



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

Prishtina, 26 January 2015
Ref. no.:AGJ761/15

JUDGMENT

in

Case No. KI72/14

Applicant

Besa Qirezi

Constitutional Review
of the Decision, CA. no. 712/2013 of Court of Appeal of Kosovo
dated 21 October 2013

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 Ms. Besa Qirezi with residence in Vushtrri.

Challenged decision

2. The challenged Decision is Decision, CA. no 712/2013 of the Court of Appeal, dated 21 October 2013, which was served on the Applicant on 16 December 2013.

Subject matter

3. The subject matter is the constitutional review of the Decision of the Court of Appeal (CA. no 712/2013 dated 21 October 2013), by which the Decision of the Basic Court in Prishtina (E. No. 2668/2012 dated 11 February 2013) rendered in the execution procedure regarding compensation of the unpaid salaries by the Ministry for Communities and Return (hereinafter: the MCR) based on Decision (A02 (114) 2008, dated 25 May 2009) of the Independent Oversight Board of Kosovo (hereinafter: IOBK) was annulled.
4. In this regard, the Applicant alleges that the Decision of the Court of Appeal (CA. no 712/2013 dated 21 October 2013) violated her rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial] of the European Convention on Human Rights (hereinafter: the ECHR) and Article 1 [Protection of Property] of Protocol No. 1 to the ECHR.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

Proceedings before the Court

6. On 14 April 2014, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 6 May 2014, the President by Decision GJR. KI72/14 appointed Judge Altay Suroy as Judge Rapporteur. On the same date, the President by Decision KSH. KI72/14 appointed the Review Panel composed of Judges: Robert Carolan (presiding), Ivan Čukalović and Enver Hasani.
8. On 16 May 2014, the Court informed the Applicant of the registration of the Referral and sent a copy of the Referral to the Court of Appeal of Kosovo and the MCR.
9. On 18 September 2014, the President amended Decision (KSH.KI 72/14 dated 6 May 2014) and appointed the Review Panel composed of Judges: Snezhana Botusharova (presiding), Ivan Čukalović and Enver Hasani.

10. On 9 December 2014, 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 Facts

11. The Applicant was employed in the MCR as an Officer for Gender Equality based on a contract for determined period from 1 June 2007 until 30 May 2009.
12. On 22 January 2008 the Disciplinary Committee within the MCR decided to impose the disciplinary measure: the termination of the employment contract of the Applicant with the MCR (hereinafter: Decision of the Disciplinary Committee).
13. On 24 January 2008 the MCR based on its Decision No. 108 terminated the working relationship (hereinafter: the Decision on termination of the working relationship) with the Applicant.

Administrative procedure

14. On 31 March 2008, following the Applicant's appeal against the Decision of the Disciplinary Committee and the Decision on termination of the working relationship, the Commission for Appeals and Submissions within the MCR based on its Decision, No. 484/1 (hereinafter: the Decision of the Commission for Appeals) rejected the Applicant's appeal.
15. On 11 April 2008, the Applicant filed an appeal with the Independent Oversight Board for Civil Service of Kosovo (hereinafter: the IOBK) against the Decision of the Disciplinary Committee, the Decision on termination of the working relationship and Decision of the Commission for Appeals.
16. On 25 May 2009, the IOBK by Decision A 02 (114) 2008 (hereinafter: the IOBK Decision) decided as following:

I. APPROVED as grounded the Appeal No. 02 114/08 of 11.04.2008 of the Appellant Ms. Besa Qirezi.

II. ANNULLED: Decision of Employer No. 484/1 of 31.03.2008 [the Decision of the Commission for Appeals], Decision No. 108 of 24.01.2008 [the Decision on termination of the working relationship] and Decision of the Disciplinary Committee of 22.01.2008 [Decision of the Disciplinary Committee].

III. ARE OBLIGED: Employer shall within 15 days, from the day of receipt of this Decision, to return the Appellant to her working place with all rights arising from the employment relationship and renew the employment contract in compliance with procedure as established in the Administrative Instruction No. MPS/DCSA 2003/02.

IV. Responsible for the Enforcement of this Decision is the Permanent Secretary of the Ministry for Communities and Return.

V. The Independent Oversight Board of Kosovo shall be informed on the measures taken to enforce this Decision.

VI. In case of non-enforcement of this Decision, the Independent Oversight Board of Kosovo shall inform the Kosovo Assembly, which shall address the report to the Prime Minister of Kosovo in accordance with Article 11, paragraph 11.4 of the Regulation No. 2001/36 on the Civil Service of Kosovo, amended by regulation No. 2008/12.”

17. On 6 July 2009, the Applicant informed the IOBK that the MCR did not execute the Decision of the IOBK.
18. On an unspecified date, against the Decision of the IOBK, the MCR had submitted a claim with the Supreme Court.
19. On 24 March 2010, the Supreme Court by Decision, A. No 472/2009 declared itself incompetent to decide on the claim submitted by MCR. The Supreme Court referred the case to the Municipal Court in Prishtina as the competent court in this matter.
20. The Supreme Court in its aforementioned Decision held that:

”As per Article 9, paragraph 1 item 1 of Law on Administrative Conflicts, it is provided that administrative conflict cannot be conducted for issues for which a court defence outside the administrative conflict is ensured.

The Supreme Court evaluates that in present case it is about a dispute arising from employment relationship, for which review according to Article 26, paragraph 1 item 7 of the Law on Regular Courts (Official Gazette of Kosovo 21/78) competent is the Municipal Court.

From what was said above, the Supreme Court as per Article 60 of the Law on Administrative Conflicts (LAC) in conjunction with Article 15 para.1 of Law on Contested Procedure, decided as in the in enacting clause of this Decision.”

21. On 17 June 2010, the Applicant informed the Prime Minister on the non-execution of the IOBK Decision and also requested him to undertake the necessary measures for the execution of the IOBK Decision. This Applicant’s request was referred to the Assembly of Kosovo on 7 July 2010.
22. On 7 September 2010, the Chair of the Committee for Human Rights, Gender Equality, Missing Persons and Petitions of the Assembly of Kosovo in its Conclusion addressed to the MCR, requested the MCR to undertake the necessary measures for the execution of the IOBK Decision.

Contested Procedure

23. In an attempt to recover her employment relationship it appears that the Applicant was involved in contested proceedings as a claimant. Furthermore, as a result of the above-mentioned Decision of the Supreme Court a contested procedure was also initiated with MCR as a claimant. These two sets of contested proceedings are however not relevant to the allegations made in this Referral.

Decision of MCR on returning the Applicant to her working place

24. On 21 November 2012, the Secretary General of the MCR with the purpose of enforcement of the IOBK Decision rendered the Decision to return the Applicant to a job position in the MCR, but in a different position that of the Officer for receiving requests in the Office for Public Communication within MCR.
25. In the same Decision, the MCR further decided that the compensation for the Applicant will be realized as following: ” [...] *compensation of the personal income in monthly salary is made from 22.01.2008, the date when her employment relationship was terminated by the Disciplinary Commission of MCR until 31.05.2009, the date when her employment contract No. 226/2007 expired.[...]*”
26. On 3 December 2012, the Applicant returned to her working place.
27. On 17 December 2012, the General Secretary of the MCR rendered a Decision for the transfer of the Applicant to the Division for Human Rights within MCR in her previous job position of the Officer for Gender Equality.

Execution procedure

28. As a result of the Decision of the MCR on compensation of the salaries only for the period from the date the Applicant's employment relationship was terminated until the date when the Applicant's contract expired (22 January 2008 until 31 May 2009), on 26 December 2012, the Applicant filed a proposal for the execution of the unpaid salaries for the period 1 June 2009, the date when the expiration of her previous employment contract took effect until 3 December 2012, the date of her return to the working place in the MCR.
29. On 11 February 2013, the Basic Court in Prishtina by Decision, E. No. 2668/2012 decided on the execution of the Applicant's proposal for the unpaid salaries for the period between 1 June 2009 and 3 December 2012.
30. On 6 March 2013, based on the MCR's objection against Decision of the Basic Court in Prishtina, (E. No. 2668/2012 dated 11 February 2013), the Basic Court in Prishtina rejected in its entirety the objection filed by the MCR.
31. Consequently, the MCR filed an appeal with the Court of Appeal against the Decision of the Basic Court in Prishtina (E. No. 2668/2012 dated 6 March 2013).
32. On 21 October 2013, the Court of Appeal by Decision, CA. No. 712/2013 approved the appeal filed by the MCR, in its capacity as a debtor and rejected the Applicant's proposal for the execution of the Decision of the IOBK.
33. The Court of Appeal, in its aforementioned Decision held that:

“From case file it results that: The procedure of execution for returning the creditor to work according to decision of Independent Oversight Board of

Kosovo A 02 (114) 2008 of 25.05.2009 ended on 3.12.2012 according to decision of Ministry for Community and Return no. 2517 of 21.11.2012, whereas the creditor filed the proposal for compensation after finalization of execution procedure, thus on 26.12.2012.

The first instance court determined execution by its Ruling E.no.2668/2012 of 11.02.2013. Against this Ruling the debtor filed an objection whereas the first instance court decided as in the enacting clause of the appealed ruling, by evaluating that there are no legal obstacles for implementation of ruling on determination of execution, but previously has not reviewed if the proposal for execution was within legal time-limit.

The legal stance of the first instance court given in the appealed ruling, the panel evaluates as incorrect and not based on law, because as per Article 294 para.2 of Law on Execution Procedure ("Official Gazette of the Republic of Kosovo" no.33/2008) hereinafter LEP is determined: "Proposal for compensation can be attached to the proposal for execution, or can be filed later on up to the finalization of execution procedure." In present case the procedure of execution for returning of creditor to work ended on 03.12.2012, whereas the proposal of creditor filed on 26.02.2012 [26.12.2012], which means after legal expiry determined by the abovementioned provision of LEP."

Applicant's allegations

34. As mentioned above, the Applicant alleges that the Decision of the Court of Appeal (CA. no 712/2013 dated 21 October 2013) violates her rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 54 [Judicial Protection of Rights] of the Constitution and Article 6 [Right to a fair trial] of the ECHR and Article 1 [Protection of Property] of Protocol No. 1 to the ECHR.
35. Regarding the allegation of violation of Article 24 [Equality Before the Law] of the Constitution, the Applicant argues that *"the Ministry for Communities and Return did not execute in entirety the decision of IOBCS [IOBK], because it compensated to me only the salaries for the period during which I had the contract, whereas for the period as long as I was unemployed, it was justified that there are no "financial means." How it can be possible that for me MCR had not monetary means for compensation of lost salaries, whereas for my colleague [...], who was dismissed and returned to work at the same time with me, was given the compensation?. To me unjustly was denied the right of receiving the lost salaries, meanwhile to my colleague compensated the lost salaries. This proves the best way of unequal treatment of individuals."*
36. Regarding the allegation of violation of Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the ECHR, the Applicant claims that:

"[...] according to ECHR practice, that non-execution matters of final decisions res judicata present continuous violations because a right gained should not remain only in paper, or partly implemented, but it should be implemented also in practice, see Judgment of Constitutional Court KI129/11, parts quoted by Strasbourg Court.

It is not my fault that MCR does not have money to compensate me. IOB made a decision by which to me should be compensated the lost salaries from the day of my dismissal from work until my return to work. The state should find mechanisms to provide implementation of public authorities' decisions, why should I be victim of absence of these mechanisms?"

37. Furthermore, as said above, the Applicant also alleges violation of Article 1 [Protection of Property] of Protocol No. 1 to the ECHR. In this regard, the Applicant alleges that: *"As a result of non-execution in entirety of IOB decisions to me the gained rights were denied, since my expectations were legitimate, in this case these were violated."*
38. The Applicant concludes by requesting the Court as follows: *"[...] referring to Judgments of Constitutional Court of the Republic of Kosovo: KI72/12, KI129/11, KI04/12 and facts that were mentioned, I request from Constitutional Court to decide based on merits of my referral, and abrogate the Decision of Court of Appeal CA.no.712/2013 of 21.10.2013."*

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

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

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."*

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."

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

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 date of the service of the 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]

“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.”

Admissibility of the Referral

39. The Court first examines whether the Applicant has fulfilled the admissibility requirements as laid down in the Constitution and as further specified in the Law and the Rules of Procedure.

40. In that respect, the Court refers to Article 113.7 of the Constitution which provides:

7. Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhausting all legal remedies provided by law.

41. The Court also refers to Article 48 and 49 of the Law, which provide that:

48. *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.*

49. *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.*

42. The Court also takes into account Rule 36 (1) of the Rules of Procedure, which foresees:

The Court may consider a referral if:

(a) the referral is filed by an authorized party, or

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted, or

(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant, or

(d) the referral is prima facie justified or not manifestly ill-founded.

43. Regarding the exhaustion of legal remedies, the Court notes that the Applicant has exhausted all legal remedies within the employment institution and with her appeal in the IOBK, which decision is final in the administrative procedure. Equally, she has used the last legal remedy in the executive procedure, which in the present case is the Decision, Ca. No. 712/ 2013 of the Court of Appeal, dated 21 October 2013, 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.
44. The Court further notes that, on 16 December 2013, the Applicant was served with the challenged decision and, on 14 April 2014, filed the Referral with the Court.
45. The Court also notes that the Applicant has specified what constitutional rights she claims to have allegedly been violated and she challenges the concrete decision, Decision of the Court of Appeal (Ca. No. 712/ 2013 dated 21 October 2013).
46. The Court further notes that the Applicant may legitimately claim to be victim of the annulment of the Decision of the Municipal Court in Prishtina (E. No. 2668/2012 dated 6 March 2013) by the Court of Appeal, which was in her favour.
47. The Court considers that the Applicant is an authorized party, has exhausted all legal remedies, submitted the Referral within the legal time limit, and that she has accurately clarified the alleged violation of the rights and freedoms and referred to the decision she challenges.
48. Therefore, the Court concludes that the Referral meets all the requirements for admissibility.

Merits of the case

49. The Applicant mainly alleges a violation of her right to Fair and Impartial Trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR, and her right to Protection of Property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol No.1 to the ECHR.

50. The Court reviews the merits of each of the Applicant's allegations.

51. The Applicant complains that her right to fair and impartial trial as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR was violated.

52. 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.

53. In addition, Article 6 (1) 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.

54. The Court refers to Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which establishes:

Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.

55. The European Court of Human Rights (hereinafter: the ECtHR) has quite often stressed the prominent place of the right to a fair trial in a democratic society. (See, *Perez v. France*, No. 47281/99, ECtHR, Judgment of 12 February 2004).

56. As mentioned in the facts, two different sets of contested proceedings were initiated by the MCR and the Applicant on the other side. In this regard, the Court considers that the contested proceedings do not fall within the scope of the Referral and therefore it will only review the proceedings related to the subject matter of the Referral.

57. In this respect, the Court notes that the Applicant challenges the Decision, CA. No. 712/2013 of the Court of Appeal, dated 21 October 2013, whereby the Decision of the Municipal Court in Prishtina (E. No. 2668/2012 dated 6 March 2013) on execution of the Applicant's proposal for compensation of unpaid salaries was annulled.

58. In this regard, the Court observes that, on 25 May 2009, the IOBK (Decision No. A 02 (114) 2008) approved the appeal of the Applicant, requesting from the MCR that, within the time limit of fifteen (15) days from the date the decision was served on them, to return the Applicant to her job position with all rights

and obligations that derive from the employment relationship and renew the employment contract in compliance with procedure as established in the Administrative Instruction No. MPS/DCSA 2003/02. 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.

59. The Court notes that following the IOBK Decision, the MCR did not return the Applicant to her previous job position within the time limit foreseen in the IOBK Decision.
60. Only on 21 November 2012, more than three (3) years after the IOBK Decision was rendered, the MCR by Decision of its Secretary General decided to return the Applicant to a job position in the MCR and as a result, on 3 December 2012, the Applicant returned to her job position in the MCR.
61. In this respect, the Court referring to its own case law 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 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 Case KI129/11, Applicant *Viktor Marku*, Constitutional Court, Judgment of 17 July 2012).
62. However, regarding the compensation of unpaid salaries, the MCR in its Decision of 11 November 2012 decided that: "*[...] compensation of the personal income in monthly salary is made from 22.01.2008, the date when her employment relationship was terminated by the Disciplinary Commission of MCR until 31.05.2009, the date when her employment contract No. 226/2007 expired.[...]*". Thus meaning that the MCR decided not to compensate the Applicant for the period of 1 June 2009, the date when the expiration of her previous employment contract took effect until 3 December 2012, the date of her return to her working place in the MCR. As such the Decision of MCR is not in compliance with the IOBK Decision.
63. The Court further observes that as a result of the non-execution of the Decision of the IOBK in its entirety, the Applicant decided to initiate an execution procedure and propose the compensation of the unpaid salaries for the aforementioned period from 1 June 2009 until 3 December 2012. The Basic Court in Prishtina, by its Decision (E. No. 2668/2012 dated 11 February 2013) and based on the IOBK Decisions approved the Applicant's proposal for compensation of unpaid salaries for the aforementioned period.
64. However, as a result of the appeal filed by the MCR against the Decision of the Basic Court, the Court of Appeal approved the appeal filed by the MCR and rejected the Applicant's proposal for the execution of the IOBK Decision,

respectively the proposal for compensation of the unpaid salaries and replaced the IOBK Decision with its own Decision.

65. In this respect, the Court wishes to clarify that it is not its task to consider whether the Court of Appeal with its Decision correctly interpreted the applicable law but shall review and consider whether the Court by its aforementioned Decision infringed individual rights and freedoms protected by the Constitution (constitutionality).
66. As a result of the annulment of the Decision of the Basic Court in Prishtina by Decision of the Court of Appeal (CA.No.712/2013 dated 21 October 2013), the Applicant alleges that the non-execution of the IOBK Decision in its entirety, respectively the non-compensation of the unpaid salaries for the aforementioned period constitutes violation of Article 31 of the Constitution and Article 6 of the ECHR.
67. In this regard, the Court referring to its case law (See among others Constitutional Court Case KI04/12 Applicant *Esat Kelmendi*, Judgment dated 20 July 2012), reiterates that a decision issued by an administrative body established by law, produces legal effects for the parties and, therefore, such a decision is a final administrative and executable decision.
68. Based on the above, the Court confirms that the final decision, respectively the decision considered to be subject of the execution procedure is the IOBK Decision. The IOBK Decision obliged the MCR to return the Applicant to her previous working place with all rights deriving from the employment relationship and renew the employment contract, which expired on 31 May 2009. Therefore, the Court concludes that the IOBK Decision was final and executable. This implies that the Applicant is entitled to be reinstated to her previous working place with the MCR and to recover all unpaid salaries from the moment of her dismissal until her return to the previous working place.
69. In addition, 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*, Case *Hornsby v. Greece*, ECtHR, Judgment of 19 March 1997, paras. 40-41, see also case KI112/12 Applicant *Adem Meta*, Constitutional Court, Judgment of 5 July 2013).
70. It follows from the above that the Court of Appeal, when annulling the Decision of the Basic Court in Prishtina to execute a final and executable administrative IOBK decision, violated the Applicant's right to a fair and impartial trial, as guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.
71. The Court also refers to Article 54 of the Constitution and Article 13 of the ECHR.
72. 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.

73. 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.

74. In that respect, the Court notes that the Applicant exhausted all legal remedies available regarding the execution of the IOBK Decision. However, despite her efforts, that Decision was not executed either by the MCC, or by the Court of Appeals.

75. The Court 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 of the ECHR.

76. 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 Constitutional Court case KI50/12, Applicant *Agush Lolluni*, Judgment of 16 July 2012, par. 41. See also *Pecevi v. Former Yugoslavian Republic of Macedonia*, No. 21839/03, ECtHR, Judgment of 6 November 2008).

77. Therefore, the Court concludes that the impossibility to bring any further legal actions for the non-execution of the IOBK Decision also constitutes a violation of Article 54 of the Constitution and Article 13 of ECHR.

78. The Applicant also alleges a violation of Article 46 [Protection of Property] of the Constitution and Article 1 of Protocol No.1 of the ECHR.

79. The Applicant argues that: *“As a result of non-execution in entirety of IOB decision my gained rights were denied, since my expectations were legitimate, in this case these were violated.”*

80. Article 46 [Protection of Property] of the Constitution establishes:

- 1. The right to own property is guaranteed.*
- 2. Use of property is regulated by law in accordance with the public interest.*
- 3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate*

compensation to the person or persons whose property has been expropriated.

4. *Disputes arising from an act of the Republic of Kosovo or a public authority of the Republic of Kosovo that is alleged to constitute an expropriation shall be settled by a competent court.*

81. Article 1 of Protocol No. 1 of ECHR provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

82. As stated above, the Court recalls that the IOBK Decision was final and executable.
83. Therefore, the Constitutional Court considers that the Applicant has a “legitimate expectation” to receive the compensation for the unpaid salaries for the period as mentioned above in accordance with the IOBK Decision, which was final and executable. (See *mutatis mutandis* Case *Pressos Compania Naviera SA and Others v. Belgium*, ECtHR, Judgment of 20 November 1995, para. 31).
84. Such legitimate expectation is also guaranteed by Article 1 of Protocol No. 1 to the Convention. (See *mutatis mutandis* Case *Gratzinger and Gratzingerova v. the Czech Republic*, No. 39794/98, ECtHR, Decision of 10 July 2002, para 73).
85. For the foregoing reasons, and based on the above conclusion that the Applicant’s right to a fair and impartial trial was violated, the Court further concludes that non execution of the IOBK Decision in relation to the unpaid salaries constitutes also a violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 to the ECHR.
86. In addition, the Applicant also alleges a violation of Article 24 [Equality before the Law] of the Constitution.
87. Ultimately, the Court does not consider it necessary to deal further with the allegation of a violation of Article 24 of the Constitution, in particular as it has found violations of relevant Articles 31, 54 and 46 of the Constitution and Articles 6 and 13 of the ECHR and Article 1 of Protocol No. 1 to the ECHR.

Conclusion

88. In conclusion, the Court finds that the non-execution of the IOBK Decision in its entirety by the competent administrative authorities and the regular courts for the part of compensation of unpaid salaries constitutes a violation of Articles 31 and 54 of the Constitution and Articles 6 and 13 of the ECHR. As a

result of this violation, the Applicant was deprived from her right to receive compensation for the unpaid salaries. Thus, the right to protection of property guaranteed by Article 46 of the Constitution and Article 1 of Protocol No. 1 to the ECHR was violated. Therefore, the Decision of the IOBK for the part of compensation of the unpaid salaries from the moment of her dismissal until the moment of her return to the working place in the MCR, namely for the period from 1 June 2009 until 3 December 2012 is still to be executed.

89. The Court further reiterates that this conclusion only relates to the alleged Constitutional violations. In fact, the conclusion does not relate to whether the decision of the regular courts or the IOBK Decision correctly interprets the applicable law, because the Constitutional Court cannot act as a court of fourth instance with respect to what is the proper interpretation of the law.
90. In sum, in accordance with the Rule 74 (1) of the Rules, the Decision of the Court of Appeal (CA. no 712/2013 dated 21 October 2013) is invalid and the case is remanded to the Court of Appeal for reconsideration.

FOR THESE REASONS

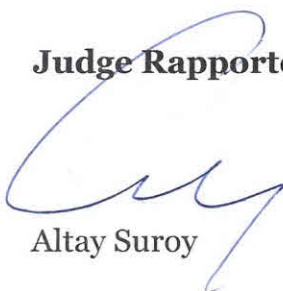
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rules 56 (a) and 74 (1) of the Rules of Procedure, unanimously, on its session held on 9 December 2014,

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been violation of Article 31 of the Constitution, in conjunction with Article 6 of the ECHR;
- III. TO HOLD that there has been violation of Article 54 of the Constitution, in conjunction with Article 13 of the ECHR;
- IV. TO HOLD that there has been violation of Article 46 of the Constitution in conjunction with Article 1 of Protocol No. 1 to the ECHR;
- V. TO DECLARE INVALID the Decision of the Court of Appeal, CA.No.712/2013 dated 21 October 2013, AND REMAND the case to the to the Court of Appeal for reconsideration in conformity with the Judgment of the Constitutional Court, namely for taking into account that the IOBK Decision must be executed in its entirety;
- VI. TO REMIND the competent authorities of their obligations under Article 116 [Legal Effect of Decisions] of the Constitution and Rule 63 [Enforcement of Decisions] of the Court's Rules of Procedure;
- VII. TO ORDER the Court of Appeal, 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;
- VIII. TO NOTIFY this Judgment to the Parties;
- IX. TO PUBLISH this Judgment in the Official Gazette, in accordance with Article 20 (4) of the Law;
- X. TO DECLARE this Judgment effective immediately.

Judge Rapporteur

Altay Suroy



President of the Constitutional Court

Prof. Dr. Enver Hasani

