



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

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Pristina, 14 November 2012

Ref. No.: VMSP323 /12

## **DECISION ON NON-EXECUTION**

of

**JUDGMENT of the Constitutional Court of 17 December 2010**

in

**Case No. KI 08/09**

**The Independent Union of Workers of IMK Steel Factory in Ferizaj,  
represented by Mr. Ali Azem, President of the Union - Constitutional  
Review of the Decision C. no. 340/2001 of the Municipal Court of Ferizaj,  
dated 11 January 2002.**

**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 the Independent Union of Workers of IMK Steel Pipe Factory from Ferizaj. In the proceedings before the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”), it is represented by Mr. Ali Azem, President of the Union residing in Ferizaj.

## **Implementing authorities**

2. The Court, in its Judgment of 17 December 2010, held that “[...] the final and binding decision of the Municipal Court of Ferizaj must be executed by the competent authorities, in particular, the Government and the Privatization Agency of Kosovo, as the legal successor of KTA.” Hence, the Government and the Privatization Agency of Kosovo are the implementing authorities.

## **Legal basis**

3. Article 116 of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”), Rules 56 and 63 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

## **Proceedings before the Court**

4. On 17 June 2011, Kosovo Privatization Agency informed this Court that *“According to Article 9.5 of the PAK Law, No. 03/L-067, the Liquidation Commission of the SOE IMK Ferizaj is an integral part of PAK. Consequently, the relevant liquidation commission, started, in line with the provisions of Regulation 2005/48 on liquidation of social enterprises, to treat credit claims according to priority order determined by Article 44 of Regulation No. 2005/48 on the Reorganization and Liquidation of Enterprises and their Assets under the Administrative Authority of PAK.”*
5. On 4 October 2011, the Court submitted a request to the Government of the Republic of Kosovo to notify this Court what action the Government has taken

in order to implement the Court's Judgment in Case KI 08/09 of 17 December 2010. The Government of the Republic of Kosovo has so far not replied to this request of the Court.

6. On 16 December 2011, the Privatization Agency of Kosovo, to whom the request to the Government had been copied, commented that:

“ ...

*Liquidation Committees established in the frame of the Agency under the previous law on the Kosovo Agency Privatization No. 03/L-067, including the Liquidation Committee for SOE IMK Ferizaj have ceased to operate upon the entry into force of the new Law on the Kosovo Privatization Agency No. 04-L-034 in September 2011.*

*Consequently, in response to the legal requirements set out in Article 12 of the Annex to Law No. 04-L-034, the Agency has started the legal procedure for the establishment of the respective Liquidation Authority. The establishment of the Liquidation Authority and the appointment of its members are conducted in accordance with the Law on Public Procurement; therefore we have to observe the procedure regarding the required publication and notices. Once this authority is established, it will start its work in reviewing the requests of the creditors of SOE IMK Ferizaj.*

*The Agency will promptly inform you about all actions that are to the benefit of the enforcement of Judgment KI 08/09.*

...”

7. On 19 December 2011, the Applicant, Mr. Ali Azemi, requested the Constitutional Court to render a ruling, pursuant to Rule 63 (6) of the Rules of Procedure which provides:

*“In the event of a failure to enforce a decision, or a delay in enforcement or in giving information to the Constitutional Court about the measures taken, the Constitutional Court may render a ruling in which it shall establish that its decision has not been enforced and decide about the publication of the ruling in the Official Gazette.”*

8. On 18 October 2012, the Court deliberated and voted on the Decision on Non-execution of the Judgment of the Constitutional Court of 17 December 2010.

### **Summary of facts**

9. On 3 March 2009, the Applicant had filed the referral with the Court requesting it to assess the constitutionality of the alleged violation of the principle *res judicata* embedded in Article 31 [Right to Fair and Impartial Trial] of the Constitution. The Applicant claimed that the Municipal Court of Ferizaj, which, by judgment of 11 January 2002, approved the request for compensation of unpaid salaries of 572 workers of the socially-owned IMK Steel Pipe Factory (hereinafter: “IMK”) in the amount of 25.649.250,00 Euro. That judgment had become final (*res judicata*) on 11 March 2002. On 22 December 2005, the same Municipal Court allowed the execution of the judgment. However, the execution had not been enforced.
10. On 13 October 2010, a public hearing was held at which the Applicant’s representative was present as well as representatives of the PAK and the New Co IMK. The Municipal Court of Ferizaj was also invited to the public hearing but they did not respond. On the same date, additional documents were submitted by the Applicant and by PAK.
11. On 17 December 2010, the Court deliberated and voted on the Referral.
12. The Court, in its Judgment of 17 December 2010, held that even while the legal remedies, available under applicable law, had been exhausted by the workers, these remedies were not effective, in the sense that they did not bring about the

expected result, because the workers were still waiting and is still waiting for the implementation of the Municipal Court decision of 11 January 2002.

13. In this connection, the Court stressed that the right to institute proceedings before a court in civil matters, as secured by Article 31 of the Constitution and Article 6, in conjunction with Article 13 of the European Convention of Human Rights (ECHR), would be illusory, if the Kosovo legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that these Articles prescribe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions. To construe the above Articles, as being concerned exclusively with access to a court and the conduct and efficiency of proceedings, would be likely to lead to situations incompatible with the principle of the rule of law which the Kosovo authorities are obliged to respect (see, *mutatis mutandis*, ECtHR judgment in *Romashov v. Ukraine*, Application No. 67534/01, judgment of 25 July 2004).
14. The Court further held, in its Judgment of 17 December 2010, that the rule of law is one of the fundamental principles of a democratic society and presupposes respect for the principle of legal certainty, particularly as regards judicial decisions that have become *res judicata* (see, *mutatis mutandis*, *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 72, ECHR 2002-VII). Were that not the case, the reversal of final decisions would result in a general climate of legal uncertainty, reducing public confidence in the judicial system and consequently in the rule of law. The competent authorities are, therefore, under a positive obligation to organize a system for enforcement of decisions that is effective both in law and in practice and ensures their enforcement without undue delay (see, *Pecevi v. Former Yugoslav Republic of Macedonia*, no. 21839/03, 6 November 2008; *Martinovska v. the Former Republic of Macedonia*, no. 22731/02, 25 September 2006).
15. In the instant case, the Applicants should not have been prevented from benefiting from the decision, which had become *res judicata*, given in their favour.

16. The Court concluded that the right to a fair and effective trial, as guaranteed by the Constitution and ECHR, has been violated because the appropriate authorities had failed for a long period of time to enforce the judgment of 11 January 2002.
17. On 17 December 2010, the Court published the Judgment.

### **Execution of the Constitutional Court's Judgment**

18. The Constitutional Court (by Judgment in Case No. KI 08/09 of 17 December 2010) granted the Referral of the Applicant for the Constitutional Review of the Decision of the Municipal Court of Ferizaj, Decision C No. 340/2001, dated 11 January 2002.
19. Further, the Court held that “[...] *there has been a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Articles 6 [Right to a Fair Trial] and 13 [Right to an Effective Remedy] of the European Convention of Human Rights.*”
20. As to the implementation of its Judgment, the Court held that “[...] *the final and binding decision of the Municipal Court of Ferizaj must be executed by the competent authorities, in particular, the Government and the Privatization Agency of Kosovo, as the legal successor of KTA.*” Hence, as stated in paragraph 2 above, it is clear that the implementing authorities are the Government and the Privatization Agency of Kosovo.
21. The Court also held that “[...] *the Government and the Privatization Agency of Kosovo shall submit to the Court, in a six months period, information about the measures taken to enforce this Judgment.*”
22. The Judgment of the Court KI 08/09 of 17 December 2010 had immediate effect from the date of 17 December 2010, which is also the starting date for the six months time limit given to the Implementing Authorities for the execution of the Judgment.

23. The Constitutional Court now finds that the time limit given to the Implementing Authorities for the enforcement of its Judgment in case KI 08/09 has expired almost two years ago.
24. Pursuant to Article 116.1 [Legal Effect of Decisions] of the Constitution, *“Decisions of the Constitutional Court are binding on the judiciary and all persons and institutions of the Republic of Kosovo.”*
25. Furthermore, the Court recalls that, in accordance with Rule 63 (2) of the Rules of Procedure *“All constitutional organs as well as all courts and authorities are obligated to respect, to comply with and to enforce the decisions of the Constitutional Court within their competences established by the Constitution and law.”*
26. It follows from the aforementioned that the Implementing Authorities has not yet enforced the final and binding Judgment of this Court in Case No. KI 08/09 of 17 December 2010, contrary to Article 116.1 of the Constitution in conjunction with Rule 63 of the Rules of Procedure.
27. The Court found in its Judgment that the Government and PAK are responsible for the execution of the Constitutional Court’s Judgment and thus remedying the violation of the human rights of the Applicant. Therefore, by refraining for almost two years from taking necessary measures to comply with the final, enforceable Constitutional Court Judgment in the present case, there has thus been a violation by the Implementing Authorities as to their constitutional obligation to enforce the Constitutional Court’s Judgment and further violation of the Applicants’ rights.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 116 of the Constitution, Rule 56 and Rule 63 of the Rules of Procedure, on 18 October 2012, unanimously

## DECIDES

- I. To Publish the Decision on Non-execution because the Government and the Privatization Agency of Kosovo has not yet executed the Judgment of the Constitutional Court of the Republic of Kosovo Case No. KI 08/09 of 17 December 2010;
- II. This Decision shall be notified to the Parties, to the Privatization Agency of Kosovo and to the Government;
- III. In accordance with Article 20.4 of the Law and for the purpose of Rule 63 (6) of the Rules of Procedure, this Decision shall be published in the Official Gazette.

**President of the Constitutional Court**

Prof. Dr. Enver Hasani

