifestly ill-founded, finding that the IOBK Decision ordered the Municipality of Gjakova to conduct disciplinary proceedings against the Applicant and not to reinstate him to the job position.

19. The Court considers that the Referral under consideration is a new Referral, taking into account that several proceedings have been conducted and the court decisions have been taken, regarding the case in question, following the issuance of both of its resolutions. (KI57/09 and KI 216/13).

20. Therefore, the Court will specifically assess all actions and procedures that have been conducted from 2014 and further, taking into account that the procedures that took place before 2014 were the subject of review in two abovementioned resolutions of the Constitutional Court.

21. In this regard, the Court notes that the regular courts have conducted in parallel several groups of the court proceedings, of a contested, administrative and enforcement nature. These procedures have been conducted in relation to each other, from 2003 to 2018 and as such have been presented chronologically below (with special emphasis on the procedures conducted since 2014).

PROCEEDINGS CONDUCTED BEFORE 2014

A. Administrative and contested procedure

22. From the documents included in the Referral it follows that the Applicant was employed in the Firefighters Unit in the Municipality of Gjakova, as a Head of Fire Prevention and Investigation.

23. On 19 August 2003, the Chief Executive of the Municipality of Gjakova rendered Decision 12. No. 01-139, for "temporary suspension" of the Applicant from his working place, starting from 20 August 2003 until the completion of the procedure for determination of his disciplinary responsibility. According to this decision, during the whole time of the suspension, the Applicant would be suspended ½ (half) of his monthly income.

24. On 20 August 2003, the Applicant filed a complaint with the Municipal Assembly of Gjakova, "to the Chief Executive Officer". From the case file it results that the Disciplinary Commission of the Municipality of Gjakova has never decided regarding the complaint of the Applicant. Also, the Applicant had never received any decision from the Municipality of Gjakova regarding his complaint.

25. On an unspecified date, the Applicant filed a statement of claim with the Municipal Court in Gjakova, against the abovementioned decision of the Chief Executive Officer of the Municipality of Gjakova.

26. On 17 January, 2005, the Municipal Court in Gjakova, by Judgment C. No. 1357/04, found that the Decision of the Chief Executive Officer of the Municipality of Gjakova was legally invalid because it was not in compliance with Administrative Order No. 2003/2 on the implementation of UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo and obliged the Municipality of Gjakova to reinstate the Applicant to his working place, as well

as to compensate him for the procedural costs in the amount of 446. €, within 8 (eight) days after this judgment becomes final.

27. On an unspecified date, the Municipality of Gjakova filed an appeal against the abovementioned Judgment with the District Court in Peja.

28. On 29 September 2005, the District Court in Peja rendered Judgment Ac. No. 113/05, which modified the abovementioned judgment of the Municipal Court in Gjakova and rejected the Applicant's statement of claim as ungrounded. The District Court reasoned that the Applicant had established a fixed-term employment relationship, starting from 1 January 2003 to 30 June 2003. Consequently, the Applicant's employment relationship was terminated after the expiration of the duration of the employment relationship specified in the contract.

29. On an unspecified date, the Applicant hd filed a revision with the Supreme Court against the abovementioned judgment of the District Court, stating that the disciplinary proceedings had not been conducted.

30. From the case file it is noted that on 25 October 2006, the Supreme Court, by Judgment Rev. No. 10/2006, rejected the Applicant's revision as ungrounded, assessing that it is an irrelevant fact that no disciplinary proceedings have been conducted against the claimant for determination of a serious violation of duties under the employment relationship.

31. While the proceedings were taking place in the Supreme Court, **on 1 December 2005 the Applicant appealed in the IOBK** (the complaint was forwarded through the Ministry of Public Services).

32. On 25 February 2008, the IOBK rendered Decision A02 158/2005, which decided as follows:

> "*I. The complaint A 02 158/2005 of the complainant Agron Vula of 1.12.2005 is APPROVED partially and the case is remanded to the employment authority for review and decision.*
>
> *II. The employment authority the Municipality of Gjakova IS OBLIGED to implement the legal procedure within 15 days from the date of receiving this decision and to approve the decision regarding this administrative issue*".

33. Regarding the proceedings followed for the suspension of the Applicant, the relevant part of the IOBK Decision found: "*This body examining the written evidence presented finds that: The suspension of the abovementioned was done in contradiction with the procedure provided by the Administrative Direction No. 2003/2 regarding the implementation of UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo […]".*

34. On an unspecified date, the Applicant submitted to the Municipal Court in Gjakova a proposal for repetition of the proceedings, because the legal

requirements were not met under Article 421 paragraph 1, items 8 and 9 of the LCP. The Applicant reasoned that the aforementioned decision of the IOBK represents a new fact.

35. The Municipal Court in Gjakova decided to refer the case for the request for repetition of the procedure to the District Court in Peja for adjudication.

36. On 7 April 2009, the District Court in Peja, by Decision C. No. 121/09, decided to: "*The repetition of the procedure completed by final Judgment Ac. No. 113/05 of the District Court in Peja of 29.09.2005 is ALLOWED and Judgment of the District Court in Peja and Judgment Rev. No. 10/2006 of the Supreme Court of Kosovo in Prishtina of 25.10.2006 are QUASHED, and the claim of the claimant in this legal matter is DISMISSED as premature*".

37. On an unspecified date, the Applicant filed a claim against the Municipality of Gjakova, for the payment of personal income.

38. On 23 September 2009, the Municipal Court in Gjakova by Judgment C. No. 555/07, rendered in the repeated procedure according to the Decision of the District Court, approved the Applicant's claim and obliged the Municipality of Gjakova to pay the Applicant the respective amounts in cash, in the name of the compensation of income.

39. On an unspecified date, the Municipality of Gjakova filed an appeal against the abovementioned Judgment of the Municipal Court in Gjakova.

40. Meanwhile, the case file states that on 18 November, 2009, the Ministry of Local Government Administration (MLGA), in response to a single letter from the Applicant, sent to the president of the Municipality of Gjakova a "Request for implementation of the Decision of the Independent Oversight Board". In this letter (signed by the Minister of MLGA), it was emphasized that the decisions of the IOBK are binding and must be implemented and that the judicial review of the decision in question does not stay its execution.

41. On 22 October 2010, the District Court in Peja, by Judgment Ac. No. 151/10, modified the Judgment of the Municipal Court in Gjakova (C. No. 555/07) and rejected as ungrounded the Applicant's statement of claim to oblige the Municipality of Gjakova to pay him the respective amounts in the name of the compensation of the personal income.

42. From the case file it is noted that Judgment Ac. No. 151/10 of the District Court in Peja, *inter alia*, emphasized that: *"[...] based on the decision of the Independent Oversight Board of Kosovo stated above, it has not been decided on merits regarding the issue of the claimant's employment relationship, because the relevant administrative procedure has not yet been completed in the respondent municipality and there is no decision regarding this issue for the creation of the obligation to compensate the damage, the essential conditions have not been met, because so far it has not been conclusively and convincingly established that the respondent based on the unlawful decision caused damage to the claimant"*.

43. On an unspecified date, the Applicant filed a request for revision with the Supreme Court, against the Judgment of the District Court in Peja.

44. On 3 June 2013, the Supreme Court rendered Judgment Rev. No. 22/2011, by which it rejected as ungrounded the revision of the Applicant.

B. Enforcement procedure

45. According to the case file, it follows that on 30 July 2009, the Municipal Court of Gjakova, by Decision E. No. 1268/09, allowed the enforcement of the Decision of the IOBK (of 25 February 2008).

46. On 30 December 2009, the Municipal Court in Gjakova rendered the Decison E. No. 1268/09, approving the objection of the Municipality of Gjakova against the decision of 30 July 2009.

47. In the reasoning of this Decision, the Municipal Court emphasized that the Decision of the IOBK did not present executive title under the Law on the Enforcement Procedure, because it had to do with a procedural obligation of the employing authority, namely the conduct of the disciplinary procedure and had nothing to do with any monetary obligation.

48. From the case file it is noted that against this Decision of the Municipal Court in Gjakova, the Applicant filed an appeal with the District Court.

49. On 22 October 2010, the District Court in Peja rendered Decision Ac. No. 139/10, by which rejected as ungrounded the Applicant's appeal and upheld the Decision of the Municipal Court in Gjakova, of 30 December 2009.

ENFORCEMENT PROCEDURE CONDUCTED FROM 2014

50. The Court notes that following the last decision of the Constitutional Court in this case (Resolution KI 216/13), four groups of enforcement proceedings were conducted.

First group of proceedings

51. It follows from the case file that on an unspecified date, the Applicant submitted to the Basic Court in Gjakova a proposal for enforcement of the IOBK Decision of 25 February 2008. On 19 December 2012, the Basic Court in Gjakova rendered Decision E. No. 1100/12, which allows the enforcement of the IOBK Decision No. A 02-158/2007, obliging the debtor (the Municipality of Gjakova), to act within 7 (seven) days and fulfill the obligation of the final Decision of the Board".

52. On an unspecified date, the Municipality of Gjakova filed an objection against the aforementioned decision of the Basic Court in Gjakova.

53. On 29 October 2014, the Basic Court in Gjakova rendered Judgment E. No. 1100/12, by which it rejected as ungrounded the objection of the Municipality of Gjakova. The Basic Court reasoned that the debtor's allegation that the IOBK Decision does not constitute an enforceable title is ungrounded. The Basic Court further added that the Constitutional Court, in its case law, as well as the Supreme Court with its principled position, proved that the decisions of the IOBK concerning the reinstatement of the employee to the working place represent an enforcement title for the courts.

54. From the case file it is noted that the Basic Court in Gjakova, acting according to the submission of the authorized representative of the Applicant, on 31 October 2014 rendered Decision (E. No. 1100/12), deciding that: "*The debtor, the Municipality of Gjakova, IS OBLIGED that within 7 days from the date of receipt of this Decision, to implement the decision of the Independent Oversight Board of Kosovo, A. 02 158/2005 of 25.02.2008, at the request of the creditor Agron Vula from Gjakova, allowed by the decision of this Court of 19.12.2012".*

55. On 2 February 2015, the Municipality of Gjakova filed a proposal seeking a return to his previous situation and to be allowed to file an appeal against the Decision of the Basic Court of 29 October 2014. The Municipality of Gjakova reasoned that on 25 March 2104 suspended from work the Municipal Public Attorney, and in his absence, authorized a company of lawyers based in Prishtina to take all actions in all disputes. The law firm did not take the actions for which it was authorized, because in this case they were also authorized by the creditor (the Applicant).

56. On 27 February 2015, the Basic Court in Gjakova rendered Decision E. No. 1100/12 and dismissed the proposal of the debtor, the Municipality of Gjakova, by which it requested that it be allowed to file an appeal against the Decision E. No. 1100/12 of that court of 29 October 2014 and 31 October 2014.

57. Regarding the non-permission of return to the previous situation, the Basic Court in Gjakova reasoned that: *"According to the provision of Article 130.2 of this Law, it is foreseen that the proposal must be submitted within 7 days (subjective deadline), from the date when the cause of inaction ceased, while, according to Article 130. 3 of the LCP, it is foreseen that after 60 days pass, from the date of inaction, the return to the previous situation may (not) be required (objective deadline). The very fact that the public advocacy in Gjakova, with the submission of 17.12.2014 informed the Court that the enforcement procedure of the enforcement title, thus the Decision of the Independent Oversight Board A 02 158/2007 of 25.02.2008, is in the enfrcement phase, so that the Public Advocacy has requested the personnel office of the Municipal Assembly of Gjakova to continue the implementation procedure at the request of the creditor, shows that the debtor was aware of the course of the procedure but within the deadlines provided by Article 130.1 and 2 of the LCP has not submitted a proposal for return to the previous situation […]."*

58. On an unspecified date, the Municipality of Gjakova filed an appeal with the Court of Appeals, alleging the existence of violations of the provisions of the contested procedure, erroneous and incomplete determination of factual situation, as well as erroneous application of the substantive law, with the proposal to annul the challenged decision and to allow the return to the previous situation.

59. On 26 October 2015, the Court of Appeals rendered Decision Ac. No. 1459/15, deciding that: "*The appeal of the authorized representative of the debtor Municipality of Gjakova is REJECTED as ungrounded, while the Decision of the Basic Court in Gjakova - General Department-Civil Division, E. No. 1100/12 of 27.02.2015, and Decision E. No. 1100/12 of 31.10.2014 are UPHELD*".

60. The Court of Appeals explained that the debtor (the Municipality of Gjakova) lost the subjective and objective deadline for returning to the previous situation and that for that reason the Basic Court in Gjakova rejected the proposal for return to the previous situation.

61. The relevant part of the abovementioned Decision of the Court of Appeals determined as follows: " *[...] according to the provision of Article 112 of the LCP, the rejection and non-receipt of the submission is considered as legally performed communication, that in the present case the decision on the rejection of the debtor's objection is considered as regular receipt and that from the date of refusal of the receipt of the decision until the date when the proposal for return to the previous situation has been submitted, have passed 94 days, which means that the proposal for return to the previous situation has been exercised in the court after the deadline [...]*".

Second group of proceedings

62. On an unspecified date, the Applicant submitted to the Basic Court in Gjakova a proposal for the enforcement of the IOBK Decision No. A 02 158/2005, of 25 February 2008, against the debtor (Municipality of Gjakova).

63. On 22 December 2016, the Basic Court in Gjakova by Decision E. No. 1268/09 dismissed the Applicant's request. The Basic Court in Gjakova reasoned that: *"[...] after analyzing the request for the continuation of the procedure, it has found that such a request at this stage of the procedure, namely when the case is completed after the court by Decision E. no. 1268/09 has repealed the decision by which the proposal for enforcement of the creditor Agron Vula was allowed, which decision has become final according to the Decision Ac. No. 139/10 of the District Court in Peja, of 22.10.2010 [...] In accordance with Article 64 of the LEP, which provides, inter alia, that "the postponed enforcement may resume upon request of the party that requested postponement before the expiration of the period", so in the present case the enforcement procedure has not been postponed according to the aforementioned articles, but the decision by which the enforcement was allowed has been repealed, therefore, as a result in this enforcement case the*

execution cannot be continued as the case has been completed by a final decision".

64. On an unspecified date, the Applicant appealed to the Court of Appeals against the decision of the Basic Court in Gjakova, alleging essential violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation, and erroneous application of substantive law.

65. On 28 August 2017, the Court of Appeals, by Decision CA. No. 380/2017, rejected as ungrounded the appeal of the Applicant and upheld the Decision of the Basic Court in Gjakova (of 22 December 2016). The Court of Appeals explained that the Decision of the Municipal Court in Gjakova, E. No. 1268/09, of 30 July 2009, was annulled and that the annulment of that decision was upheld and became final by Decision Ac. No. 139/2010of the District Court in Peja, of 22 October 2010.

66. Regarding the nature and non-enforcement of the IOBK Decision, the Court of Appeals explained: "*The decision of the IOBK deals with two aspects: continuation of the disciplinary procedure initiated by the decision for suspension and payment of compensation in ½ of monthly personal income [...] The court of second instance considers that by the decision of the IOBK dated 25.02.2008, with no. A 02 158/2007, it has not been decided on merits, but the case has been remanded to the employer for repeated proceeding for decision making, so such a decision is not suitable for enforcement, because it does not specify the object of enforcement, the amount and time of fulfillment of the obligation, as provided for in Article 27 of the LEP [...] As the employer authority of the Municipality of Gjakova did not act according to the decision of the IOBK, to issue the relevant decision in administrative procedure, the creditor had the opportunity under the conditions provided in paragraph 3 of Article 29 of the Law on Administrative Conflict, No.03/L-202, to address a special request to the IOBK, namely in the requirements provided by this legal provision to start the administrative conflict".*

Third group of proceedings

67. On an unspecified date, the Municipality of Gjakova filed an appeal with the Court of Appeals for annulment of Decision E. No. 1100/12 of the Basic Court in Gjakova, which allowed the enforcement of the IOBK Decision No. A 02 158/2007, of 25 February 2008. The Municipality of Gjakova alleged that the case was adjudicated by a final decision Ac. no. 139/10 of the District Court in Peja, of 22 October 2010.

68. On 4 December 2017, the Court of Appeals rendered Judgment Ac. No. 516/16, by which the Municipality of Gjakova rejected as ungrounded the appeal of the debtor and upheld Decision E. No. 1100/12 of the Basic Court in Gjakova. The Court of Appeals reasoned that the allegations of the debtor are ungrounded because the Decision of the Basic Court in Gjakova allowed the enforcement of Decision No. A 02 158/2007 of the IOBK, of 25 February 2008. The Court of Appeals added that the decision was final and enforceable.

Fourth group of proceedings

69. Following the aforementioned Decision of the Court of Appeals (of 26 October 2015), the Applicant submitted to the Basic Court in Gjakova a proposal to allow the enforcement under the IOBK Decision (of 25 of February 2008).

70. On 19 January 2016, the Basic Court in Gjakova, by Decision E. No. 1100/12, decided that: *"The proposal for allowing the enforcement of the creditor Agron Vula, from Gjakova, against the debtor, the Municipality of Gjakova, is DISMISSED, due to existence of the litispendence"*.

71. The Basic Court in Gjakova reasoned: *"The court, examining at the case file, and then looking at the evidence of the cases ex officio, noticed that the same creditor against the same debtor for the same object of enforcement previously submitted the same proposal on 30.07.2009. Finding that for the same enforcement case in this court are conducted proceedings against the same parties, with the same object of enforcement, based on the same enforcement document, namely Decision No. A 02 158/2005 of the Independent Oversight Board of Kosovo, of 25.02.2008. The case in question bears the number of the Court E. No. 1268/09 and the enforcement was allowed on 30.07.2009"*.

72. Meanwhile, on an unspecified date, the Applicant filed an appeal with the Court of Appeals against Decision E. No. 1100/12 of the Basic Court of Gjakova, of 19 January 2016, which rejected the proposal to allow the enforcement of the decision of the IOBK due to the existence of litispendence.

73. On 18 September 2018, the Court of Appeals, by Decision Ac. No. 227/18, rejected as ungrounded the appeal of the Applicant and upheld Decision E. No. 1100/12 of the Basic Court in Gjakova, of 19 January 2016. The Court of Appeals reasoned, *inter alia*, that pursuant to Article 17 of the LEP, in conjunction with Articles 262.3 and 262.4 of the LCP, it is provided that: "*At the time of the existence of the litispendence for the same statement of claim, no new trial may be initiated between the same parties. If, however, such a thing is done, the court rejects the lawsuit*".

74. On 30 October 2018, the Applicant submitted a proposal to the Office of the Chief State Prosecutor to initiate a request for protection of legality, against Decision Ac. No. 227/18 of the Court of Appeals, of 18 September 2018.

75. On 16 November 2018, the Office of the Chief State Prosecutor notified the Applicant that his request was not approved, because there was insufficient legal basis for filing a request for protection of legality.

Applicant's allegations

76. The Applicant alleges that the non-enforcement of the IOBK Decision, No. A 02 158/07, of 25 February 2008, by the debtor Municipality of Gjakova, violates his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial],

32 [Right to Legal Remedies], 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights] of the Constitution, in conjunction with Articles 6 [Right to a fair trial] and 13 [Right to an effective remedy] of the ECHR.

77. The Applicant alleges that decisions E. No. 1100/12 of the Basic Court in Gjakova, of 19 December 2012 and of 29 October 2014, upheld that Decision A 02 158/07 of the IOBK, of 25 February 2008, is "final and enforceable".

78. The Applicant alleges that the Decision of the IOBK and of the courts grants him the right to reinstatement to work: "*...I have acquired the right to return to my previous job, because I was temporarily suspended from my job unlawfully, and for this I am still treated as an active worker of the respondent and which is substantiated by the Board decisions and court decisions [...] substantiated by Decision A 02 158/2007 of the Independent Oversight Board of the Republic of Kosovo in Prishtina of 25.02.2008 because by this decision I am treated as an active worker of the Municipal Assembly of Gjakova [...]*".

79. The Applicant alleges that Decision Ac. No. 1459/15 of the Court of Appeals, of 26 October 2015, rejected the objection of the debtor the Municipality of Gjakova and upheld the decisions of the Basic Court in Gjakova, E. No. 1100/12, of 19 December 2012 and 29 October 2014. According to the Applicant, the aforementioned decisions of the Court of Appeals and the Basic Court in Gjakova have established that Decision A 02 158/07 of the IOBK, of 25 February 2008, is "final and enforceable".

80. The Applicant alleges that the fourth decision of the Court of Appeals, Ac. No. 227/18, of 18 September 2018, annulled the decision of the IOBK, which had previously been upheld by the decisions of the Basic Court in Gjakova, E. No. 1100/12, of 19 December 2012 and of 29 October 2014 and the Decision of the Court of Appeals, Ac. No. 1459/15, of 26 October 2015.

81. The Applicant, in support of his allegations, refers to the case law of the European Court of Human Rights, namely case *Brumarescu v. Romania* (case no. 28324/95, ECtHR, Judgment of 28 October 1999) and the case law of the Constitutional Court of Kosovo, namely case No. KI04/12 (Applicant *Esat Kelmendi*, Judgment of 20 July 2014) and case No. KI112/12 (Applicant *Adem Meta*, Judgment of 5 July 2013). According to the Applicant, the abovementioned cases are important for his case because "*a similar situation has arisen that the courts have not implemented the administrative decisions*".

82. Finally, the Applicant requests the Court: (i) to declare the Referral admissible; (ii) to find that there has been a violation of Articles 31, 32, 49 and 54 of the Constitution, in conjunction with Articles 6 and 13 of the ECHR and Article 13 of Protocol No. 11 of the ECHR; (iii) to declare invalid Decision Ac. No. 227/18 of the Court of Appeals, of 18 September 2018, which "violated Article 54 of the Constitution and Article 13 of the ECHR"; and, (iv) to remand Decision Ac. No. 227/18 of the Court of Appeals, of 18 September 2018, "*for reconsideration in*

accordance with the judgment of this Court, pursuant to Rule 74 (1) of the Rules of Procedure, also to take into account that the Decision of the Independent Oversight Board for Civil Servants of Kosovo in Prishtina, must be enforced".

Reply of the Municipality of Gjakova

83. In its response requested by the Court, the Municipality of Gjakova stated as follows: (i) no disciplinary proceedings have been conducted against the Applicant; (ii) as the Applicant had a fixed-term contract (from 01.01.2003 to 30.06.2003), the Municipality did not have a legal basis to conduct the procedure, because the disciplinary procedure cannot be conducted against the employees to whom the "employment relationship" was terminated; (iii) the Applicant was invited by the Commander of the Fire Brigade to report for work at the fire station but he did not respond to the invitation; and, that (iv) the Applicant has not exhausted all possibilities in administrative proceedings against the administrative silence guaranteed by law.

84. Regarding the exhaustion of all possibilities in the administrative procedure, the Municipality of Gjakova alleges that: "*The Municipality of Gjakova was obliged to act according to the law, always based on its evidence and competencies, so that the clarifications confirmed that the employment body-the Municipality has not conducted the disciplinary proceedings as required by the Independent Board by Decision A 02 158/2005, due to the situation created (termination of the employment relationship), according to the case file Agron Vula was obliged to act against the silence of the administration (for not implementing the Decision of the Independent Board), and that such a fact is proved that Agron Vula has never exercised-acted according to the Law on Administrative Conflict – administrative silence of the municipal body, he has not exhausted all his possibilities in the administrative procedure guaranteed by law, but he has continuously acted with judicial, enforcement procedures without exhausting all the procedures-remedies as provided by the administrative procedure, therefore it follows that he has lost all disputes in all judicial instances*".

85. The Municipality also points out that the Applicant "*has continuously filed various complaints whenever the local government changes, but this issue has nothing to do with the will of the President of the Municipality or the Municipal Public Advocate, as the Applicant claims*".

Relevant legal provisions

UNMIK REGULATION FOR KOSOVO CIVIL SERVICE, No. 2001/36

Section 11
Appeals

11.3 Where the Board is satisfied that the challenged decision breached the principles set out in section 2.1 of the present regulation, it shall order an appropriate remedy by written decision and order directed to the

Permanent Secretary or chief executive officer of the employing authority concerned, who shall be responsible for effecting the employing authority's compliance with the order.
11.4 Where the employing authority concerned does not comply with the Board's decision and order, the Board shall report the matter to the Prime Minister and the Special Representative of the Secretary-General.

ADMINISTRATIVE DIRECTION NO. 2003/2 IMPLEMENTING UNMIK REGULATION NO. 2001/36 ON THE KOSOVO CIVIL SERVICE

Article 31
Disciplinary proceedings

31.5 In cases of serious violations, the civil servant may be suspended for payment until investigations and/or disciplinary proceedings are in progress. The payment suspension order is made only by the staff leader of the employment authority.

Law NO.03/L -192 ON INDEPENDENT OVERSIGHT BOARD FOR CIVIL SERVICE OF KOSOVO

Article 12
Appeals

4. Where the Board is satisfied that through challenged decision there are breached the principles or rules set out in Civil Service of the Republic of Kosovo, it shall issue a written decision directed to the senior managing officer or the chief executive officer of the respective employing authority, who shall be responsible for implementation of Board's decision.

Article 13
Decision of the Board

Decision of the Board shall represent a final administrative decision and shall be executed by the senior managing officer or the person responsible at the institution issuing the original decision against the party. Execution shall be effected within fifteen (15) days from the day of receipt of the decision..

Article 15
Procedure in case of non-implementation of the Board's decision

1. Non-implementation of the Board's decision by the person responsible at the institution shall represent a serious breach of work related duties as provided in Law on Civil Service in the Republic of Kosovo.

Admissibility of the Referral

86. The Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution, foreseen by the Law and further specified by the Rules of Procedure.

87. 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".*

88. The Court notes that the Applicant claims to be a victim of a constitutional violation, due to non-execution of the decision of a public authority, namely the IOBK. Therefore, he is an authorized party.

89. The Court also notes that the Applicant has exhausted all legal remedies provided by law and in the absence of any other effective remedy available to protect his rights, he addressed the Constitutional Court.

90. The Court also refers to Article 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

> *Article 48*
> *[Accuracy of the Referral]*
>
> *"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".*
>
> *Article 49*
> *[Deadlines]*
>
> *"The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision...".*

91. The Court notes that the final decision in this proceeding is Decision Ac. No. 227/18 of the Court of Appeals of 18 September 2018, and that the Referral was submitted to the Court on 17 December 2018. It results that the Referral was submitted in accordance with the legal deadline provided by Article 49 of the Law.

92. The Court also considers that the Applicant has accurately indicated what rights, guaranteed by the Constitution and the ECHR, he claims to have been violated to his detriment, due to non-enforcement of the IOBK Decision A 02 158/07, of 25 February 2008.

93. Therefore, the Court concludes that the Applicant is an authorized party; that he has exhausted all legal remedies; that he respected the requirement of submitting the referral within the legal deadline; has accurately clarified the alleged violations of fundamental human rights and freedoms, and has shown what is the challenged specific act of the public authority.

94. Moreover, in light of the allegations of the Referal and their argumentation, the Court considers that the Referral raises serious constitutional issues and their addressing depends on the consideration of the merits of the referral. Also, the referral cannot be considered as manifestly ill-founded, within the meaning of Rule 39 of the Rules of Procedure, and no other basis has been established to declare it inadmissible.

95. Therefore, the Court declares the Referral admissible for review of its merits.

Merits of the Referral

96. The Court initially notes, once again, that in the Applicant's case it has already rendered two resolutions on inadmissibility, with numbers KI57/09 and KI216/13. In case no. KI57/09, the Court declared inadmissible the Applicant's Referral due to non-exhaustion of legal remedies. Whereas in case No. KI216/13, the Court declared the Applicant's Referral as manifestly ill-founded, finding that the IOBK Decision did not order the Municipality of Gjakova to reinstate the Applicant to the working place, but to conduct disciplinary proceedings against him in accordance with the law on civil servants in force.

97. The Court also reiterates that following the recent decision of the Constitutional Court in this case (Resolution KI 216/13, of 23 January 2014), in the same case four other sets of proceedings were conducted and several court decisions were taken. Those procedures have to do with the (non) enforcement of the IOBK decision and as such are subject to review by the Constitutional Court in this case.

98. Thereforer, in examining the merits of the Referral, the Court notes that the Applicant's Referral raises two basic issues: (i) whether the IOBK decision in the present case is binding and executable; and, (ii) if the non-enforcement of the decision of the IOBK caused a violation of the Applicant's right to fair and impartial trial (Article 31 of the Constitution), in conjunction with the right to legal remedies (Article 32 of the Constitution) and the right to protection of the judicial rights (Article 54 of the Constitution).

(i) Regarding the effect of IOBK decisions

99. Regarding the legal nature of the IOBK decisions, the Court considers it important that it first refers to Article 101 [Civil Service] of the Constitution, which stipulates:

> *"1. The composition of the civil service shall reflect the diversity of the people of Kosovo and take into account internationally recognized principles of gender equality.*
>
> *2. An independent oversight boardfor civil service shall ensure the respect of the rules and principles governing the civil service, and shall itself reflect the diversity of the people of the Republic of Kosovo".*

100. In light of these constitutional provisions, the Court emphasizes its principled position that the IOBK is an independent institution established by the Constitution, in accordance with Article 101.2 of the Constitution. Therefore, all obligations arising from decisions of this institution, regarding the matters that are under its jurisdiction, produce legal effects for other relevant institutions, where the status of employees is regulated by the Law on Civil Service of the Republic of Kosovo. In this regard, the IOBK has the features of a court, namely a tribunal for civil servants, within the meaning of Article 6 of the ECHR.

101. In this regard, the Court refers to the case law of the ECtHR, according to which "*"a 'tribunal' is characterized in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner (*See, Judgment of 30 November 1987 in the case of *H v. Belgium*, Series A no. 127,p. 34, paragraph 50)";. see also ECtHR case *Belilos v. Switzerland*, Application No. 10328/83), Judgment of 29 April 1988, paragraph 64).

102. In the present case, the Court notes that the IOBK Decision of 25 February 2008 was rendered at a time when the establishment of the IOBK and the enforcement of its decisions were governed by UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo and Administrative Direction No. 2003/2 on the implementation of UNMIK Regulation No. 2001/36 on the Civil Service of Kosovo, which entered into force on 22 December 2001, namely on 25 January 2003 (which had exclusive legislative, executive and judicial powers in Kosovo).

103. In this regard, the Court emphasizes its consistent position that it has maintained in all cases decided by it, which have to do with the decisions of the IOBK, from 2012 onwards. The Court has consistently pointed out that a decision of the IOBK produces legal effects for the parties and, therefore, such a decision is a final decision in administrative and enforceable proceedings. (See decision of the Constitutional Court in cases KI04/12 *Esat Kelmendi*, Judgment of 20 July 2012 and No. KI74/12, *Besa Qirezi*, Judgment of 4 April 2015 and the references cited therein).

104. The Court brings to attention the fact that among the first cases where it was found that the decisions of the IOBK are final and binding for enforcement is the Judgment of the Constitutional Court in case No. KI04/12, of 24 July 2012. In the judgment in question, the Court dealt with the effect of the IOBK decision of 18 March 2011 - which means that after the entry into force of the Law on the IOBK No. 03/L-192, which was later, on 10 August 2018, replaced and repealed by the Law on the IOBK 06/L-048. Both laws in question were approved by the Assembly of the Republic of Kosovo.

105. The Court has consistently reiterated that the relevant constitutional and legal provisions, in addition to the subject matter jurisdiction of the IOBK to resolve labor disputes for civil servants, constitute a legal obligation for the respective institutions to respect and implement the decisions of the IOBK.

106. In this context, the Court also refers to its case law regarding the non-enforcement by the courts of the administrative decisions - including the decisions of the IOBK - which did not provide for an exclusive obligation in cash. (See, *inter alia*, decisions of the Constitutional Court in cases: KI94/13, Applicant *Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj*, Judgment of 16 April 2014; KI112/12, Applicant *Adem Meta*, Judgment of 2 August 2018 and KI04/12, Applicant *Esat Kelmendi* , cited above, Judgment of 24 July 2012). In these cases, the Court concluded that a decision issued by an administrative body established by law produces legal effects for the parties and, consequently, such a decision is final and enforceable administrative decision".

107. In this case, the Court notes that the IOBK Decision is of 25 February 2008. However, the Court also notes that that decision had remained the subject of the court proceedings from 2008 to 2018.

108. In addition, based on the case file available, the Court specifically emphasizes the fact that the IOBK decision was upheld in the enforcement proceedings by the Court of Appeals, as a final instance, by decisions Ac. No. 1459/15 and Ac. No. 516/16, of 26 October 2015, of 4 December 2017. These decisions of the Court of Appeals upheld the decisions of the Basic Court in Gjakova, with the same number, E. No. 1100/12, of 31 October 2014, namely of 27 February 2015, which allowed the enforcement of the IOBK Decision of 25 February 2008.

109. The Court considers that the treatment of the IOBK Decision of 25 February for more than ten years in the court proceedings and, in particular, the confirmation of its binding character by the regular courts, has made that the decision in question does not have the current character but continuous.

110. Therefore, the Court concludes that the IOBK decision in this case was final and binding to be enforceable.

(ii) If there is a violation of the Applicant's right to fair and impartial trial in conjunction with the right to legal effective remedies, and the right to judicial protection of rights

111. The Court recalls that the Applicant alleges violations of his rights guaranteed by Articles 31 [Right to Fair and Impartial Trial], 32 [Right to Legal Remedies], 49 [Right to Work and Exercise Profession] and 54 [Judicial Protection of Rights] of the Constitution, in conjunction with Article 6 (Right to a fair trial), and Article 13 (Right to an effective remedy) of the ECHR.

112. In light of the facts and allegations of the Referral, the Court considers that its essential aspects relate to the rights of the Applicant to fair and impartial trial, in conjunction with the right to legal effective remedies and the right to judicial protection of rights.

Regarding the right to fair and impartial trial

113. Initially, the Court refers to Article 31 [Right to Fair and Impartial Trial] of the Constitution, which establishes:

> *"1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*
>
> *2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law".*

114. In addition, the Court refers to paragraph 1, of Article 6 [Right to a fair trial] of the ECHR, which stipulates:

> *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".*

115. The Court also refers to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which stipulates:

> *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".*

116. The Court reiterates that since it is master of the characterisation to be given to the facts of the case, it does not consider itself bound by the characterisation given by an applicant. By virtue of the *jura novit curia* principle, it has, for example, considered of its own motion complaints under Articles or paragraphs not relied on by the parties. In other words, according to the ECtHR case law, a complaint is characterised by the facts alleged in it and not

merely by the legal grounds or arguments relied on (See, *mutatis mutandis, Talpis v. Italy,* appeal no. 41237/14, ECtHR, Judgment of 18 September 2017, paragraph 77 and the references cited therein).

117. In this background, the Court initially brings to attention (as stated in Resolution KI 216/13), the decision of the IOBK did not stipulate that the Municipality of Gjakova must reinstate the Applicant to his working place. However, the IOBK ordered the Municipality of Gjakova to conduct the disciplinary proceedings against the Applicant in accordance with the law on civil servants.

118. Therefore, the Court wishes to emphasize the fact that the enforcement of the IOBK Decision did not involve the reinstatement of the Applicant to his working place (from where he was suspended), but the completion of disciplinary proceedings against him.

119. Further, based on the case file it possesses, the Court notes that despite repeated efforts by the Applicant that the IOBK decision is enforced, that decision has never been enforced or repealed. So, more than 10 (ten) years have passed from the issuance of the IOBK Decision (25 February 2008) until the last decision of the Court of Appeals (Decision Ac. No. 227/18, of 18 September 2018).

120. In light of these facts, the Court highlights the main allegation of the Applicant regarding the violation of his right guaranteed by Article 31 of the Constitution and Article 6 of the ECHR. In this regard, the Court refers to its judgment in case no. KI94/13, where he stated that "*the execution of a final and executable decision should be taken as an integral part of the right to a fair trial, as guaranteed by Article 31 of the Constitution and Article 6 of ECHR* (See the Constitutional Court, case No. KI94/13, Applicant*, Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj,* Judgment of 16 April 2014).

121. The Court notes that such a position is based on the case law of the ECtHR, which states that the enforcement of a final decision must be seen as an integral part of the right to a fair trial. Moreover, in the case *Hornsby v. Greece*, the ECtHR highlighted that the enforcement of a final decision is of greater importance within the administrative procedure regarding a dispute, which result is of special importance for the civil rights of the party to the dispute (*Hornsby v. Greece*, No. 18357/91, Judgment of 19 March 1997, paragraphs 40-41). In the case above, the ECtHR found that the Applicants should not have been deprived of the benefit of the enforcement of the final decision, which was taken in their favor.

122. Therefore, the Court emphasizes that the implementation of a final and binding decision, within a reasonable time, is a guaranteed right under Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR.

123. In this regard, the Court notes that the ECtHR in its consolidated case law found that by avoiding for more than 5 (five) years to take the necessary measures to implement a final and binding decision, the state authorities had

stripped the provisions of Article 6 of all their beneficial effect (See *Hornsby v. Greece,* paragraph 45).

124. In the present case, the Court considers that the Applicant's dispute with the Municipality of Gjakova was not particularly complicated, as the IOBK had ordered disciplinary proceedings against the Applicant in accordance with applicable law. The decision of the IOBK has remained unimplemented by the Municipality of Gjakova to this date.

125. The Court takes into account the response of the Municipality of Gjakova that, since the duration of the Applicant's employment contract had expired, the disciplinary proceedings could not be conducted against him. However, the Court emphasizes the finding given in the IOBK Decision that the suspension of the Applicant from working place by the Municipality of Gjakova was rendered in violation of the relevant legal provisions in force. Therefore, the effect of the unlawful Decision of the Municipality of Gjakova (of 2003), on the "temporary suspension" of the Applicant from his working place, should be remedied by implementing the IOBK Decision. All the more so when the enforceability of the IOBK Decision was upheld by several decisions of the Basic Court in Gjakova and the Court of Appeals.

126. In connection with this, the Court emphasizes that it would be meaningless if the legal system of the Republic of Kosovo would allow that a final judicial decision to remain ineffective in disfavor of one party. Therefore, non-effectiveness of the procedures and the non-implementation of the decisions produce effects that bring to situations that are inconsistent with the principle of Rule of Law (Article 7 of the Constitution) – a principle that the Kosovo authorities are obliged to respect (see, *mutatis mutandis*, Judgment of the Constitutional Court in case KI04/12).

Regarding the allegations of violation of the right to effective legal remedies and judicial protection of rights

127. The Court takes into account the Applicant's allegations relating to the right to effective legal remedies and judicial protection of rights.

128. Therefore, the Court refers to Articles 32 and 54 of the Constitution, as well as Article 13 of the ECHR.

Article 32 [Right to Legal Remedies]

"*Every person has the right to pursue legal remedies against judicial and administrative decisions which infringe on his/her rights or interests, in the manner provided by law* ".

Article 54 [Judicial Protection of Rights]

"*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority*

notwithstanding that the violation has been committed by persons acting in an official capacity".

Article 13 of the ECHR [Right to an effective remedy]

"*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity*".

129. The Court initially underlines that each person has the right to use legal remedies against the judicial and administrative decisions, which violate his rights or interests as provided by law. (See, *mutatis mutandis*, *Voytenko v. Ukraine*, No. 18966/02, Judgment of 29 June 2004, paragraphs 46-48).

130. Considering its findings regarding Article 31 of the Constitution, in conjunction with Article 6 (1) of the ECHR, the Court considers that the complaints concerning those articles are "arguable" for the purposes of Articles 32 [Right to Legal Remedies] and 54 [Judicial Protection of Rights] of the Constitution, in conjunction with Article 13 [Right to an effective remedy] of the ECHR (see, *mutatis mutandis, Boyle and Rice v. United Kingdom,* 27 April 1998, paragraph 52).

131. The Court reiterates that Articles 32 and 54 of the Constitution, in conjunction with Article 13 of the ECHR, stipulate that the legal system must make available an effective legal remedy authorizing the competent authority to address the merits of an allegation of violation of the Constitution and the ECHR (see the ECtHR, *Sharxhi and others v. Albania,* Judgment of 11 January 2018, paragraph 81 and the references referred to therein).

132. The ECtHR has in some cases emphasized that the effect of Article 13 is an obligation for states to provide effective legal remedies that enable them to examine the substance of an arguable claim under the Convention and to grant an appropriate relief. (see decisions of the ECtHR: *Kudla v. Poland*, Judgment of 26 October 2000*; Kaya v. Turkey,* Judgment of 19 February 1999). The ECtHR emphasized that Article 13 must be "effective" in law as well as in practice (see, for example, *Ilhan v. Turkey,* Judgment of 27 June 2000). The ECtHR, also, emphasized that "effectiveness of a legal remedy", within the meaning of Article 13 of the ECHR, does not depend on the certainty of a favourable outcome for the applicant (*Kudla v. Poland*).

133. In the present case, the Court notes that, by requesting the enforcement of the IOBK Decision, the Applicant has addressed several times the regular courts and the Constitutional Court. Furthermore, the Court reiterates that, in the enforcement proceedings, the regular courts (the first and second instance) have rendered several decisions in favor of the Applicant - which allowed the enforcement of the IOBK Decision - and some contradictory decisions.

134. Thus, the Applicant has exhausted all available legal remedies for the enforcement of the IOBK Decision. However, despite his efforts, that Decision

has not been implemented, either by the competent bodies of the Municipality of Gjakova or by the competent courts. In fact, the legal remedies used by the Applicant, as well as the court decisions in his favor, have not had any practical effect on his situation.

135. Related to this, the Court refers to the case law of the ECtHR, which in case *Klass v. Germany* stated that "*where an individual considers himself to have been prejudiced by a measure allegedly in breach of the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress. Thus Article 13 must be interpreted as guaranteeing an effective remedy before a national authority to everyone who claims that his rights and freedoms under the Convention have been violated*" (See *Klass v. Germany*, Judgment of 6 September 1978, paragraph 64).

136. Non-existence of legal remedies or other effective mechanisms for the enforcement of the IOBK Decision (regardless of what the epilogue would be for the Applicant from the enforcement of that Decision), violates the right to effective legal remedies, guaranteed by Article 32 and the right to judicial protection of rights, guaranteed by Article 54 of the Constitution, in conjunction with the right to an effective remedy, guaranteed by Article 13 of the ECHR.

137. This position is in line with the practice of the Court, which in this case KI 94/13 stated that "*the inexistence of legal remedies or of other effective mechanisms for the execution of the Decision of [Municipal] Directorate affects the right to an effective legal remedy, as guaranteed by Articles 32 [Right to Legal Remedies], 54 [Judicial Protection of Rights] of the Constitution, and Article 13 of the ECHR. According to these provisions, each person has the right to use legal remedies against the judicial and administrative decisions, which violate his rights or interests as provided by law"* (see decision of the Constitutional Court: KI94/13, Applicants *Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj*, Judgment of 16 April 2014, paragraph 90; see *mutatis mutandis, Voytenko v. Ukraine*, No. 18966/02, Judgment of 29 June 2004, paragraphs 46-48).

138. In this regard, the Court emphasizes that it is not its duty to determine what would be the most appropriate way for the regular courts and the Municipality of Gjakova, within the competencies they have, to find effective mechanisms to fulfill completely the obligations established by law and the Constitution.

139. The burden of the enforcement of the final and binding decision of the IOBK falls on the regular courts and the Municipality of Gjakova. The lack of enforcement mechanisms of this public authority should in no way be a reason for denying the right of the Applicant to enforce the final and binding decision in his favor.

140. Therefore, the Court considers that it is intolerable that the Applicant - despite his efforts for more than ten years - has not enjoyed the rights recognized to him by the IOBK decision.

141. The Court also emphasizes that it is unacceptable that the Applicant's Referral has not been dealt with due seriousness and efficiency for more than ten years, by the regular courts and the Municipality of Gjakova. Furthermore, the decisions of the regular courts regarding the enforcement of the IOBK Decision are contradictory and have placed a disproportionate burden on the Applicant, for example, requiring him to use one remedy instead of the other. In this regard, the Court notes the reasoning of the Court of Appeals (Decision CA. No. 380/2017 of 28 August 2017), which, *inter alia*, stated that: "*As the employer authority the Municipality of Gjakova did not act according to the decision of the IOBK, to issue the relevant decision in administrative procedure, the creditor had the opportunity under the conditions provided in paragraph 3 of Article 29 of the Law on Administrative Conflict, No. 03/L-202, to address a special request to the IOBK, namely under the requirements provided by this legal provision to initiate the administrative conflict".*

142. The Court refers to the case law of the ECtHR, which makes it clear that if one or more potentially effective legal remedies are available, the Applicant is obliged to use only one of them. (*Aquilina v. Malta*, [GC], paragraph 39). In fact, when a legal remedy has been used, the use of another legal remedy that essentially has the same purpose is not required. (*Micallef v. Malta* [GC], paragraph 58). It is the right of the Applicant to choose the remedy that is most appropriate in his case (*O'Keeffe v. Ireland* [DHM], paragraphs 110-11). Thus, if domestic law offers a number of legal remedies in parallel in different spheres of law, and Applicant who has sought a remedy of an alleged violation of the Constitution and the ECHR, through one of those remedies, should not necessarily use other remedies that essentially have the same objective (*Jasinskis v. Latvia*, paragraphs 50 and 53-54).

143. The Court also considers it necessary to emphasize to the Applicant cannot be blamed for the delay of the proceedings and non-enforcement of the decision of the IOBK, because he only used the legal remedies and pursued the court ways, in accordance with the law in force (see, *mutatis mutandis*, *Erkner and Hofauer v. Austria,* paragraph 68).

144. Therefore, the Court concludes that the inability to take further legal action to enforce the IOBK Decision also constitutes a violation of Articles 32 and 54 of the Constitution and Article 13 of the ECHR.

145. Finally, the Court considers that it should not deal further with allegations of violations of Article 49 of the Constitution, because such allegations and requests are consumed by the Court's finding of violations of Articles 31 and 32 and 54 of the Constitution in conjunction with Article 6.1 of the ECHR and Article 13 of the ECHR (see, *mutatis mutandis*, case No. KI65/15, Applicant*, Tatjana Davila, Ljubiša Marić, Zorica Kršenković, Zlatoj Jevtić,* Judgment of the Constitutional Court of the Republic of Kosovo, of 14 September 2016). Furthermore, the Court reiterates its finding that the IOBK Decision does not recognize the Applicant the right to reinstate to his working place, but obliges the Municipality of Gjakova (as a public authority) to apply disciplinary proceedings against the Applicant.

Conclusion

146. The Constitutional Court emphasizes its constitutional obligation to ensure that the proceedings before the public authorities, especially before the courts, respect the fundamental human rights guaranteed by the Constitution.

147. In the present case, the Court finds that the non-enforcement of the IOBK Decision by the Municipality of Gjakova, especially after some decisions of the regular courts that allowed its enforcement, have caused violation of Articles 31, 32 and 54 of the Constitution, as well as Articles 6 and 13 of the ECHR.

148. The Court reiterates that the IOBK Decision did not stipulate that the debtor, namely the Municipality of Gjakova, had to reinstate the Applicant to his working place. The IOBK ordered the Municipality of Gjakova to conduct disciplinary proceedings against the Applicant in accordance with the legal provisions in force for civil servants. Therefore, the Court did not address the issue of whether or not the Applicant should be reinstated to his working place.

149. In this regard, the Court emphasizes that, based on the consolidated case law of the ECtHR, whenever a violation of the right to a fair trial from Article 6 of the ECHR is found, the Applicant should as far as possible be put in the position he would have enjoyed had the proceedings complied with the ECHR requirements (see case of the ECtHR, *Kingsley v. United Kingdom*, Judgment of 28 May 2002, paragraph 40 and the references cited therein).

150. However, the Court considers that the case under consideration is special because, although the non-enforcement of the IOBK Decision constitutes a violation of the procedural guarantees provided by the Constitution and the ECHR, its implementation may be impossible for objective reasons. Thus, it may be objectively impossible to conduct disciplinary proceedings, as required by the IOBK Decision of 2008, especially because the Applicant had a fixed-term employment relationship.

151. Therefore, taking into account the special circumstances of the case under consideration, the Court is obliged to be satisfied with the finding of a violation of Articles 31, 32 and 54 of the Constitution, in conjunction with Article 6.1 of the ECHR and Article 13 of the ECHR, instructing the Applicant in civil proceedings, before the regular courts, for eventual compensation of damage (see the case law of regular courts in the case of Gëzim Kastrati and Makfire Kastrati, Judgment C. No. 1209/13 of the Basic Court in Prizren, of 03.07.2019).

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Articles 20 and 47 of the Law and Rules 59 (1) and 66 of the Rules of Procedure, on 22 April 2020, unanimously

DECIDES

I. TO DECLARE the Referral admissible;

II. TO HOLD that the non-enforcement of the IOBK Decision A 02 158/2005, of 25 February 2008, caused violation of Articles 31, 32 and 54 of the Constitution, in conjunction with Articles 6 and 13 of the ECHR;

III. TO INSTRUCT the Applicant in civil procedure for eventual compensation of damage;

IV. TO ORDER that this Judgment be notified to the parties and in accordance with Article 20.4 of the Law, be published in the Official Gazette;

V. TO DECLARE that this Judgment is effective immediately.

Judge Rapporteur | **President of the Constitutional Court**

Bekim Sejdiu | Arta Rama-Hajrizi

This translation is unofficial and serves for information purposes only