



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

Prishtina, 4 August 2017
Ref. No.:AGJ 1113/17

JUDGMENT

in

Case no. KI33/16

Applicant

Minire Zeka

**Constitutional review of Decision No. Decision AC. no. 4276/2014 of the
Court of Appeals of the Republic of Kosovo of 9 June 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral was submitted by Minire Zeka, from Prishtina (hereinafter: the Applicant).

Challenged Decision

2. The Applicant challenges Decision AC. no. 4276/2014 of the Court of Appeals of 9 June 2015, in connection with the non-execution of Decision No. 879/2007 of the Independent Oversight Board of Kosovo (hereinafter: the IOBK) of 4 September 2007.

Subject Matter

3. The subject matter is the constitutional review of the challenged which allegedly violated the Applicant's rights guaranteed by Articles 21 [General Principles], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], and 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), in conjunction with Articles 6 (Right to a fair trial), 13 (Right to an effective remedy) of the European Convention on Human Rights (hereinafter: the ECHR) and Article 7 of the Universal Declaration of Human Rights.

Legal Basis

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Articles 47 and 48 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 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 16 February 2016, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 14 March 2016, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur and the Review Panel composed of Judges Almiro Rodrigues, Snezhana Botusharova and Bekim Sejdiu.
7. On 6 April 2016, the Applicant sent a letter of urgency to the Court asking to speed-up the resolution of her case.
8. On 11 May 2016, the Applicant was notified about the registration of the Referral and was asked to provide evidence of service of the challenged decision of the Court of Appeals. On the same date, a copy of the referral was sent to the Court of Appeals and the Basic Court in Prishtina.
9. On 28 July 2016, the Court sent a copy of the Referral to the Ministry of Culture, Youth and Sport in Prishtina (hereinafter, the Ministry).
10. On 9 September 2016, Judge Robert Carolan resigned from the position of the Judge of the Constitutional Court

11. On 2 November 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur replacing Judge Robert Carolan. The composition of the Review Panel remained unchanged.
12. On 6 July 2017, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court to declare the Referral admissible and to find a violation.

Summary of facts

13. It transpires from the submitted documents that the Applicant was employed by the Ministry in the position of "Manager of Personnel" with coefficient nine (9).
14. On 2 February 2007, the Ministry (Decision 199/2007) reassigned the Applicant to the position of "Official Staff" in the Human Resources Office with coefficient eight (8).
15. The Applicant submitted a complaint to the IOBK against the abovementioned re-assignment Decision.
16. On 4 September 2007, the IOBK (Decision No. 879/2007) held that the *"Ministry of Culture, Youth, Sports and Non-Residential Matters, in the capacity of Employer, is OBLIGED that according to the employment contract of Employee Minire Zeka for 2007, pursuant to the conditions foreseen by Article 3.3 of Regulation no. 2001/36 and Article 4, item a) of the MPS/DCSA Administrative Direction no. 2003/02 on Contract Procedures, to reinstate the Appellant to her previous job position"*.
17. On several occasions, the Applicant informed the IOBK that the Ministry has not executed the final and binding Decision of the IOBK. The Applicant asked the IOBK to undertake the necessary legal measures in order to execute the final and binding Decision of the IOBK.
18. IOBK reported to the Prime-Minister of Kosovo that demotion and promotion of employees, including the Applicant, within the Ministry was done in breach of the Law on Civil Servants. The Ministry did not execute the IOBK Decision as it was required by the then applicable law in Kosovo.
19. The Applicant filed an appeal with the Committee on Human Rights, Gender Equality, Missing Persons and Petitions of Assembly of Kosovo, requesting implementation of the Decision of IOBK.
20. On 26 May 2009, the Committee on Human Rights recommended to the Applicant to *"address herself to the Municipal Court in Prishtina and request that it executes Decision no. 1764/2007, of 04 September 2007 of the Independent Oversight Board of Kosovo"*.
21. The Applicant filed with the Municipal Court in Prishtina a proposal for execution of the above-stated decision of the IOBK. There ensued a host of different decisions by the then Municipal and District courts in Prishtina, rejecting the proposal of the Applicant on various legal grounds such as being

untimely, unsuitable document of enforcement, lack of passive legitimacy of the Ministry or lack of subject-matter jurisdiction of the courts to implement the IOBK decisions.

22. On 11 May 2011, the Municipal Court (Decision E. no. 487/09) rejected the proposal of the Applicant for the execution of the IOBK Decision. The Municipal Court considered that, in accordance with the applicable law on administrative proceedings, the execution is carried out only on matters pertaining to monetary obligations and that, therefore, the proposal is not suitable for execution.
23. The Applicant filed with the District Court an appeal against the above-stated decision.
24. On 28 June 2011, the District Court (Decision Ac. no. 462/2011) rejected as ungrounded the appeal of the Applicant and upheld the impugned decision of the Municipal Court. The District Court adopted the rationale of the Municipal Court and further considered that, in accordance with the applicable law, documents are suitable for execution when they expressly provide for the name of the creditor, the executing debtor in addition to the object, type, sum and time for fulfillment of the obligation.
25. The Applicant then proposed to the State Prosecutor to file with the Supreme Court a request for protection of legality.
26. The State Prosecutor filed with the Supreme Court the request for protection of legality. The State Prosecutor considered that the challenged decisions were marred by erroneous application of the substantive law and that the matter must be referred back to the court of first instance for fresh consideration.
27. On 10 April 2014, the Supreme Court (Decision CML. no. 14/2013) approved the request for protection of legality, quashed both decisions of courts of lower instance and referred the matter back to the court of first instance for fresh consideration. The Supreme Court held that the courts of lower instance had erroneously applied the substantive law and that the IOBK decision was an enforceable judicial document.
28. On 24 June 2014, the Basic Court (Decision E. no. 487/2009) held that the IOBK decision was final and executable and that the Ministry is obliged to reinstate the Applicant into a job position of the same level and salary as she had before the reassignment.
29. The Ministry filed a complaint alleging that *“the proposal for allowing the execution was filed after the lapse of more than two years”*.
30. On 24 October 2014, the Basic Court (Decision E. no. 487/2009) approved the objection of the Ministry and rejected the proposal of the Applicant for the execution of the IOBK decision as untimely. The Basic Court held that the Applicant had filed the execution proposal after more than two years, whereas, in accordance with Article 313 of the Law No. 04/L-139 on Enforcement Procedure, the Applicant should have filed the proposal for execution within ninety (90) days.

31. The Applicant filed with the Court of Appeals an appeal against the above-stated decision of the Basic Court.
32. On 9 June 2015, the Court of Appeals (Decision AC. no. 4276/2014) rejected the appeal of the Applicant and upheld the impugned decision of the Basic Court. The Court of Appeals adopted the reasoning of the Basic Court and held that the latter rendered a fair and correct decision when it found that the Applicant's proposal was untimely.
33. The Applicant submitted a new proposal to the State Prosecutor to file a request for protection of legality against the above-stated decisions of the basic and the Court of Appeals.
34. On 19 October 2015, the State Prosecutor (Notification KMLC. No. 110/2015) informed the Applicant that it was unable to file a request for protection of legality because her proposal for execution of the IOBK decision was untimely.

Relevant Law

UNMIK REGULATION NO. 2001/36 ON THE KOSOVO CIVIL SERVICE

Section 11 Appeals

11.3 Where the Board is satisfied that the challenged decision breached the principles set out in section 2.1 of the present regulation, it shall order an appropriate remedy by written decision and order directed to the Permanent Secretary or chief executive officer of the employing authority concerned, who shall be responsible for effecting the employing authority's compliance with the order.

11.4 Where the employing authority concerned does not comply with the Board's decision and order, the Board shall report the matter to the Prime Minister and the Special Representative of the Secretary-General.

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

Section 11 Mobility

11.1 Where the needs of the Civil Service so require, civil servants may be reassigned to a different post at the same level and salary rate by the employing authority, provided the new post is appropriate to their qualifications and competence. Such reassignments may involve a move to a different location, provided that reasonable allowance is made for personal circumstances.

**Law No.03/L –192 ON INDEPENDENT OVERSIGHT BOARD FOR
CIVIL SERVICE OF KOSOVO**

Article 12

Appeals

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

Article 13

Decision of the Board

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

Article 15

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

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

Applicant's Allegations

35. The Applicant claims a violations of Articles 21 [General Principles], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], and 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 6 [Right to a fair trial], Article 13 [Right to an effective remedy] of the ECHR and Article 7 of the Universal Declaration of Human Rights.
36. The Applicant alleges that "the Basic Court in Prishtina rendered an unlawful decision, violating the provisions of the Constitution, namely those of Article 31 - right to fair and impartial trial and the right of parties for a public, fair, and impartial hearing related to their allegations, the Court acted in contradiction to, or violated the provisions of Article 6 of the European Convention of Human Rights for a fair trial, the right of every person to be fairly and publicly heard, within a reasonable time limit and in an impartial manner".
37. The Applicant also alleges that "the challenged decisions have severely violated the rights and fundamental freedoms of the [Applicant] by the mere fact that the [Applicant] was given no chance and opportunity to declare herself before the Court about her allegations, much more when we are dealing with a final decision of a public authority, which was rendered on 31 August 2006 by the Independent Oversight Board of Kosovo, which had to be executed within the time limit of 15 days, always based on the Law on the Independent Oversight

Board, by a high-ranking official, head, or responsible person of the institution, which had rendered the decision and how more than 10 (ten) years have passed and such decision remained nowhere by in letter. It is, therefore, clear that the [Applicant's] freedoms and fundamental rights were violated by not executing the decision".

38. Furthermore, the Applicant further alleges that *"the first instance court - the Basic Court in Prishtina and the second instance court – Court of Appeals of Kosovo, referred to the provision of Article 313 of the LEP – namely that the Creditor, Proposer Minire Zeka had allegedly filed the proposal for reasoning out of time, reasoning that the Creditor had been served with the Decision of the Independent Oversight Board on 04 September 2007, while filing the Proposal for Execution on 05 June 2007. These reasons are ungrounded because of the fact that the provision of Articles 13, 14, and 15 of the Law on the Independent Oversight Board of Kosovo Civil Service and UNMIK Regulation no. 2001/36, of 22 December 2001, which was applicable at that time, namely Article 11.3 and 11.4, had foreseen the time limits and the responsible persons having jurisdiction to execute such decisions."*
39. The Applicant requests the Court *"TO DETERMINE that the provisions of Articles 21, 24, 31 and 54 of the Constitution and Articles 6 and 13 of the ECHR and Article 7 of the Universal Declaration of Human Rights, were violated"* and *TO ANNUL the final Decision no. E. no. 487/2009 of the Basic Court in Prishtina of 24 October 2014, and Decision AC. no. 4276/2014 of the second instance court – Court of Appeals of Kosovo, of 09 June 2015"*.

Admissibility of the Referral

40. In respect to the Admissibility of the Referral, the Court refers to Article 46 [Admissibility] of the Law, which provides:

The Constitutional Court receives and processes a referral made in accordance with Article 113, Paragraph 7 of the Constitution, if it determines that all legal requirements have been met.

41. Thus the Court first examines whether the Applicant has fulfilled the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure.
42. In that respect, the Court also refers to Article 113 of the Constitution which establish:
- 1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.
[...]*
- 7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.*
43. The Court notes that the Applicant legitimately claims to be the victim because of the non-execution of the IOBK Decision. Thus, she is an authorized party.

44. The Court also notes that the Applicant has exhausted all legal remedies provided for by law and, due to lack of any other available effective remedy, she has addressed the Constitutional Court with the request for execution of Decision no. 879/2007 of the IOBK of 4 September 2007.

45. The Court also refers to Article 49 of the Law, which provides:

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.

46. The Court reiterates that the requirement for the submission of the Referral within the time limit of four (4) months does not apply in the case of the non-execution of the decisions by the public authority. The European Court of Human Rights (hereinafter: ECtHR) explicitly noted, in a similar situations, that the time limit rule does not apply where there is a refusal of the executive to comply with a specific decision. (See, *mutatis mutandis*, ECtHR case *Iatridis v. Greece*, No. 59493/00, Judgment of 19 October 2000. See also Constitutional case No. KI50/12, *Agush Lolluni*, Constitutional review of non-execution of the Decision No. 02 (207) 2010 of 4 October 2010, of the Independent Oversight Board of the Republic of Kosovo by the Municipality of Junik, Judgment of the Constitutional Court of 20 July 2012).

47. The Court also refers to Article 48 of the Law, which provides:

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.

48. The Court considers that the Applicant has accurately specified what rights, guaranteed by the Constitution and the Convention have allegedly been violated to her detriment, by the non-execution of the IOBK Decision.

49. Thus, the Court concludes that the Applicant is an authorized party; she has exhausted all legal remedies; she complied with the requirement of the legal deadline as a result of a continuing situation, she has accurately clarified the alleged violation of rights and freedoms, and she has indicated what concrete act of public authority is subject to challenge.

50. In sum, the Court considers that the admissibility requirements established by the Constitution and as further provided by the Law and foreseen by the Rules of Procedure have been met.

51. Therefore the Court, pursuant to Article 46 of the Law, determines that the Referral is admissible for consideration of its substantive legal aspects.

Substantive legal aspects of the Referral

52. While analyzing the Substantive legal aspects of the Referral, the Court will consider whether (i) the IOBK Decisions are final, binding and executable and

(ii) there is a violation of the Applicant's right to fair and impartial trial and to judicial protection of rights.

(i) Whether the IOBK Decisions are final, binding and executable

53. In that connection, the Court refers to Article 101 [Civil Service] of the Constitution, which establishes:

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.

54. The Court emphasizes that the IOBK is empowered by the Constitution to “ensure the respect of the rules and principles governing the civil service”. In that sense, the IOBK enjoy the prerogatives of a tribunal in the meaning of Article 6 of the European Convention of Human Rights (hereinafter, the Convention).

55. In fact, according to the ECtHR's case-law, “a ‘tribunal’ is characterized in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner (see, as the most recent authority, the judgment of 30 November 1987 in the case of *H v Belgium*, Series A no. 127, p. 34, § 50)”. See ECtHR case *Belilos v. Switzerland*, Application No. 10328/83), Judgment of 29 April 1988, § 64

56. The Court, also referring to its own case law, notes that the IOBK is an independent institution established by the Constitution, in accordance with Article 101 (2) of the Constitution. Therefore, all obligations arising from decisions of this institution, regarding the matters that are under its jurisdiction, produce legal effects for other relevant institutions, where the status of employees is regulated by the Law on Civil Service of the Republic of Kosovo. 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, for example, Constitutional Court case No. KI29/11, *Viktor Marku*, Judgment of 17 July 2012).

57. The Court reiterates that a decision of IOBK produces legal effects for the parties and, therefore, such a decision is a final administrative and executable decision. (See Constitutional Court cases No. KIo4/12, *Esat Kelmendi*, Judgment of 20 July 2012 and No. KI74/12, *Besa Qirezi*, Judgment of 4 April 2015 and the references cited therein).

58. Moreover, the Court considers that the relevant constitutional and legal provisions, in addition to the IOBK subject matter jurisdiction to settle labor disputes for civil servants, denote a legal obligation for the addressee institutions to respect and implement IOBK Decisions.

59. Therefore, the Court concludes that the IOBK Decisions are final, binding and executable.

(ii) Whether there is violation of the Applicant's right to a fair and impartial trial and to judicial protection of rights

60. The Court recalls that the Applicant claims a violations of her rights as guaranteed by Articles 21 [General Principles], 24 [Equality Before the Law], 31 [Right to Fair and Impartial Trial], and 54 [Judicial Protection of Rights] of the Constitution, in conjunction with Article 6 [Right to a fair trial] and Article 13 [Right to an effective remedy] of the ECHR.
61. In that respect, the Court will analyze the substantive aspects of the Referral, in relation to the Applicant's rights to fair and impartial Trial and to judicial protection of rights.
62. The Court notes that the Applicant's main allegation is that the delays and non-execution of the IOBK Decision violate her rights to a fair and impartial trial.
63. In this regard, the Court refers to Article 31 [Right to a Fair and Impartial Trial] of the Constitution, which establishes:
- 1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.*
- 2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law.*
64. In addition, paragraph 1 of Article 6 [Right to a fair trial] of the ECHR establishes:
- 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.*
65. The Court recalls that the Applicant approached several times the Ministry and the IOBK, requesting to have the IOBK final decision in her case executed. The Applicant has continuously made efforts in order to see her final decision executed.
66. In this regard, the Court reiterates that it would be meaningless if the legal system allowed that a final judicial decision remains ineffective in disfavor of one party. Therefore, the non-effectiveness of procedures and the non-implementation of the decisions produce effects that raise situations that are inconsistent with the principle of the Rule of Law (Article 7 of the Constitution), a principle that the Kosovo authorities are obliged to respect. (See ECtHR case *Romashov v. Ukraine*, No. 67534/01, Judgment of 25 July 2004).

67. The Court considers that the execution of a decision rendered by a court should be considered as an integral part of the right to a fair trial guaranteed by the abovementioned constitutional provisions. (See ECtHR case *Hornsby v. Greece*, No. 18357/91, Judgment of 19 March 1997, § 40). In that specific case, the ECtHR held that the Applicants should not have been deprived of the benefit of the execution of a final decision, which is in their favor.
68. Furthermore, the Court considers that no authority can justify the non-execution of decisions, intending to obtain revision and fresh review of the case. (See ECtHR case *Sovtransavto Holding v. Ukraine*, No. 48553/99, Judgment of 25 July 2002, para. 72, and ECtHR Judgment of 24 July 2003, *Ryabykh v. Russia*, No. 52854/99, § 52).
69. The Court emphasizes that it is not its duty to determine the most appropriate way for the regular courts and the Ministry to find efficient mechanisms of execution, within their competencies, in the sense of completely fulfilling the obligations they have under the Law and the Constitution. However, every individual is entitled to judicial protection in case of violations or denials of any rights guaranteed by the Constitution or by law (see Article 54 of the Constitution).
70. The Court also emphasizes that it already dealt with the constitutional review of the non-execution of IOBK decisions. In that Judgment, the Court held that there was a violation of Articles 31, 46 and 54 of the Constitution in conjunction with Articles 6 (1) and 13 as well as Article 1 of the Protocol No. 1 of the Convention, as a consequence of the non-execution. (See Constitutional Court Case No. KI72/14, *Besa Qirezi*, Judgment of 4 February 2015 and the references cited therein).
71. Therefore, the burden of the execution of the final decision of the IOBK in the case of the Applicant falls solely on the regular courts and the Ministry. Lack of implementation mechanisms of this institution should not in any way be a reason for denial of the Applicant's right to a fair and impartial trial, i.e. to have the final and binding decision executed in her favor.
72. As to the decisions of the Basic and Appeals Courts finding that the Applicant's proposal to implement the IOBK Decision untimely, the Court notes that, based on the IOBK Decision and the applicable law in Kosovo, the Ministry as the employer of the Applicant was, and still is, under a legal obligation to execute the final and binding Decision of the IOBK within fifteen days from the day it received the decision.
73. The Court notes that the Decision of the IOBK was rendered in the Applicant's favor on 4 September 2007, and that, at the material time the applicable legislation were UNMIK REGULATION No. 2001/36 on the Kosovo Civil Service and Administrative Direction No. 2003/2 on Implementing UNMIK REGULATION No. 2001/36 on the Kosovo Civil Service which entered into force on 22 December 2001 and 25 January 2003 respectively.

74. The Court also notes that both the Basic Court and the Court of Appeal ruled that the applicants' request to enforce the IOBK Decision was untimely because it was not filed within the deadline of ninety (90) days as stipulated by Article 313 of Law No. 04/L- 139 on Enforcement Procedure.
75. In this respect, the Court notes that Law No. 04/L-139 on Enforcement Procedure was promulgated on 3 January 2013, which means that in the applicant's case, the law in question was applied retroactively. The Applicant got the IOBK Decision in her favor on 4 September 2007 which denotes that she could not possibly have observed the legal deadline of ninety (90) days simply because that remedy was not at her avail at the material time. Therefore, the non-observance of the ninety (90) day legal deadline as stipulated by Article 313 of the Law No. 04/L-139 on Enforcement Procedure cannot be imputable to the Applicant.
76. The Court emphasizes that there occurred changes in legislation-as regards enforcement proceedings and the status of the IOBK- which were beyond the applicants' control; and for which, the responsibility for the enforcement of the IOBK Decision is-by virtue of law and fact-is attributable to the Basic Court, the Court of Appeals and the Ministry.
77. The Court also takes into account the fact that legislation regulating the IOBK position in the legal system of the Republic of Kosovo stipulates the obligation of the Employing Authority to enforce the final and binding decisions of the IOBK arising out of disputes in the Civil Service of Kosovo. (For more details on the responsibility of the Employing Authority to enforce the IOBK Decisions see Section 11.3 and 11.4 of the UNMIK REGULATION No. 2001/36 on the Kosovo Civil Service and Articles 12.4, 13 and 15 of the Law No. 03/L-192 on the Independent Oversight Board for Civil Service of Kosovo for Civil Service of Kosovo which superseded UNMIK REGULATION No. 2001/36).
78. Moreover, the Court refers to the case law of the ECtHR which specifies that a person who has obtained judgment against the State at the end of legal proceedings may not be expected to bring separate enforcement proceedings. (See ECtHR case *Burdov v. Russia* (no. 2), , no.33509/04, Judgment of 15 January 2009, § 68).
79. In fact, the burden to ensure compliance with a judgment against the State lies with the State authorities, starting from the date on which the judgment becomes binding and enforceable. (See ECtHR cases *Yavorivskaya v. Russia*, No. 34687/02, Judgment of 21 July 2005, § 25, and *Burdov v. Russia* (no. 2), *Ibidem*, § 69).
80. The Court is struck by the inconsistent approach of the regular courts and of the Ministry when noting that the Applicant, in spite of all her efforts for over ten years, has not enjoyed yet the rights recognized to her by the final Decision of the IOBK. In fact, that Decision, as a matter of fact and of law, should have been implemented by the Basic Court, the Court of Appeals and the Ministry within the time-limit set by the IOBK and the applicable law in Kosovo.

81. The Court also is struck by the fact that the Applicant's claim has not been taken seriously and sent back and forth, for over ten years, by the Ministry and the regular courts. The problem is additionally compounded when the courts dismissed the Applicant's proposal to execute the IOBK Decision, in spite of the Decision of the Supreme Court which held that the IOBK Decision is a final and executable document.
82. In this respect, the Court recalls that the Supreme Court found that "*such a legal stance of the lower instance courts on the basis of which the proposal of the Creditor for the enforcement of the Decision of IOBK mentioned above was rejected, with the reasoning that this Decision is not a suitable document for enforcement cannot be accepted as fair and lawful due to the reason that, based on the assessment of this court, on such an ascertained factual situation, the substantive law was erroneously applied when they found that the proposal for enforcement must be rejected; this is due to the reason that the Decision mentioned above presents an executive and enforceable title, in terms of Article 24, item (b) and 26 of the Law on Enforcement Procedure. Pursuant to this legal provision, it results without a doubt that for the application of the Decision of IOBK mentioned above, the Municipal Court in Prishtina is competent, since such a Decision presents an executive and enforceable judicial document. Due to these reasons, during the retrial, by accepting the Decision of IOBK mentioned above as an executive title, the first instance court shall allow the enforcement proposed by the Creditor, and shall continue the enforcement based on her proposal, by which the substantive law shall be applied correctly*".
83. Accordingly, the Court further emphasizes that the regular courts and the Ministry are under obligation to execute the Decision of the IOBK.
84. In addition, the Court refers to Article 54 [Judicial Protection of Rights] which provides:

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.
85. The Court also refers to Article 13 [Right to an effective remedy] of the ECHR which stipulates:

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
86. In that respect, the Court notes that the Applicant exhausted all legal remedies available regarding the execution of the IOBK Decision. However, despite her all efforts, that Decision was not executed either by the Ministry or by the regular courts.
87. Furthermore, the Court reiterates that "*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 Constitutional Court case No. KI50/12, Agush Lolluni, Judgment of 16 July 2012, par. 41. See also ECtHR case Pecevi v. Former Yugoslavian Republic of Macedonia, No. 21839/03, Judgment of 6 November 2008).

88. The Court further reiterates that the inexistence of legal remedies or of other effective mechanisms for the execution of the IOBK Decision affects the right guaranteed by Article 54 [Judicial Protection of Rights] of the Constitution, and Article 13 [Right to an effective remedy] of the ECHR. (See Constitutional Court case No. KI74/12, Besa Qirezi, Judgment of 4 April 2015).
89. Based on the foregoing considerations, the Court finds that a failure to execute final and binding Decision of the IOBK constitutes a violation of the right to a fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 (1) of the ECHR, as well as of the right to judicial protection of rights and the right to an effective remedy as guaranteed by Article 54 of the Constitution in connection with Article 13 of the ECHR.
90. Having found violation of articles 31 and 54 of the Constitution in connection with articles 6 (1) and 13 of the ECHR, the Court deems it unnecessary to review allegations on violation of article 21, 24 of the Constitution and Article 7 of the Universal Declaration on Human Rights.

Conclusion

91. The Court reiterates that in its case law on many occasions it has held that questions of fact and questions of interpretation and application of law are within the domain of the regular courts and other public authorities within the meaning of Article 113.7 of the Constitution and as such are a matter of legality, unless and in so far, such questions result in a breach of fundamental human rights and freedoms or create an unconstitutional situation. Thus, the Court is under constitutional obligation to ensure that in proceedings developed before public authorities the fundamental human rights and the supremacy of the Constitution have been respected.
92. In conclusion, the Court finds that the non-execution of the IOBK Decision by the Ministry and the regular courts-during a ten year period- for reinstating the Applicant to her previous position "Manager of Personnel", with coefficient nine (9) or alternatively reassigning her in another position of the same level and salary constitutes a violation of Articles 31 and 54 of the Constitution in connection with Articles 6 (1) and 13 of the ECHR. As a result of this violation, the Applicant was deprived from her right to be reinstated in a job position in accordance with the findings and injunction of the IOBK Decision rendered in her favor.
93. The Court finds that the fact that the IOBK Decision rendered in the Applicant's favor was not executed by the regular courts and the Ministry-within a time span of 10 years-have resulted in a breach of fundamental human rights and freedoms and non-observance of the constitutional procedure.

94. In sum, in accordance with the Rule 63 (5) of the Rules, the Decision of the IOBK No. 879/2007 of 4 September 2007 is to be implemented by the Ministry.

FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113 (7) of the Constitution, Articles 47 and 48 of the Law and Rules 56 (1) and 63 (5) of the Rules of Procedure, on 6 July 2017, unanimously

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been a breach 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 HOLD that there has been a violation of Article 54 [Judicial Protection of Rights] of the Constitution in conjunction with Article 13 [Right to an effective remedy] of the ECHR;
- IV. TO DECLARE INVALID Decision of the Basic Court in Prishtina no. E. no. 487/2009 of 24 October 2014; and Decision of the Court of Appeals AC. no. 4276/2014 of 9 June 2015;
- V. TO ORDER the Ministry of Culture, Youth, Sports and Non-Resident Matters, to implement the IOBK Decision No. 879/2007 of 4 September 2007 rendered in the Applicant's favor, in accordance with *ratio decidendi* of this Judgment;
- VI. TO ORDER the Ministry of Culture, Youth, Sports and Non-Residential Matters, 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;
- VII. TO REMAIN seized of the matter pending compliance with that order;
- VIII. TO NOTIFY this Judgment to the Parties;
- IX. TO PUBLISH this Judgment, in accordance with Article 20 (4) of the Law, in the Official Gazette;
- X. TO DECLARE this Judgment effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Arta Rama-Hajrizi