



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

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Prishtina, on 5 July 2013  
Ref. no.: AGJ464/13

## **JUDGMENT**

in

**Case no. KI80/12**

Applicant

**Sali Pepshi**

**Constitutional review of non-execution of Decision  
of the District Court in Peja, Ac. no. 164/2011, of 5 July 2011**

**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 Applicant is Mr. Sali Pepshi, with residence in Junik.

## **Challenged decision**

2. The Applicant challenges the non-execution of the Decision of the District Court in Peja, Ac. no. 164/2011, of 5 July 2011, served on the Applicant on 15 July 2011, Decision of the Municipal Court in Deçan E. No. 648/2010, of 18 April 2011, and of the Decision of the Independent Oversight Board for Civil Service of Kosovo (hereinafter: the IOBCSK), no. 02 (67) 2010, of 11 May 2010, by the Municipality of Junik.

## **Subject matter**

3. The Applicant's Referral is related to his appeal regarding the non-execution of the administrative decision of the IOBCSK, and of the court decisions in executive procedure, by the Municipality of Junik, in restoring the Applicant to his working positions, since all decisions are in favor of the same.

## **Legal basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 20 of the Law, and Rule 56(1) of the Rules of Procedure.

## **Procedure before the Court**

5. On 3 September 2012, the Applicant filed his Referral before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 5 October 2012, the President, by Decision no. GJR. KI80/12, appointed Judge Altay Suroy as Judge Rapporteur. On the same date, by Decision no. KSH. 80/12, the President appointed the Review Panel composed of Judges: Ivan Čukalović (Presiding), Kadri Kryeziu (member) and Arta Rama Hajrizi (member).
7. On 1 November 2012, the Court notified the Applicant, the Municipality of Junik, the Independent Oversight Board and the District Court in Peja of the registration of the Referral in the respective Court's register.
8. On 6 November 2012, the Court requested from the Applicant and the Municipality of Junik to submit to the Court Secretariat, within a deadline of 15 days, the Decision on dismissal of the Applicant issued by the Municipality of Junik.
9. On 13 November 2012, the Court requested from the Municipal Court in Deçan, to submit to the Court the complete case file E. No. 648/2010, within a deadline of 15 days.
10. On 19 November 2012, the Municipality of Junik submitted to the Court the decision on dismissal of the Applicant from work.
11. On 22 November 2012, the Municipality of Junik, by referring to the document of the Court of 1 November 2012, submitted to the Secretariat of the Court the response that has to do with the justification of the Municipality of Junik

regarding non-execution of item 2 of the IOB Decision No. 02 (67) 2010 of 11 May 2010.

12. On 7 December 2012, the Municipal Court in Deçan submitted to the Court the incomplete case file E. No. 648/2010.
13. On 18 March 2013, the Court requested from the Basic Court in Peja and from the Municipality of Junik that within the time limit of 15 days notify the Court about the last actions of the Basic Court for execution of the IOB Decision No. 02 (67) 2010 of 11 May 2010 and of the Decision of the District Court in Peja, Ac.no. 164/2011.
14. On 2 April 2013, the Court requested from the Applicant that within the time limit of 15 days, to inform the Court whether the monetary compensation was made to him for the period his contract was in force and whether the Applicant has undertaken any actions regarding the execution of this decision, after the Decision of the District Court in Peja Ac. No. 164/2011 was rendered.
15. On 8 April 2013, the Municipality of Junik submitted to the Court Secretariat its response to the request of the Court of 18 March 2013.
16. On 10 April 2013, the Applicant submitted to the Court the response to the request of the Court dated 2 April 2013.

### **Summary of facts**

17. The Applicant, from 1 October 2009, had worked as a driver in the Municipality of Junik, as a civil servant, no. 22/1, of 1 October 2009 issued by the Municipality of Junik, until the termination of employment contract. The Applicant was under employment contract until 1 October 2010, with a possibility of extension.
18. Based on the document, submitted in the case file by the Applicant of 10 February 2010, the Applicant states that he was invited to the office of the Mayor of the Municipality of Junik on 5 February 2010, where he was notified that he was dismissed from work, without any reason. In this document, the Applicant requires from the Mayor of the Municipality of Junik a written explanation on the reasons of such dismissal.
19. On 8 February 2010, according to Decision no. 01/07, the Applicant was terminated his employment contract with the Municipal Assembly of Junik, with a justification that there was a lack of formal annual assessment and lack of assessment of probation period.
20. On 12 April 2010, the Applicant filed an appeal with the IOB against the decision on termination of employment relationships, demanding from the IOB to order the employment authority to review the case, and restore the Applicant to his working relationship pursuant to his employment contract as Driver, in the Municipality of Junik.

21. On 11 May 2010, the IOB, based on the case files and legal acts in force, rendered the Decision no. 02 (67) 2010, thereby approving as grounded the appeal of the Applicant and annulling the Decision of the Municipality of Junik, no. 01/07, of 8 February 2010, on termination of employment relationship. By this Decision, the IOB ordered the employing authority to restore the Applicant to his working position as Driver, and enable the Applicant to enjoy all rights from employment relationship, in accordance with the employment contract no. 22/1 of 1 October 2009, within a deadline of 15 days.
22. On 27 May 2010, the Applicant notified the IOB that the Decision 02 (67) 10 of 11 May 2010, approved by this authority, is not being enforced by the Municipality of Junik.
23. On 8 June 2010, the IOB notified the President of Assembly of the Republic of Kosovo on the non-enforcement of decisions of this Board.
24. On 19 November 2010, the Municipal Court in Deçan rendered the Decision, E.no. 648/2010, allowing the execution based on the executive title of the Decision of the Independent Oversight Board of Kosovo, no. 02(67)2010 of 11 May 2010. With the executive title, the request of the creditor Sali Pepshi from Junik was approved, with the content: "the decision of the Municipality of Junik on termination of the work employment was annulled and the employee was obliged within 15 days upon receipt of the decision to allow the creditor to realize all his rights from the employment relation in accordance with the employment contract no. 22/1 of 1 October 2009."
25. On 10 May 2011, the IOB addressed the President of Assembly of the Republic of Kosovo, demanding from the President to extend his authorities within the competency of the President of Assembly of the Republic of Kosovo, to compel the responsible persons in the Employing Authority to respect and enforce the decision of the IOB for restoring the Applicant, Mr. Pepshi to his working position.
26. On 5 July 2011, the District Court in Peja, acting upon the appeal filed by the debtor-Municipality of Junik, rendered the Judgment AC. No. 164/2011, whereby rejecting the appeal as ungrounded and upholding the first instance Decision E.no. 648/2010 of 18 April 2011.
27. On 12 February 2012, the Office of the Mayor of Municipality of Junik rendered the Decision no. 01/2, in reference to the decision of IOB no. 02 (67) 10 of 11 May 2010, thereby stating that the Applicant shall be compensated his personal income from the date of termination of employment relationship as per Decision no. 2/67 of 11 May 2010, until expiry of contract on 1 October 2010, and since the contract shall cease having legal effect, it shall be irrelevant, respectively it does not produce any legal effect.
28. On 10 April 2013, the Applicant responded to the issues raised by the Court and stated that he has not received any material compensation since the time when he was dismissed and after the Decision of the District Court in Peja, Ac.No. 164/2011 was rendered, he tried to do that, by requesting from the competent

authorities of the Municipality of Junik, but his request was not taken into consideration.

### **Allegations of the Applicant**

29. The Applicant alleges that by non-enforcement of the court decisions by the Employing Authority, the Municipality of Junik, his rights guaranteed by Constitution and international conventions have been violated:
- a. Article 31 of the Constitution [Right to Fair and Impartial Trial];
  - b. Article 6 of the European Convention for Protection of Human Rights [Right to a Fair Trial];

### **Relevant legal provisions related to the procedures for execution of administrative and court decisions**

#### ***Law on Executive Procedure (No. 03/L-008)***

30. In the Republic of Kosovo, legal rules, the executive procedure and security of decisions are regulated by the Law on Executive Procedure (Law no. 03/L-008).

*“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, 2 except in cases when for such execution, by the law is foreseen the jurisdiction of other body.*

*Article 24 [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.”*

*Article 26 [Executability of decision]*

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

*Article 294 [Reward of payment in case of return of worker to work]*

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

### **Law No. 03/L-192 on IOBCSK**

*“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 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 day of the service of decision. Initiation of an administrative dispute shall not stay the execution of the Board’s decision.*

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

*a) 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.*

*b) 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.*

*c) 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 Law on Civil Service of the Republic of Kosovo.*

*d) The aggrieved party may initiate, within thirty (30) days of the day of expiry of 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 nonmaterial 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.”*

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

31. In order to be able to adjudicate the Applicant's Referral, the Constitutional Court has to assess beforehand whether the Applicant has met all the requirements of admissibility, which are laid down in the Constitution, the Law and Rules of Procedure.
32. The Court should determine whether the Applicant is an authorized party, in accordance with Article 113.7 of the Constitution, which 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."* With respect to this, the Court notes that the Referral was submitted in the Court by an individual. Therefore, the Applicant is authorized party to submit Referral before this Court, in accordance with the requirements of Article 113.7 of the Constitution.
33. The Court should also determine whether the Applicant has exhausted all legal remedies, since the District Court in Peja is considered "as the court of last instance to adjudicate the matters that are related to the execution." As a result, the Applicant has exhausted all available legal remedies, according to the law of Kosovo.
34. In addition, regarding the requirement that the Applicant had to submit his Referral within the four month time limit, after the final court decision on this case was served on him, the Court notes that the situation of non-execution of the Decision of the District Court in Peja Ac. no. 164/2011 of 5 July 2011; of the Decision of the Municipal Court in Deçan, E. No. 648/2010 of 18 April 2011; and of the IOBCSK Decision, No. 02 (67) 2010, of 11 May 2010; by the Municipality of Junik "is continuing until to date" (see Case KI50/12, Judgment of Constitutional Court of the applicant Viktor Marku, dated 16 July 2012).
35. The concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicants victims. (*Iordache v. Romania, Application 6817/02, Judgment dated 14.10.2008*).
36. In this regard, the Court assesses that the question that should be considered in this case, is whether the expiry of the 4 month time limit, from the day of service of the last court decision (15 July 2011) presents full obstacle to submit the Referral in the Court, or it is a continuing situation, which still exists and eventually constitutes violation of the Constitution, every day as long and the

IOB decision and Decisions of the Courts are in force and remaining non-executed .

37. The Court considers that the 4 month time limit provided in Article 49 of the Law on the Constitutional Court regarding the individual Referrals should be applied with flexibility and in the cases that as a consequence have produced continuing situation and which may result in continuing constitutional violation to the detriment of the Applicant, the 4 month time limit cannot present an obstacle for reviewing the merits of such a Referral submitted in the Court.
38. Furthermore, the Court notes that the Applicant has met the requirements of Article 48 of the Law: *"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."* With respect to this, the Court notes that the Applicant alleges violation of Article 31 (Right to Fair and Impartial Trial) of the Constitution and Article 6 of the European Convention.
39. The Court considers that the Applicant has met all requirements for admissibility.

#### **Assessment of constitutionality of Referral**

40. Since the Applicant has met procedural requirements for admissibility, the Court should review the merits of the Applicant's Referral must consider grounds of the Applicant's Referral on the merits.
41. With regard to the Applicant's submission, the Court observes that the Applicant is not challenging any decision of public authorities, because all decisions are in his favor, starting from the IOBCSK decision and up to the decision of the District Court in Peja. The subject matter of the Applicant's Referral has to do with non-execution of the IOBCSK decision and the courts' decisions by the authorities of Municipality of Junik.
42. Moreover, the Court notes that on 11 May 2010, the IOBCSK approved the appeal of the Applicant No. 02 (67) 2010, annulled the decision on termination of employment relationship and requested from the Employing Authority that within time limit of 15 days from the day of service of the decision, enables the Applicant to earn all rights that derive from the employment relationship. The IOBCSK further concluded that the IOBCSK decision should be executed by the Mayor of the Municipality of Junik and by Director for Administration and Personnel of the Municipality.
43. In addition, the Court notes that on 19 November 2010, the Municipal Court in Dečan approved the Applicant's proposal on execution of the IOBCSK Decision and obliged the debtor, namely the Mayor of Municipality of Junik, to take all necessary measures to reconstitute the Applicant to his previous job position, with all rights that derive from the employment relationship (Decision E.no. 648/2010). This Decision was upheld by the District Court in Peja (Ac.no. 164/2011).



44. In relation to the above, the Court holds that the Applicant although has earned the right violated by the Employing Authority, by all administrative and court decisions, despite his continuing efforts he could not realize this right.
45. The failure to take concrete measures for execution of final court decisions by any municipality is not inconsistent with the requirements of the Article 124.6 of the Constitution, which clearly provides that:

*"Municipalities are bound to respect the Constitution and laws and to apply court decisions."*

46. Constitutional Court, in terms of clarifying the IOBCSK's position and jurisdiction, considers that IOBCSK is an independent institution constituted by law, in accordance with Article 101.2 of the Constitution. Therefore, all obligations arising from this institution, regarding the matters that are under the jurisdiction of this institution 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 this institution provides final administrative decision, and as such should be executed by the competent court as proposed for execution by a creditor in terms of realization of the right earned in administrative procedure.
47. Article 6 of the ECHR is also applied to administrative phases of judicial process respectively is within the framework "for the Right to a Fair and Impartial Trial" a right guaranteed by Article 31 of the Constitution of the Republic of Kosovo. From this it follows that the non-implementation of the IOBCSK decision as well as the non-execution of the court decisions is an element of Article 6 of the Convention, and consequently presents its violation.
48. Furthermore, the Court refers to Article 54 of the Constitution that highlights the fact 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".*

49. The Constitutional Court notes that is the right of an unsatisfied party to initiate court proceedings in case of failure of realization of the earned right as defined in Article 31 and Article 32 of the Constitution and Article 6 in conjunction with Article 13 of the European Convention on Human Rights (ECHR) and 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. Interpretation of the above Articles exclusively deals with the access to the court. Therefore, non-effectiveness of procedures and the non-implementation of the decisions produce effects that bring to situations that are inconsistent with the principle of Rule of Law, a principle that the Kosovo authorities are obliged to respect (*see ECHR Decision in the case Romashov against Ukraine, Submission No. 67534/01. Judgment of 25 July 2004*).

50. The Court considers that, the execution of a decision rendered by any court should be considered as an integral part of the right to fair trial, a right guaranteed by the above articles (*see Hornsby v. Greece case, Judgment of 19 March 1997, reports 1997-11, p. 510, par. 40*). In this specific case, the Applicant should not be deprived of the benefit of a final decision, which is in his favor. No authority can justify non-implementation intending to obtain revision and fresh review of the case (*See Sovtransvto Holding against Ukraine, No. 48553/99, § 72, ECHR 2002-VII*). Competent authorities, therefore, have the obligation to organize a system for implementation of decisions which is effective in law and practice, and should ensure their application within reasonable time, without unnecessary delays (*See Pecevi v. former-Republic of Yugoslavia and Macedonia, no. 21839/03, 6 November 2008*).
  
51. In conclusion, this Court finds that non-implementation of the judicial decisions by competent authorities of the Republic of Kosovo and the failure to ensure effective mechanisms in terms of the enforcement of decisions of the relevant authorities and courts, constitutes a violation of Article 31 of the Constitution, and as well of Article 6 in conjunction with Article 13 of the ECHR.

## FOR THESE REASONS

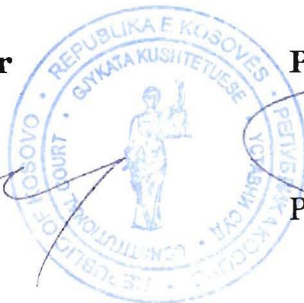
The Constitutional Court, pursuant to Article 20 of the Law, and Rule 56 (1) of the Rules of Procedure, in its session held on 5 July 2013, unanimously

### DECIDES

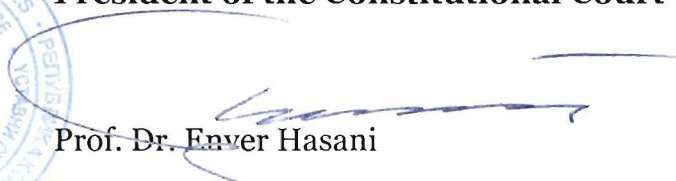
- I. TO DECLARE the Referral Admissible;
- II. HOLDS that there has been a breach of Articles 31, 32 of the Constitution and Article 6 in conjunction with Article 13 of ECHR;
- III. HOLDS that the final and executable decision of IOB, Decision No. 02 (67) 2010 of 11 May 2010, the Decision of District Court in Peja, Ac. no. 164/2011 of 5 July 2011, the Decision of the Municipal Court in Deçan, E. no. 648/2010 of 18 April 2011 must be executed by the competent authorities, in particular, the Municipality of Junik.
- IV. Pursuant to Rule 63 (5) of the Rules of Procedure, the Municipality of Junik shall submit information to the Constitutional Court about the measures taken to enforce this Judgment of the Constitutional Court;
- V. This Judgment shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on Constitutional Court; and
- VI. This Judgment is effective immediately.

**Judge Rapporteur**

  
Altay Suroy



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani