



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

Pristina, 5 July 2013
No.ref.:AGJ465/13

JUDGMENT

in

Case no. KI112/12

Applicant

Adem Meta

**Constitutional Review of the Decision of the District Court in Mitrovica,
Ac. Nr. 61/12, dated 13 February 2012**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge and
Arta Rama-Hajrizi, Judge

Applicant

1. The Referral was submitted by Adem Meta (hereinafter: the Applicant), with residence in Skenderaj.

Challenged decision

2. The Applicant challenges the Decision of the District Court in Mitrovica, Ac. No. 61/12, dated 13 February 2012, served on the Applicant on 22 February 2012.

Subject matter

3. The Applicant requests the implementation of his right to return to his working place and the execution in its entirety of the Decision of the Independent Oversight Board of Kosovo (hereinafter: IOBK), as well as the annulment of the Decisions of the Municipal Court in Skenderaj (No. 0242/2011) and of the District Court in Mitrovica (Ac. No. 61/12), in the parts where his request to return to his working place were not approved.

Legal basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 22 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, dated 15 January 2009, (hereinafter: the Law) and Rule 56. 1 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, the Rules of Procedure).

Proceedings before the Constitutional Court

5. On 7 November 2012, the Applicant submitted his Referral to the Court.
6. On 4 December 2012, the President appointed Deputy President Ivan Ćukalović as Judge Rapporteur and the Review Panel composed of judges Almiro Rodrigues (Presiding), Snezhana Botusharova and Kadri Kryeziu.
7. On 13 December 2012, the Court notified the Applicant, the IOBK, the Municipality of Skenderaj and the District Court in Mitrovica of the registration of the Referral.
8. On 14 March 2013, the Court requested from the Applicant additional information regarding the actions taken by the Applicant and by relevant institutions regarding the execution of the IOBK Decision No. A 02/200/2011, dated 13 September 2011, and the Decision Ac. No. 61/12, dated 13 February 2012, of the District Court in Mitrovica.
9. On 19 March 2013, the Applicant additionally submitted to the Court: 1. IOBK Notification on non-execution of the IOBK Decision sent to the Prime Minister of the Republic of Kosovo dated 24 October 2011; 2. IOBK Notification regarding non-execution of IOBK Decision sent to the President of the Assembly of the Republic of Kosovo on 24 October 2011; 3. Report with Recommendation of the Ombudsperson sent to the Mayor of the Municipality of Skenderaj on 5 November 2012; and 4. Response of the Mayor of the Municipality to the Report of the Ombudsperson on 8 November 2012.

10. On 5 July 2013, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the admissibility of the Referral.

Summary of fact as submitted by the Applicant

11. On 10 May 2011, the Head of Personnel of the Office of the Mayor of the Municipality of Skenderaj rendered Decision No. 118/347 on the elimination of the job position of Professional Officer of Historical Archives in the Directorate for Culture, Youth and Sport of the Municipality of Skenderaj, which function was exercised by the Applicant. The Decision of the Head of Personnel was based, *inter alia*, on the Decision in execution of the Municipal Administration Reform, No. 02-112-333, signed by the Mayor of the Municipality of Skenderaj, on 5 May 2011, whereby the position of Professional Officer of Historical Archives was eliminated in the Directorate for Culture, Youth and Sport.
12. On 9 June 2011, the Applicant filed an appeal to the Committee for dispute resolution and appeals of the Municipality of Skenderaj (No. 118-639).
13. According to the documentation attached to the Referral, the Committee for dispute resolution and appeals of the Municipality of Skenderaj did not render any decision on the Applicant's appeal.
14. On 8 August 2011, the Applicant filed an appeal with the IOBK (No. 02/200/2011), alleging that the Decision on elimination of the job position was made in contradiction with the provisions of the administrative procedure, the provisions of the Law on Civil Service of the Republic of Kosovo, no. 03/L-149, and the Regulation on Internal Organization of the Municipality of Skenderaj, as well as it was an erroneous application of the substantive law. The Applicant requested his return to his working place and compensation of lost salary, starting from 1 May 2011 until the date of the execution of the decision.
15. On 13 September 2011, the IOBK (Decision No. A 02/200/2011) approved the appeal of the Applicant, annulled Decision No. 118-347 on elimination of the job position, rendered by the Head of Personnel of the Office of the Mayor of the Municipality of Skenderaj, and ordered the Municipal Administration of Skenderaj that, within the time limit of 15 days from the date of receipt of the decision, the Applicant's return to his working place with all rights and obligations that derive from the employment relationship, including the compensation of monthly salaries in a retroactive manner. The IOBK further stated that the IOBK Decision should be executed by the Head of the Municipal Administration in Skenderaj and the Head of Personnel.
16. On 11 October 2011, the Applicant filed with the Municipal Court in Skenderaj a request for execution of the IOBK Decision.
17. On 24 October 2011, the IOBK informed the President of the Assembly and the Prime Minister regarding the non-execution of the IOBK decision by the employment authority.

18. On 8 November 2011, the Municipal Court of Skenderaj (Decision No. 0242/2011) rejected the proposal of the Applicant on the execution of the Decision with respect to his job position and approved only the proposal on compensation of salaries. The Municipal Court reasoned that “[...] *the decision of the Independent Oversight Board for Civil Service of Kosovo for return to the working place is not an executive title*”.
19. On 24 December 2011, against the Decision of the Municipal Court of Skenderaj (No. 0242/2011) the Applicant filed an appeal with the District Court in Mitrovica.
20. On 13 February 2012, the District Court in Mitrovica (Decision Ac. No. 61/12) rejected the Appeal of the Applicant as ungrounded and upheld in its entirety the Decision No. 0242/2011 of the Municipal Court in Skenderaj. The District Court concluded that the execution of the decision on return to his working place is the obligation of the relevant institution and, in case of non-fulfillment of this obligation, the Prime Minister’s Office is responsible for its execution.
21. On 5 November 2012, the Ombudsperson submitted to the Mayor of the Municipality of Skenderaj a Report with Recommendation to take measures for execution of the Decision A 02/200/2011 of the IOBK, dated 13 September 2011. The Ombudsperson Report considered that [...] *“Non-execution of the final administrative decision of IOBK by the Municipality of Skenderaj constitutes a violation of human rights and weakens the trust of citizens on the implementation of justice and rule of law.”* [...] and recommended to the Municipal Assembly of Skenderaj to take immediate measures for return of the Applicant to his working place, without any further delay and in compliance with the IOBK decision.
22. On 12 November 2012, the Mayor of the Municipality of Skenderaj responded to the Ombudsperson Institution, informing it that the IOBK decision was rendered in a unilateral way, as the appeal of the Applicant and the abovementioned decision was not notified to the employment authority, thus making impossible the presentation of facts by the other party.

Applicant’s allegations

23. As it was said above, the Applicant alleges that the Decision Ac. No. 61/12 of the District Court, dated 13 February 2012, violated his rights guaranteed by Article 21 [General Principles], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 49 [Right to Work and Exercise Profession] and Article 54 [Judicial Protection of Rights] of the Constitution as well as his rights under Article 6 [Right to a Fair Trial] and Article 13 [Right to an effective remedy] of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR).
24. The Applicant requests the Constitutional Court to annul the decisions of the Municipal Court in Skenderaj (No. 0242/2011, dated 8 November 2011) and District Court in Mitrovica (Ac. No. 61/12, dated 13 February 2012), in the part in which his request for return to his working place was not approved.

Relevant legal provisions relating to procedures for the execution of administrative and court decisions

Law on Executive Procedure (Law no. 03/L-008)

25. Article 1 [Content of the law]

“1.1 By this law are determined the rules for court proceedings according to which are realised the requests in the basis of the executive titles (executive procedure), unless if with the special law is not foreseen otherwise.

1.2 The provisions of this law are also applied for the execution of given decision in administrative and minor offences procedure, by which are foreseen obligation in money, except in cases when for such execution, by the law is foreseen the jurisdiction of other body.”

26. Article 24 paragraph 1 [Execution title]

“Execution titles are:

- a) execution decision of the court and execution court settlement;*
- b) execution decision given in administrative procedure and administrative settlement, if it has to do with monetary obligation and if by the law is not foreseen something else;*
- c) notary execution document;*
- d) other document which by the law is called execution document.”*

27. Article 26 paragraph 3 [Executability of decision]

“A given decision in administrative procedure is executable if as such is done according to the rules by which such procedure is regulated.”

28. Article 294 paragraph 1 [Reward of payment in case of return of worker to work]

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

Law no. 03/L-192 on Independent Oversight Board of Kosovo Civil Service

29. 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.”

30. Article 14 [The right to appeal]

“The aggrieved party, alleging that a decision rendered by the Board is unlawful, may appeal the Board’s decision by initiating an administrative dispute before the competent court within thirty (30) days from the date of the service of the decision. Initiation of an administrative dispute shall not stay the execution of the Board’s decision.”

31. Article 15 [Procedure in case of non-implementation of the Board’s decision]

“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 the Law on Civil Service in the Republic of Kosovo.

1. If the person responsible at the institution does not execute the Board’s decision within the deadline set out in Article 13 of this Law, the Board within fifteen (15) days from the day of expiry of execution deadline, shall notify in writing the Prime Minister and the immediate supervisor of the person responsible for execution.

2. Notification from paragraph 2 of this Article shall be considered as a requirement for initiation of disciplinary and material procedure against the person responsible for execution, which shall be conducted pursuant to provisions set out in the Law on Civil Service of the Republic of Kosovo.

3. The aggrieved party may initiate, within thirty (30) days of the date of expiry of the execution deadline, an execution procedure before the municipal court pursuant to Law for the execution procedure against the person and institution responsible for execution, because of the material and non-material damage caused by that decision. If the competent court decides on reimbursement of the amount of salaries to the employee (person), who has disputed the non-execution (non-execution of decision), the procedural costs and other eventual costs shall be incurred by the person responsible at the institution and he or she shall also be responsible for damage caused to the institution in accordance with Law.

4. The Board shall have to notify in writing for the decisions that have not been executed even the Assembly of the Republic of Kosovo.”

Assessment of admissibility of the Referral

32. First of all, the Court examines whether the Applicant has met all the requirements of admissibility foreseen by the Constitution and further specified by the Law and Rules of Procedure.

33. The Court should first examine whether the Applicant is an authorized party to submit a referral with the Court, in accordance with requirements of Article 113.7 of the Constitution.

Article 113.7 of the Constitution provides:

„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.“

34. The Court considers that the Applicant is a natural person and is an authorized party, in compliance with Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution.
35. The Court must also determine if the Applicant, in compliance with the requirements of Article 113 (7) of the Constitution, as well as Article 47 (2) of the Law, has exhausted all legal remedies. The Applicant has exhausted all legal remedies within the employment institution and with his appeal in the IOBK, which decision is final in the administrative procedure. Equally, he has used the last legal remedy in the executive procedure, which in the present case is the Decision Ac. No. 61/12 of the District Court in Mitrovica, dated 13 February 2012, against which no right of appeal is allowed. As a result, the Applicant has exhausted all available legal remedies, according to the legislation in force.
36. With regard to the requirement, according to which the Applicant should have submitted the Referral within 4 months after rendering of the final court decision regarding the case, the Court determines that the situation of the non-execution of the IOBK decision with respect to the return to the working place by the District Court in Mitrovica (Decision Ac. No. 61/12, dated 13 February 2012) continues even today. A similar situation of the non-execution of both the Court and IOBK decisions has arisen in a number of other cases before the Constitutional Court, in which cases the Court has confirmed the existence of a continuing situation and, thereby, the non-applicability of the established time limit (See *Case No. KI 08/09*, Applicant *Independent Trade Union of the employees of the Steel Factory IMK Ferizaj* Judgment dated 17 December 2010 and *Case KI 50/12*, Applicant *Agush Lolluni*, Judgment dated 16 July 2012). Thus, the fact that the Applicant has not submitted the Referral within four (4) months of the final court decision is rendered irrelevant by the continuing situation. That exception is well-established in the jurisprudence of the European Court of Human Rights.
37. The Court further notes that the Applicant challenges the failure of the execution of the IOBK Decision in its entirety by the competent courts. Therefore, the requirement for the submission of the Referral within the time limit of four months does not apply in the case of the non-execution of the decision by the public authority (See *mutatis mutandis Iatridis v. Greece* No. 59493/00, ECtHR, Judgment of 19 October 2000). The ECtHR explicitly noted, in a similar situation arising in *Iatridis v. Greece*, that the time limit rule does not apply where there is a refusal of the executive to comply with a specific decision.

38. Regarding the fulfillment of the requirement provided by Article 48 of the Law, which states that *“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”* the Court notes that the Applicant has accurately specified what rights, guaranteed by the Constitution and other acts have been violated to him, stating that the decisions of the Municipal Court (No. 0242/2011, dated 8 November 2011) in Skenderaj and that of the District Court in Mitrovica (Ac. No. 61/12, dated 13 February 2012), as the acts of public authority, are the subject of his challenge.
39. Taking into consideration that the Applicant is an authorized party and has exhausted all legal remedies, that he has met the requirement to submit the Referral to the Court within the legal deadline as a result of a continuing situation, and that he has accurately clarified the alleged violation of the rights and freedoms, including the decisions, which he challenges, the Court finds that the Applicant has met all the requirements for admissibility.

Assessment of the substantive legal aspects of the Referral

40. Since the Applicant has met all procedural requirements for admissibility, the Court reviews the merits of the Applicant’s Referral.

I. Regarding the Right to Fair and Impartial Trial

41. The Applicant complains that his right to fair and impartial trial as guaranteed by Article 31 of the Constitution was violated.

42. Article 31.1 of the Constitution establishes:

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

43. The Court notes that the Applicant challenges the Decision AC. No. 61/12 of the District Court in Mitrovica, dated 13 February 2012, whereby the Decision E. no. 0242/2011 of the Municipal Court in Skenderaj, dated 8 November 2011, was upheld, rejecting the proposal of the Applicant for execution of the IOBK Decision regarding the return to his working place and approving only the proposal on compensation of salaries.

44. The Court observes that, on 13 September 2011, the IOBK (Decision No. A 02/200/2011) approved the appeal of the Applicant, requesting from the Municipal Administration of Skenderaj that, within the time limit of 15 days from the date the decision was served on them, to return the Applicant to his job position with all rights and obligations that derive from the employment relationship, including the compensation of monthly salaries in a retro-active manner. The IOBK Decision states that:

“The Board Decision presents final administrative decision and is executed by the official senior level or by the responsible person of the institution that has rendered the original decision towards the party.”

45. In this respect, the Court recalls that the IOBK is an independent institution established by law, in accordance with Article 101.2 of the Constitution. Therefore, all obligations arising from decision 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. The decision of the IOBK provides final and binding decisions, and that the appeal filed against the IOBK decision does not stay the execution of the Decisions of IOBK (See *Case KI 129/11, Applicant Viktor Marku*, Judgment of 17 July 2012).
46. On 13 February 2012, the District Court in Mitrovica (Decision AC. No. 61/12) upheld the Decision E. No. 0242/2011 of the Municipal Court of Skenderaj, dated 8 November 2011, regarding the execution of the IOBK Decision only concerning the part of compensation of salaries. The District Court in Mitrovica added that, in compliance with Article 24 [Executive Title] of the Law No. 03/L-008 on the Executive Procedure, the part of the execution on the return of the Applicant to his working place is the obligation of the responsible persons of the respective institution and, in case of non-fulfillment of this obligation, the Office of Prime Minister is responsible for execution of the decision in respect of the return to his working place.
47. Based on the facts above, the Court notes that, regarding the IOBK Decision, the Applicant made efforts for exhausting all available remedies, in compliance with the legislation in force, but despite his efforts, the IOBK Decision was not executed by the competent bodies of the Municipality of Skenderaj, nor by the competent courts regarding the execution of the part of the decision on his return to his working place.
48. The Court observes that Article 6 of the ECHR, also applies for administrative proceedings, as they are within the framework “*of the right to fair and impartial trial*”, a right also guaranteed by Article 31 of the Constitution.
49. The Court considers that the execution of a final and binding decision must be considered as an integral part of the right to a fair trial, a right guaranteed by Article 31 of the Constitution and Article 6 of ECHR. The above-mentioned principle is of greater importance within the administrative procedure regarding a dispute, which result is of special importance for the civil rights of the party in dispute (See *mutatis mutandis, Hornsby v. Greece*, No. 18357/91, Judgment of 19 March 1997, paras. 40-41).

II. Regarding the Right to Effective Legal Remedies

50. The Applicant also complains that the right to an effective legal remedy, guaranteed by Articles 32 and 54 of the Constitution is violated.
51. Article 32 [Right to Legal Remedies] establishes that:

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.

52. Also Article 54 [Judicial Protection of Rights] establishes that:

Everyone enjoys the right of judicial protection if any right guaranteed by this Constitution or by law has been violated or denied and has the right to an effective legal remedy if found that such right has been violated.

53. In addition, Article 13 of the ECHR states that:

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.

54. The Court notes that the inexistence of legal remedies or of other effective mechanisms, which would enable the obligation of the respective bodies for the timely execution of the IOBK Decision, raises issues of the right to an effective legal remedy, as guaranteed by Articles 32 [Right to Legal Remedies], 54 [Judicial Protection of Rights] of the Constitution, in conjunction with 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 *mutatis mutandis*, *Voytenko v. Ukraine*, No. 18966/02, Judgment dated 29 June 2004, paragraphs 46-48).

55. Furthermore, the competent authorities have the obligation to organize an efficient system for the implementation of decisions which are effective in law and practice, and should ensure their application within a reasonable time, without unnecessary delays (See *Case KI 50/12*, Applicant *Agush Lolluni*, Judgment of 16 July 2012 and also see *Pecevi v. Former Yugoslavian Republic of Macedonia*, no. 21839/03, ECtHR, Judgment of 6 November 2008).

56. The Court again refers to Article 54 of the Constitution. In this connection, the Constitutional Court notes that it would be meaningless if the legal system of the Republic of Kosovo would allow that a final judicial decision remains ineffective to the detriment of one party. Interpretation of the above Articles exclusively deals with access to, and protection by, courts. Therefore, non-effectiveness of procedures and the non-implementation of the decisions produce effects that result in situations that are inconsistent with the principle of the Rule of Law, a principle clearly affirmed in the ECtHR jurisprudence and that the Kosovo authorities are obliged to respect (See *mutatis mutandis*, *Romashov v. Ukraine*, No. 67534/01, Judgment of 27 July 2004).

III. Regarding Articles 21 and 49 of the Constitution

57. The Applicant also alleges a violation of Articles 21 and 49 of the Constitution.

58. Article 21 of the Constitution lays down the general principles that apply to the fundamental rights and freedoms guaranteed in Chapter II of the Constitution. It establishes that:

1. Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of the Republic of Kosovo.

2. *The Republic of Kosovo protects and guarantees human rights and fundamental freedoms as provided by this Constitution.*
3. *Everyone must respect the human rights and fundamental freedoms of others.*
4. *Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.*

59. Article 49 of the Constitution establishes that:

1. *The right to work is guaranteed.*
2. *Every person is free to choose his/her profession and occupation.*

60. The Court considers that an alleged violation of the right to work is not relevant in this case, as the non-execution in its entirety of the IOBK decision is a matter that falls within the ambits of the rights guaranteed by Articles 31, 32 and 54 of the Constitution, in conjunction with Articles 6 and 13 of the ECHR.

61. Ultimately, the Court does not consider it necessary to deal further with the allegations of a violation of Articles 21 and 49 of the Constitution, in particular as it has found violations of relevant Articles 31, 32 and 54 of the Constitution and Articles 6 and 13 of the ECHR.

IV. Conclusion

62. In conclusion, the Court finds that the non-execution of the entirety of the IOBK decision by the regular courts, and the failure of the competent authorities of the Republic of Kosovo to ensure effective mechanisms to ensure the enforcement of respective decisions of the relevant authorities and court decisions, constitutes a violation of Articles 31, 32 and 54 of the Constitution, and of Articles 6 and 13 of the ECHR. Consequently, the right to a fair trial and to an effective legal remedy, guaranteed by the above-mentioned Articles, was violated and the final IOBK Decision should be executed in its entirety, whereas, for reasons set out in paragraphs 60 and 61 of this Judgment, the Court considers unnecessary to deal with the allegation of a violation of Articles 21 and 49 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56 (1) of the Rules of Procedure, unanimously, at its session held on 5 July 2013,

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been violation of Articles 31, 32 and 54 of the Constitution and Articles 6 and 13 of ECHR;
- III. TO HOLD that it is unnecessary to deal with the allegation of a violation of Articles 21 and 49 of the Constitution;
- IV. TO REMAND the Decision Ac. Nr. 06/12 of 13 February 2012 of the District Court in Mitrovica – Branch in Skenderaj for reconsideration to the Basic Court in Mitrovica in conformity with this Judgment;
- V. TO ORDER the Basic Court in Mitrovica – Branch in Skenderaj pursuant to Rule 63 (5) of the Rules of Procedure to submit information to the Constitutional Court about the measures taken to enforce this Judgment of the Constitutional Court;
- VI. TO NOTIFY this Decision to the Parties;
- VII. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- VIII. TO DECLARE this Decision effective immediately.

Judge Rapporteur

Ivan Čukalović



President of the Constitutional Court

Prof. Dr. Enver Hasani