



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

Prishtina, on 7 June 2021  
Ref. no.:RK 1802/21

*This translation is unofficial and serves for informational purposes only*

## JUDGMENT

in

Case no. KI51/19

Applicant

**Qamil Lupçi**

**Constitutional review of non-enforcement of the Decision of the  
Independent Oversight Board for Civil Service in the Republic of Kosovo,  
[A/02/68/2016] of 12 April 2016**

### 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 Qamil Lupçi, residing in Prishtina (hereinafter: the Applicant).

## **Challenged decision**

2. The Applicant challenges the constitutionality of the Judgment [ARJ. UZVP. no. 37/2018] of the Supreme Court, of 5 December 2018, in conjunction with Judgment [AA. no. 97/2018] of the Court of Appeals, of 10 October 2018, and Judgment [A. No. 724/16] of the Basic Court in Prishtina, of 6 September 2017 (hereinafter: the Basic Court).
3. The Applicant also challenges: (i) the constitutionality of the Decision no. 2379, of the Disputes and Grievances Appeals Committee of the Ministry of Labor and Social Welfare (hereinafter: the MLSW Appeals Committee), of 5 May 2016, in which case the Applicant had requested the realization of the rights guaranteed by Articles 52 and 53 of the General Collective Agreement of 18 March 2014; and (ii) the Decision [A/02/68/2016] of the Independent Oversight Board for Civil Service of Kosovo (hereinafter: IOBCSK) of 12 April 2016, ordering the MLSW Appeals Committee to issue a meritorious decision regarding the Applicant's request.

## **Subject matter**

4. The subject matter is the constitutional review of Decision of the MLSW Appeals Committee, Decision of the IOBCSK and the decisions of the regular courts, which allegedly violate Applicant's fundamental rights and freedoms guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution) in conjunction with Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR) and Article 7 of the Universal Declaration of Human Rights.

## **Legal basis**

5. The Referral is based on paragraphs 1 and 7 of Article 113 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 22 [Processing Referrals] and 47 [Individual Requests] of Law No. 03/L-121 on the 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 Court**

6. On 27 March 2019, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 2 April 2019, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Bajram Ljatifi (Presiding), Safet Hoxha and Radomir Laban (members).
8. On 23 July 2019, the Court notified the Applicant about the registration of the Referral and a copy of it was sent to the Supreme Court of Kosovo.

9. On 25 September 2019, the Court requested the Applicant to clarify some aspects of his Referral.
10. On 25 September 2019, the Court requested the Ministry of Labor and Social Welfare (hereinafter: MLSW) to notify whether the Disputes and Grievances Appeals Committee within the MLSW has enforced the Decision of the IOBCSK. The MLSW did not respond to the request of the Court.
11. On 25 September 2019, the Court requested from the IOBCSK to be notified whether the MLSW Appeals Committee has enforced the Decision of the IOBCSK. The IOBCSK did not respond to the request of the Court.
12. On 4 October 2019, the Applicant submitted an additional document with the clarifications requested by the Court.
13. On 30 September 2020, the Court considered the case and decided to adjourn the decision-making to another hearing in accordance with the required supplementations.
14. On 6 October 2020, the MLSW was requested to submit additional documents regarding the allegations raised in the Referral no. KI51/19.
15. On 8 October 2020, the MLSW submitted additional documents in relation to the allegations raised in the Referral no. KI51/19. The MLSW submitted: (i) Decision no. 389, of the Office of the Secretary General, of 7 December 2015; (ii) Decision A 02/68/2016, of the IOBCSK, of 12 April 2016; (iii) Decision A/02/64/2016, of the IOBCSK, of 14 April 2016; (iv) Reference no. 2097, from the Office of the Secretary General of the MLSW, of 15 April 2016; (v) Decision no. 2379, of the MLSW Appeals Committee, of 5 May 2016.
16. On 25 March 2021, the Court reviewed the case and decided to adjourn the decision-making to another hearing in accordance with the required supplementations.
17. On 28 April 2021, the Review Panel considered the report of the Judge Rapporteur, and unanimously recommended to the Court the admissibility of the Referral.
18. On the same date, the Court found that: (i) the Referral is admissible; (ii) there has been violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 [Right to a fair trial] of the European Convention on Human Rights;

### **Summary of facts**

19. From the documents included in the Referral, it results that the Applicant worked as a civil servant (position: labor inspector) at the MLSW.
20. On 7 December 2015, the Office of the Secretary General in the MLSW with a Decision protocolled with no. 389 decided: (i) the employment of the Applicant (Qamil Lupçi) in the position of Labor Inspector within the Executive Body of

the Labor Inspectorate/MLSW, will terminate on 11 December 2015; (ii) the employee's employment relationship will terminate due to reaching of the retirement age of sixty-five (65) years. The Office of the Secretary General of MLSW reasoned that based on the documents of the personal file, the Applicant was born on 10 December 1950, and that according to the evidence he reached the mandatory retirement age on 10 December 2015, whereas in support of legal and sub-legal acts in force, his employment will terminate on 11 December 2015. The abovementioned decision contained legal advice defining: *"The dissatisfied party has the right to appeal against this decision, within 15 days from the date of receipt of the decision, addressing the Disputes and Grievances Appeal Committee of the MLSW."*

21. The abovementioned decision of the Office of the Secretary General of the MLSW is silent in regards to the right of the Applicant to be paid three salaries after retirement and one salary as a jubilee reward as provided for in Article 52 and Article 53 of the General Collective Agreement of Kosovo of 18 March 2014, even though the General Collective Agreement was in force at the time of issuance of the decision of the Office of the Secretary General of MLSW.
22. On 14 January 2016, the Applicant by the Referral no. 24 addressed the MLSW Appeals Committee and requested to be paid with three salaries after retirement and one salary as a jubilee reward as provided by Article 52 and Article 53 of the General Collective Agreement of Kosovo of 18 March 2014. The Applicant claimed that as a claimant he has met the requirements for retirement and has over ten years of uninterrupted work experience in the MLSW and that his request is founded. However, the Applicant did not receive any response from the MLSW Appeals Committee in regards to his request.
23. On 24 February 2016, the Applicant submitted an appeal with the IOBCSK due to the administrative silence of the MLSW Appeals Committee regarding his request. Among other things, the Applicant claimed three salaries after the retirement and one salary as a jubilee reward.
24. On 12 April 2016, the IOBCSK by Decision [A/02/68/2016] obliged the Appeals Committee to review the Applicant's appeal as defined in Article 82 paragraph 1 and 2 of Law No. 03/L-149 on the Civil Service of the Republic of Kosovo.
25. Among other things, the IOBCSK has clarified as follows:

*"The Panel for reviewing appeals on settlement of this matter, has reviewed all the submitted case files and has concluded that there is a legal basis to decide, obliging the employment body, respectively the Secretary General and the Disputes and Grievances Appeal Committee, to take all actions to decide regarding the appeal of the complainant, with number 24, of 14.01.2016. In accordance with the legislation on the civil service, employment bodies are obliged to establish the Disputes and Grievances Appeal Committees for reviewing any appeal submitted by civil servants and applicants for employment in the civil service, as provided for in Article 82 paragraph 1 and 2 of Law No. 03/L-149 on the Civil Service of the Republic of Kosovo, which stipulates that "Disputes and Grievances*



*Appeal Committees shall be established in each institution of the central and municipal administrations that employ Civil Servants, as appellate bodies for disputes and grievances management. Decisions of the Disputes and Grievances Appeal Committees are binding for the institutions of the public administration and all concerned parties. Their decisions may be appealed in the Independent Oversight Board."*

26. The IOBCSK, in the aforementioned decision also stated that the MLSW Appeals Committee is obliged to review the appeal and issue **a meritorious decision** in accordance with the civil service legislation.
27. On 5 May 2016, the Appeals Committee in MLSW with Decision no. 2379 determined: (i) The Applicant's request for payment of the jubilee reward and compensation of the accompanying salary, in the total of 3 monthly salaries received for the last three months is rejected; (ii) It is recommended that the request be followed by the administrative procedure and addressed to the highest administrative authority of the employment body. The MLSW Appeals Committee reasoned: (i) The MLSW Appeals Committee based on the legislation in force assesses with **non-substantive competence** to decide on the Applicant's request; (ii) the Applicant does not challenge any decision alleging that his legal rights have been violated; (iii) the applicant has not addressed any request for compensation in question, to the employment body; (iv) the Applicant is recommended to follow the relevant administrative procedures for the realization of his legal rights.
28. In the aforementioned decision of the MLSW Appeals Committee is given the following legal advice which stipulates: *"The party has the right to file an appeal against this decision to the Independent Oversight Board for the Civil Service of Kosovo within 30 days from the date of receipt of this Decision."*
29. On an unspecified date, the Applicant filed a claim with the Basic Court requesting that (i) the MLSW be obliged to recognize the compensation of three accompanying monthly salaries for the retirement and a salary as a jubilee reward; as well as, (ii) the annulment of the decision [no.AO2/68/2016] of the IOBCSK, of 12 April 2016, since the latter did not rule on the merits of Applicant's appeal but it delegated the settlement of his appeal to the MLSW Appeal Committee.
30. On 6 September 2017, the Basic Court, by Judgment [A.no724/2016] rejected the Applicant's claim for annulment of the Decision [no.AO2/68/2016] of the IOBCSK, of 12 April 2016. As a reasoning for rejecting the statement of claim, the Basic Court, among others, stated that the IOBCSK acted correctly, when by the challenged Decision [noAO2/68/2016] of 12 April 2016, obliged the MLSW Appeals Committee that within 15 days to decide on the Applicant's appeal. The Basic Court did not confirm the Applicant's allegations for the salary compensation with the reasoning that the decision of the IOBCSK should be executed by the administrative body of the first instance.
31. In the aforementioned Judgment, the Basic Court had found:

*“The Court finds that the respondent Independent Oversight Board for Civil Service of Kosovo has correctly applied the legal provisions and has acted correctly when with decision no. A02/68/2016, of 12.04.2016 has obliged the Disputes and Grievances Appeal Committee of the MLSW that within 15 days from the date of receipt of this decision, to review the appeal of the complainant, of 14.01.2016. The court accepts the findings mentioned in the reasoning of the contested decision when the employment body is informed that they are legally obliged to establish the Disputes and Grievances Appeal Committees to review any appeal submitted by civil servants and applicants for employment in the civil service, an obligation which is provided for in the provision of Article 82 of Law No.03/L149 on the Civil Service of Kosovo. The court did not approve the claimant’s allegations, the request for compensation and payment of jubilee reward and accompanying payments for retirement, because at this stage of the administrative conflict procedure, the court considers that the contested decision of the Independent Oversight Board for Civil Service of Kosovo should be executed by the administrative body of the first instance according to the recommendations given in the decision No2/68/2016, of 12.04.2016 [...] The court did not approve the allegations of the claimant, the request for compensation and payment of the jubilee reward and accompanying payments for retirement, because at this stage of the administrative conflict, the court considers that the contested decision of the Independent Oversight Board for Civil Service of Kosovo, should be executed by the administrative body of the first instance according to the recommendations given in the decision A/02/68/2016, of 12.04.2016.”*

32. On an unspecified date, the Applicant filed an appeal with the Court of Appeals against the Judgment of the Basic Court, due to erroneous determination of the factual situation and misapplication of the substantive law, in order to amend the challenged Judgment and to return the case for retrial. At the same time, the Applicant requested to oblige the MLSW to pay him the salaries after retirement.
33. On 10 October 2018, the Court of Appeals by Judgment [AA.no.97/2018] rejected the Applicant’s appeal as unfounded and upheld the Judgment of the Basic Court [A.no724/2016], of 6 September 2017. The Court of Appeals reasoned that the Basic Court had rejected as unfounded the Applicant’s appeal in a fair manner and without substantial violation of the provisions of the Law on Administrative Conflicts.
34. In the abovementioned Judgment, the Court of Appeals had reasoned:

*“Regarding the appealed allegations for erroneous and incomplete determination of the factual situation, that the first instance court in the case of deciding without any legal basis has concluded that the IOBCSK, with decision A02/68/2016, of 12.04.2016, has acted correctly invoking on Article 82 of Law No.031L-149 on the Civil Service of Kosovo, as this legal provision was not required to be cited at all, because with the same is provided that employment bodies are obliged to establish the Disputes and Grievances Appeal Committees while in MLSW the committee existed*

when the request no. 24 of 14.01.2015 was submitted, and it still exists even today [...].

*The appealed allegations that the first instance court after having assessed that the employment body should be waited to decide with regard to the request [...] should have terminated until the request in question was decided as a preliminary matter applying the legal provision of Article 32 of Law No. 03/L020 on Administrative Conflicts, which stipulates that "When the decision of the court in the administrative conflict depends on the legal matter which constitutes an independent legal entity, and on which the other court or other body has not decided (preliminary case), the court who develops the administrative conflict procedure, may decide on that matter, unless otherwise provided by law, or may terminate the procedure until the issuance of a decision on the preliminary matter, by the competent body". These appealed allegations were not approved by this panel, because it assessed that they are unfounded and unsubstantiated, to approve the appeal. Because according to the assessment of this court, the first instance court has fairly decided when it rejected as unfounded the allegations of the claimant stated in the claim and in the main trial hearing, due to the fact that at this stage of the administrative conflict procedure, the disputed decision of the Independent Oversight Board for Civil Service of Kosovo, number A02/68/2016, of 12.04.2016, must be implemented by the administrative body of the first instance according to the recommendations given in them."*

35. Against the abovementioned Judgment of the Court of Appeals, the Applicant filed with the Supreme Court, a request for extraordinary reconsideration of the court decision, alleging violation of substantive law and violation of procedural provisions as well as annulment of the abovementioned decisions of the lower instance court, and to return the case for reconsideration.
36. On 5 December 2018, the Supreme Court by Judgment [ARJ.UZVP.NO.67/2018] rejected the Applicant's request for extraordinary reconsideration of the court decision as unfounded, filed against the Judgment AA.UZH.no.97/2018, of the Court of Appeals, of 10 October 2018.
37. In the abovementioned Judgment, the Supreme Court had explained:

*"According to Article 82 of the Law no.03/L-149 on civil service, it is provided that the Disputes and Grievances Appeal Committees are established within each institution of the central and municipal administrations, as bodies for the resolution of disputes and receiving of appeals. Paragraph 2 of this Article states that the Decisions of the Disputes and Grievances Appeal Committees are binding for the institutions of the public administration and for all concerned parties. Their decisions may be appealed in the Independent Oversight Board. From the case file it results that the administrative body -the Disputes and Grievances Appeal Committee of the MLSW has not issued a legal decision according to the claimant's appeal no. 24, of 4.01.2016, and that the respondent IOBCSK has correctly applied the legal provisions, Article 82*

*par.1 and 2, and has acted correctly when with the decision it obliged the Committee to review the claimant's appeal no.24, of 14.01.2016. The administrative body-the Disputes and Grievances Appeal Committee of MLSW is legally obliged to act according to the decision of the IOBCSK, and then the right to file an appeal to the Independent Oversight Board."*

### **Applicant's allegations**

38. The Applicant alleges that the Judgment of the Supreme Court [ARJ.UZVP.NO.67/2018] of 5 December 2018 and the Decision of the IOBCSK [A/02/68/2016] of 12 April 2016 violate his rights guaranteed by Article 31 [Right to Fair and Impartial Trial] in conjunction with Article 6 [Right to a fair trial] of the ECHR, Article 46 [Protection of Property], and Article 7 of the Universal Declaration on Human Rights.
39. The Applicant alleges that since the submission of the request to the MLSW Appeals Committee and after the expiration of the deadline of 15 days set by the IOBCSK, he has not received any response to his request from the MLSW Appeals Committee. According to him, since the time of retirement, the Applicant is taking legal action to realize his right, therefore he claims that there are legitimate expectations in the realization of his request.
40. At the same time, the Applicant alleges that the IOBCSK also failed to resolve his case. According to him, Article 12 of Law No. 03/L-192 on the Independent Oversight Board for Civil Service of Kosovo, entitles the IOBCSK to decide regarding the civil servant's appeals, if it reasonably believes that the employment body will fail the settlement of the appeal within 30 days.
41. The Applicant specifically alleges: *"The provision of Article 12, paragraph 3, sub-paragraph 3.1 1 of Law No. 03/L-192 on the Independent Oversight Board for Civil Service of Kosovo, gives the right to the Board in question to decide on the appeal of the civil servant, if it reasonably believes that the employment body will fail the settlement of the appeal within 30 days. Hence, despite the fact that the IOBCSK had convincing evidence that the employment body will never settle the appeal in question - thus it failed, with decision A/02/68/2016, of 12.04.2016, without any basis and reason has again returned the appeal in question to the same body. Decision of the IOBCSK A/02/68/2016, of 12.04.2016, has no effect because even though more than 3 years have passed, the claimant has not received any response for its implementation. While the IOBCSK has not taken any action to implement the decision in question"*.
42. The Applicant alleges: *"If in the respective case the Disputes and Grievances Appeal Committee of the MLSW must be waited, the Court could have terminated it and given a deadline to the Disputes and Grievances Appeal Committee of the MLSW, but not to reject the claim in this way"*.
43. The Applicant requests the Court to declare null and void the contested decisions of the regular courts and the decision of the IOBCSK and to hold a fair trial which would result as: *"The Ministry of Labor and Social Welfare, will pay me 1,700.00 euros on behalf of three monthly salaries in case of*

*retirement and a salary of 569.00 euros on behalf of the jubilee salary, which make a total of 2.276.00 euros, procedural expenses in the amount of 120.00 euros, with 8% interest calculated from 14.01.2016, pursuant to Articles 52 and 53 of the General Collective Agreement of Kosovo”.*

44. Finally, the Applicant “*expresses a desire to attend the court hearing*”.

## **Relevant constitutional and legal provisions**

### **Constitution of the Republic of Kosovo**

#### **Article 31 [Right to Fair and Impartial Trial]**

*1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

*(...)*

*4. Everyone charged with a criminal offense has the right to examine witnesses and to obtain the obligatory attendance of witnesses, experts and other persons who may clarify the evidence.*

*(...)*

### **European Convention on Human Rights**

#### **Article 6 (Right to a fair trial)**

*1. 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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

*(...)*

*3. Everyone charged with a criminal offence has the following minimum rights:*

*d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*

#### **PROTECTION OF PROPERTY ARTICLE 46**

*(...)*



## **LAW No. 03/L-149 on the Civil Service of the Republic of Kosovo**

### **Article 81**

#### **Bodies for Grievances and Appeals Settlement**

- 1. Specific bodies for the settlement of grievances and employment related disputes arising within the Civil Service are established in each institution of the central and municipal administrations that employ Civil Servants.*
- 2. The procedures for the settlement of grievances and appeals shall be ensured by the following bodies:*
  - 2.1. Disputes and Grievances Appeal Committees; and*
  - 2.2. Independent Oversight Board.*

### **Article 82**

#### **The Disputes and Grievances Appeal Committees**

- 1. Disputes and Grievances Appeal Committees shall be established in each institution of the central and municipal administrations that employ Civil Servants, as appellate bodies for disputes and grievances management.*
- 2. Decisions of the Disputes and Grievances Appeal Committees are binding for the institutions of the public administration and all concerned parties. Their decisions may be appealed in the Independent Oversight Board.*
- 3. The chairman and members of the Disputes and Grievances Appeal Committees shall be appointed from the ranks of Civil Servants with superior education, are appointed by the General Secretary or equivalent position of the relevant institution for a period of two (2) years with possibility of extension and must reflect the diversity of the Kosovar society, including in particular gender diversity.*
- 4. The chairman and members of the Disputes and Grievances Appeals Committees shall not serve as members of a disciplinary commission in the relevant institution.*
- 5. The criteria of membership appointment, competencies and procedures of the committee for disputes and grievances settlement from work relationship, shall be defined with sub-legal act.*

## **Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo**

### **Article 12**

## **Appeals**

- 1. A civil servant who is unsatisfied by a decision of an employing authority in alleged breach of the rules and principles set out in Law on Civil Service in the Republic of Kosovo, shall have the right to appeal to the Board.*
- 2. The appeals shall be reviewed and decided by a panel of three (3) Board members, on behalf of the Board.*
- 3. The Board shall prescribe rules and procedures applicable to appeals. Such rules and procedures shall provide:*
  - 3.1. That before appealing to the Board, the civil servant or applicant who alleges to be damaged must exhaust the internal appeals procedures of the employing authority concerned, unless the Board excuses this requirement based on evidence of reasonable fear of retaliation, failure by the employing authority to resolve the appeal within thirty (30) days, or other good cause;*
  - 3.2. That the aggrieved party and the employing authority shall both have an opportunity to present their positions to the Board in writing, which shall be made available to the opposing party;*
  - 3.3. That, in cases involving disputes of material fact, both parties shall have the opportunity that together to be interrogated by the Board, at which they may present evidence and witness for the direct and cross-examination and investigation,*
  - 3.4. That in each appeal brought before it, the Board shall within sixty (60) days of the end of the appeal proceedings issue a written decision setting forth its determination and the legal and factual basis therein.*
  - 3.5. In exclusion from sub-paragraph 3.4 of this paragraph, there can be cases of specific nature wherein the Board shall have to issue a decision and the deadline of sixty (60) days is extended by another thirty (30) days.*
- 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.*
- 5. A member of the Board, who participated as a member of the panel concerning the appointment of a civil servant, shall not participate in appeal procedure against such 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.*

**Law No.03/L-212 on Labour**

**Article 90**  
***Collective Contract***

*1. Collective Contract may be concluded between:*

*1.1. Organization of employers and their representatives and*

*1.2. Organization of employees or, in cases where there are no such organisations, the agreement may be concluded by the representatives of employees;*

*2. Collective Contract may be concluded at:*

*2.1. the state level,*

*2.2. the branch level,*

*2.3. the enterprise level.*

*3. Collective Contract shall be concluded in a written form in official languages of Republic of Kosovo.*

*4. Collective Contract may be concluded for a certain period of time with a duration of maximum three (3) years.*

*5. Collective Contract shall be applicable to those employers and employees who commit themselves to the implementation of obligations deriving from such an agreement.*

*6. Collective Contract shall not include such provisions that limit the rights of employees and that are less favourable than the ones defined by this Law.*

*7. An employer shall make available to employees a copy of the Collective Contract.*

*8. Collective Contract shall be registered in the Ministry in compliance with terms and criteria determined by sub-legal act.*

*9. For the resolution of various disputes in a peaceful manner and the development of consultations on employment, social welfare and labour economic policies by the representatives of employers, employees<sup>28</sup> and Government in the capacity of social partners, through a special legal-secondary legislation act, the Social-Economic Council shall be established.*

*10. Other issues of social dialogue shall be regulated through a legal or sub-legal act depending on the agreement reached by social partners.*

### **The General Collective Agreement of 18 March 2014**

#### *Article 52 Jubilee rewards*

*1. Employee is entitled to jubilee rewards in following cases:*

*1.1. for 10 years of continuous experience at the last employer, equal to one monthly wage;*

*1.2. for 20 years of continuous experience, for the last employer, equal to two monthly wages;*

*1.3. for 30 years of continuous experience, for the last employer, equal to three monthly wages.*

*2. The last employer is the one who provides jubilee rewards.*

*3. Jubilee reward, is paid in a timeframe of one month, after meeting the conditions from the present paragraph.*

#### *Article 53 Retirement reimbursement*

*When retiring, employee is entitled to a reimbursement equal to three (3) monthly wages, he/she received during the last three (3) months.*

### **Assessment of the admissibility of the Referral**

45. The Court examines whether the Applicant has met the admissibility criteria set out in the Constitution and further specified in the Law and the Rules of Procedure.
46. In this regard, the Court refers to paragraphs 1 and 7 of Article 113 of the Constitution, which stipulate:

*“(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.”*

47. In addition, the Court also examines whether the Applicant fulfilled the admissibility requirements as provided by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which stipulate:

Article 47  
[Individual Requests]

1. *“Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.*

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

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. [...].”*

48. With regard to the fulfillment of these criteria, the Court finds that the Applicant is an authorized party, challenging an act of the public authority, namely Judgment [ARJ.UZVP.no.67/2018] of the Supreme Court, of 5 December 2018, after the exhaustion of all available legal remedies provided by Law. The Applicant also clarified the rights and freedoms he alleges to have been violated, in accordance with the requirements of Article 48 of the Law and have submitted the Referral in accordance with the deadlines established in Article 49 of the Law.
49. Therefore, the Court, concludes that the Applicant is an authorized party; that he has exhausted all legal remedies; that he has met the condition of submitting the Referral within the legal deadline; has accurately clarified the



alleged violations of fundamental human rights and freedoms, as well as has specified which concrete act of public authority is subject to challenge.

50. The Court considers that the Referral raises important constitutional issues and their determination depends on the examination of the merits of the Referral. In addition, the Referral cannot be considered as manifestly ill-founded as set out in Rule 39 (2) of the Rules of Procedure and no other grounds have been established to declare it inadmissible (see Constitutional Court, Case No. KI97/16, *Applicant IKK Classic*, Judgment of 4 December 2017).
51. Consequently, the Court declares the Referral admissible.

### **Merits of the Referral**

52. The Court recalls that in substance the Applicant's main allegation is violation of rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, because the MLSW Appeals Committee had failed twice to respond to the Applicant's request regarding the payment of three retirement salaries and a jubilee reward salary as provided in Articles 52 and 53 of the General Collective Agreement in Kosovo, of 18 March 2014.
53. Furthermore, the Applicant, in essence, alleges that also the IOBCSK had failed to resolve his case because it did not decide on the merits but chose to force the MLSW Appeals Committee to respond to the Applicant's appeal.
54. The Court refers to the relevant provisions of the Constitution and the ECHR:

#### **Article 31 [Right to Fair and Impartial Trial]**

*"Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*

*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."*

#### **Article 6 (Right to a fair trial) of the ECHR:**

*"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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in*

*special circumstances where publicity would prejudice the interests of justice.”*

55. The Court also, reiterates that in accordance with Article 53 [Interpretation of Human Rights Provisions] of the Constitution "*[Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights]*".
56. In this regard, the Court first notes that the case law of the ECtHR consistently considers that the fairness of the proceedings is assessed based on the proceedings as a whole (see case of the ECtHR, *Barbera, Messeque and Jabardo v. Spain*, Judgment of 6 December 1988, no. 146, paragraph 68). Therefore, in the procedure of assessing the grounds of the Applicant's allegations, the Court will adhere to these principles.
57. The Court notes that in its case law in many cases it has found that matters of fact and matters of interpretation and application of the law are within the scope of regular courts and other public authorities, in terms of Article 113.7 of the Constitution and as such are issues of legality, except and unless such issues result in violation of fundamental human rights and freedoms or create an unconstitutional situation (see, inter alia, Constitutional Court Case No. KI33/16, Applicant *Minire Zeka*, Judgment of 4 August 2018, paragraph 91).
58. Similarly, the role of the Court in the individual Referral submitted within Article 113.7 is of a subsidiary character against the MLSW Appeals Committee, the IOBCSK and the regular courts, but, the final decision on whether the restriction of right of Applicant's to access court is in accordance with the Constitution, the ECHR, is however taken by the Court.
59. The Court notes that the Applicant's main allegation is violation of Article 31 of the Constitution in conjunction with Article 6 of the ECHR. The Applicant alleges that the MLSW Appeals Committee and the IOBCSK had a legal obligation to respond to and resolve the Applicant's appeals. The Applicant further alleges that the MLSW Appeals Committee and the IOBCSK by this failure to act have deprived him of the right to a fair trial.
60. The Court notes that the Applicant presented these allegations to the regular courts, which rejected his request as inadmissible. Whereas, the IOBCSK did not decide on the merits of the Applicant's appeal but obliged the MLSW Appeals Committee to review the merits of the Applicant's request. The Appeals Committee, following the decision of the IOBCSK, issued a procedural decision that did not substantially address the Applicant's request regarding the jubilee reward and the payment of three (3) accompanying salaries.
61. In the respective case, the Applicant considers that the Decision [A/02/68/2016] of the IOBCSK, of 12 April 2016 and the Judgments of the regular courts, specifically the Judgment [ARJ-UZVP.NO 66/2018] of the Supreme Court, of 5 December 2018, have violated the right to a fair trial, with the reasoning that "*Law No. 03/L-192 on the Independent Oversight Board for Civil Service of Kosovo entitles the IOBK to decide on the appeal of civil servant, if they reasonably believe that the employment body will fail to*

*resolve the appeal within 30 days. Hence, despite the fact that the IOBK had convincing evidence that the employment body will never resolve the appeal in question, by decision [A/02/68/2016] of 12 April 2016, without any basis and reason of the same body has returned the appeal in question. The decision of the IOBK [A/02/68/2016] of 12 April 2016 did not achieve any effect, because although more than three years have passed, the claimant has not received any response concerning its implementation”.*

62. In this regard, the Court recalls that the Applicant alleges that even after the decision of the IOBCSK to oblige the MLSW Appeals Committee to decide on his request, he did not receive a response from the latter regarding his appeal. The Court notes that, in essence, the Applicant alleges violation of his right to access the court, as he failed to receive a response from the MLSW Appeals Committee, the IOBCSK and the regular courts rejected his appeal without reviewing its essence.
63. The Court notes that the Applicant has not received a response on the merits to his allegations for the payment of three salaries for retirement and the jubilee reward, by the MLSW Appeals Committee and that in later stages in the proceedings conducted in the IOBCSK and the regular courts, the Applicant’s position has remained unchanged, i.e., he has not received a response on the merit or the substance to his allegations.
64. The Court notes that the Applicant challenges the decision of the IOBCSK, the decisions of the MLSW Appeals Committee and all decisions of the regular courts. However, regardless of the allegations of the Applicant, the Court finds that in this case it is a matter of non-enforcement of the decision of the IOBCSK in favor of the Applicant, therefore, the following constitutional review addresses only the issue of non-enforcement of the final decision, namely the decision [A/02/68/2016] of the IOBCSK, of 12 April 2016, as confirmed by the decisions of the regular courts.
65. In this regard, the Court reiterates that being in possession of the characterization of the facts of the case, it does not consider itself bound by the characterization given by the Applicant. In the spirit of the *jury novit curia* principle, the Court may, on its own initiative, examine appeals on the basis of provisions or paragraphs to which the parties have not expressly referred. In this respect, according to the jurisprudence of the ECtHR, an appeal is characterized by the facts it contains and not only by the legal basis and arguments explicitly referred to by the parties (See the case of the Constitutional Court no. KI193/18, *Applicant Agron Vula*, Judgment of 22 April 2020, paragraph 116; and also see, *mutatis mutandis*, the case of the ECtHR *Talpis v. Italy*, Judgment of 18 September 2017, paragraph 77 and the references cited therein).

***(i) Regarding the effect of the decisions of the IOBCSK***

66. With regard to the legal nature of the decisions of the IOBCSK, the Court considers it important to refer to Article 101 [Civil Service] of the Constitution, which provides:

*“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 board for 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.”*

67. Taking into account these legal provisions, the Court emphasizes its principled position that the IOBCSK is an independent institution established by the Constitution, respectively, in accordance with Article 101. 2 of the Constitution. Therefore, all obligations arising from the decisions of this institution, regarding issues that are under its jurisdiction, produce legal effects for all relevant institutions, where the status of employees is regulated by the Law on the Civil Service of the Republic of Kosovo. In this respect, the IOBCSK has the features of a court, respectively, a tribunal for civil servants, in terms of Article 6 of the ECHR (see case no. KI193/18, *Applicant Agron Vula*, cited above, paragraph 100).
68. In this regard, the Court refers to the case law of the ECtHR, according to which *“the Court’ in the essential sense of the term is characterized by its judicial function, which means deciding cases within its jurisdiction on the basis of rules of law and after proceedings performed in the prescribed manner* (See, Judgment of 30 November 1987 in the Case *H v. Belgium*, Series A. no. 127, p. 34, § 50; see also the case of the ECtHR *Belilos v. Switzerland*, appeal no. 10328/83, Judgment of 29 April 1988, § 64).
69. In this respect, the Court emphasizes its consistent position in all cases decided by it, which were in relation to the decisions of the IOBCSK, from 2012 onwards. The Court has consistently pointed out that a decision of the IOBCSK produces legal effects for the parties and, therefore, such a decision is a final decision in administrative procedure and enforceable (See decisions of the Constitutional Court, in the cases, KI193/18, cited above; KI04/12 *Esat Kelmendi*, Judgment of 24 July 2012 and no. KI74/12, *Besa Qirezi*, Judgment of 4 April 2015 and references cited therein).
70. The Court recalls that among the first cases where it was found that the decisions of the IOBCSK are final and binding for execution is the Judgment of the Constitutional Court in case no. KI04/12, of 24 July 2012. In the judgment in question, the Court had addressed the effect of the decision of the IOBK, of 18 March 2011 – which means that after the entry into force of the Law No.03/L-192 on the IOBK, which was later, on 10 August 2018, was substituted and abolished by the Law No. 06/L-048 on the IOBCSK. Both laws in question have been adopted by the Assembly of the Republic of Kosovo (see case KI193/18, *Applicant Agron Vula*, cited above, paragraph 104).
71. The Court has consistently emphasized that the relevant constitutional and legal provisions, in addition to the substantive competence of the IOBCSK to resolve labor disputes for civil servants, constitute a legal obligation for the relevant institutions to respect and implement the decisions of the IOBCSK (see case KI193/18, *Applicant Agron Vula*, cited above, paragraph 105).

72. In the following, the Court also refers to its case law regarding the non-execution by the courts of administrative decisions – including decisions of the IOBCSK – which have not exclusively provided for a monetary obligation (See, inter alia, the decisions of the Constitutional Court in the cases: KI193/18, *Applicant Agron Vula*, cited above; 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). 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 a final and enforceable administrative decision”.
73. In addition, based on the case file available, the Court emphasizes in particular the fact that the regular courts in their reasoning have determined that the Decision [A/02/68/2016] of the IOBCSK, of 12 April 2016 should to be implemented by the MLSW Appeals Committee.
74. The Court considers that the reasoning given by the regular courts in relation to the Decision [A/02/68/2016] of the IOBCSK, of 12 April 2016, determines that the decision in question has a binding character to be implemented by the MLSW Appeals Committee.
75. Consequently, the Court concludes that the decision of the IOBCSK in the respective case was final and binding for execution.

***(ii) Regarding the right to fair and impartial trial***

76. The Court refers to Article 31 of the Constitution [Right to Fair and Impartial Trial], which provides:

*“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.”*
77. In addition, the Court refers to paragraph 1 of Article 6 [Right to a fair trial] of the ECHR, which provides:

*“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”.*



78. The Court also refers to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which provides:
- “Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”.*
79. In this context, the Court recalls that the Decision of the IOBCSK has ordered the MLSW Appeals Committee to issue a meritorious decision regarding the Applicant’s allegations for the jubilee reward and the payment of three (3) accompanying salaries.
80. The Court notes the Applicant’s main allegation 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 the case no. KI94/13, which stated that “the enforcement of a final and enforceable decision should be considered an integral part of the right to a fair trial, a right guaranteed by Article 31 of the Constitution and Article 6 of the ECHR (see case no. KI94/13, *Applicant, Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanaj*, cited above).
81. The Court notes that such a stance is also based on the case law of the ECtHR, which states that the enforcement of a final decision should be seen as an integral part of the right to a fair trial. Moreover, in the case of *Hornsby v. Greece*, the ECtHR has noted that the enforcement of the final decision is of even greater importance within the administrative procedure in relation to a dispute, the outcome of which is of particular importance to the civil rights of the party in dispute (see the case of the ECtHR, *Hornsby v. Greece*, no. 18357/91, Judgment of 19 March 1997, paragraphs 40-41). In the present case, the ECtHR had determined that the Applicants should not have been deprived of the benefit of enforcing the final decision, which had been taken in their favor.
82. Therefore, the Court notes that the enforcement of a final and binding decision, within a reasonable time, is a right guaranteed by Article 31 of the Constitution, in conjunction with Article 6.1 of the ECHR.
83. In this regard, the Court notes that the ECtHR in its consolidated case law has found that by avoiding for more than 5 (five) years to take the necessary measures for enforcement of a final and binding decision, the state authorities had stripped the provisions of Article 6 of all their beneficial effect (see ECtHR case, *Hornsby v. Greece*, cited above, paragraph 45).
84. In the present case, the Court considers that the Applicant’s dispute with the MLSW Appeals Committee was not particularly complex, as the IOBCSK had ordered the issuance of a meritorious decision to address the Applicant’s allegations of jubilee reward and payment of three (3) accompanying salaries, in accordance with applicable law. The decision of the IOBCSK has still remained unimplemented by the MLSW Appeals Committee to this day.

85. In this regard, the Court notes that it would be meaningless if the legal system of the Republic of Kosovo allowed a final decision in administrative and enforceable proceedings to remain ineffective to the detriment of one party. Therefore, inefficiency of procedures and non-enforcement of decisions produce effects which bring forth situations that are inconsistent with the principle of rule of law (Article 7 of the Constitution) – a principle which all public authorities in Kosovo are obliged to respect (see, *mutatis mutandis*, Judgments of the Constitutional Court in cases no. KI193/18 and KI04/12, cited above).
86. Consequently, the Court finds that the non-enforcement of the Decision [A/02/68/2016] of the IOBCSK, of 12 April 2016, by the MLSW Appeals Committee has resulted in violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with paragraph 1 of Article 6 [Right to a fair trial] of the ECHR.

### **Applicant's request for oral hearing**

87. With regard to the “expressed desire” of the Applicant to “participate in the hearing”, the Court refers to Article 20 [Decisions] of the Law which provides:
- “1. The Constitutional Court shall decide on a case after completion of the oral session. Parties have the right to waive their right to an oral hearing.*
- 2. Notwithstanding Paragraph 1 of this Article, the Court may decide, at its discretion, the case that is subject of constitutional consideration on the basis of case files.”*
88. The Court considers that the documents included in the Referral are sufficient to decide in this case based on the provision of Article 20 paragraph 2 of the Law (see the case of the Constitutional Court no. KI34/17, Applicant *Valdete Daka*, Judgment of 1 June 2017, paragraphs 108-110).
89. Therefore, the Applicant's request for an oral hearing is rejected.

### **Conclusion**

90. The Constitutional Court notes its constitutional obligation to ensure that proceedings conducted before the public authorities must respect the fundamental human rights guaranteed by the Constitution.
91. In the present case, the Court finds that the non-execution of the decision of the IOBCSK by the MLSW Appeals Committee, especially after the decisions of the regular courts which confirmed the legality of the Decision of the IOBCSK, has resulted in violation of Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR.
92. The Court reiterates that in accordance with the subsidiary character of this individual Referral it has not assessed the material aspect of the Applicant's Referral relating to jubilee reward and the payment of three (3) salaries because this matter must be resolved by the MLSW Appeals Committee, as also

defined by Decision [A/02/68/2016] of the IOBCSK, of 12 April 2016. Nevertheless, the Court has assessed the procedural aspect of the Applicant's request related to the non-execution of the Decision [A/02/68/2016] of the IOBCSK, of 12 April 2016, the legality of which is confirmed by the regular courts.

93. The Court considers that the issue of non-enforcement of the Decision [A/02/68/2016] of the IOBCSK, of 12 April 2016, is a matter of procedural guarantees protected by Article 31 of the Constitution in conjunction with Article 6 (1) of the ECHR for which the Court has found that it has resulted in violation of fundamental human rights.
94. Consequently, regardless of the allegations of the Applicant, the Court has decided to return the case for effective resolution to the competent Commission of MLSW, in accordance with the Decision [A/02/68/2016] of the IOBCSK, of 12 April 2016, as confirmed by the decisions of regular courts.

## 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 (5) of the Rules of Procedure, in the session held on 28 April 2021, unanimously

## DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution, in conjunction with paragraph 1 of Article 6 [Right to a fair trial] of the European Convention on Human Rights;
- III. TO RETURN the case for effective settlement to the competent Committee of the Ministry of Labor and Social Welfare, in accordance with the Decision [A/02/68/2016] of the Independent Oversight Board for the Civil Service of Kosovo, of 12 April 2016 as confirmed by the decisions of regular courts;
- IV. TO REQUEST the Ministry of Labor and Social Welfare, to notify the Court, in accordance with Rule 66 (5) of the Rules of Procedure, about the measures taken to implement the Judgment of the Court, not later than 11 October 2021;
- V. TO REJECT the request for holding a hearing;
- VI. TO REMAIN seized of the matter pending compliance with that request;
- VII. TO ORDER notification of this Judgment to the parties and, in accordance with Article 20.4 of the Law, to publish it in the Official Gazette;
- VIII. TO DECLARE this Judgment effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Selvete Gërxhaliu-Krasniqi

Arta-Rama-Hajrizi

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