



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, on 27 November 2017
Ref. No.: AGJ 1156/17

JUDGMENT

in

Case No. KI10/17

Applicant

Sadije Shabani

Constitutional review of non-execution of Decision No. 112-158/1 of the Appeals Commission for Civil Servants of the Municipality of Skenderaj, of 12 June 2008

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 Sadije Shabani (hereinafter: the Applicant), residing in the village Tërnavc, municipality of Skenderaj, represented by Safet Voca, a lawyer.

Challenged decision

2. The Applicant challenges the constitutionality of the non-execution of Decision No. 112-158/1 of the Appeals Commission for Civil Servants of the Municipality of Skenderaj (hereinafter: ACCS-MA in Skenderaj), of 12 June 2008, by the Municipality of Skenderaj and by the regular courts in execution proceedings.

Subject matter

3. The subject matter is the constitutional review regarding the refusal of the Municipality of Skenderaj and the regular courts in execution proceedings to execute Decision No. 112-158/1, of the ACCS-MA in Skenderaj, of 12 June 2008. As a result of the non-execution of the said decision, the Applicant alleges a violation of her rights guaranteed by Article 24 [Equality Before the Law], Article 31 [Right to Fair and Impartial Trial], Article 46 [Protection of Property] Article 49 [Right to Work and Exercise Profession] and 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] in conjunction with Article 13 [Right to an effective remedy] of the European Convention on Human Rights (hereinafter: the Convention).

Legal basis

4. The Referral is based on Article 113, paragraph 7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 of Law No. 03/L-121 on the 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 8 February 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 20 March 2017, the President of the Court appointed Judge Selvete Gërxhaliu-Krasniqi as Judge Rapporteur and the Review Panel composed of Judges: Altay Suroy (Presiding), Snezhana Botusharova and Gresa Caka-Nimani.
7. On 11 April 2017, the Court notified the Applicant's authorized representative about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
8. On 23 April 2017, the Applicant submitted additional arguments to the Court.
9. On 13 November 2017, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the full Court to declare the Referral admissible and find a violation of Article 31 of the Constitution in conjunction with Article 6 of the Convention.

Summary of facts

Administrative proceedings

10. The Applicant from 2002 to 2007 worked as a teacher of the subject Civic Education and Human Rights at "Hamëz Jashari" high school in Skenderaj.
11. In October 2007, the Municipal Directorate of Education of the Municipality of Skenderaj (hereinafter: MDE in Skenderaj) terminated the Applicant's employment relationship.
12. On 20 November 2007, the Applicant filed an appeal with the Appeals Commission of the Municipality of Skenderaj, because the MDE in Skenderaj did not reply to her objection to the non-extension of her employment contract.
13. On 19 December 2007, the Appeals Commission of the Municipality of Skenderaj (Decision No. 112-567) rejected the Applicant's appeal as ungrounded, based on the case file and following the recommendation of the director of the high school "Hamëz Jashari" No. 46, of 23 October 2007, which stated that *"...only 10 class hours of the subject of civic education are stipulated for academic year 2007/08 and the teacher of history who had long experience was appointed to teach those 10 classes"*.
14. On 14 January 2008, the Applicant filed an appeal (Appeal No. 70/08) with the Independent Oversight Board of Kosovo (hereinafter: the IOBK) against the Decision of 19 December 2007 of the Appeals Commission of the Municipality of Skenderaj.
15. On 11 March 2008, the IOBK (Decision No. 499/2008) decided: *"I. Appeal No. 70/08, of 14 January 2008, submitted by Mrs. Sadije Shabani is partly approved, while Decision No. 112-567, of 19 December 2007, is annulled and the case is remanded to the Appeals Commission of MA of Skenderaj for reconsideration. II. The Board of IOBK ascertained EX OFFICIO that during the establishment of the Appeals Commission, the principles of Administrative Order 2003/2, Article 33.2, have been violated and there is conflict of interest regarding the issuance of the Decision and the establishment of the Commission (Chairperson), pursuant to Article 29 - 29.3 of Administrative Order 2003/2."*
16. On 26 March 2008, the Applicant, based on the IOBK findings, filed an appeal with the ACCS-MA in Skenderaj for reinstatement to work.
17. On 12 June 2008, ACCS-MA in Skenderaj (Decision No. 112-158/1), approved the Applicant's appeal and obliged the MDE in Skenderaj, as follows: *"II. The Municipal Education Directorate is obliged to systemize Mrs. Sadije Shabani in the service of administration."* This decision became final, 15 (fifteen) days after its issuance, as no appeal had been filed against it (hereinafter: the final decision).

18. On an unspecified date, the Applicant filed a claim with the Municipal Court in Skenderaj against the MDE of Skenderaj because of the non-execution of the final decision for reinstatement to work and compensation of unpaid salaries.
19. On 14 November 2008, the Municipal Court in Skenderaj (Decision C. No. 168/08) rejected the Applicant's claim, reasoning that, according to Regulation No. 2001/36 on the Civil Service of Kosovo, competent to decide on this legal issue is the IOBK.
20. The Applicant claims that she notified the IOBK several times about non-execution of the final decision but never received a response from it.

Execution proceedings

21. On 11 December 2008, the Applicant, in a capacity of the creditor, submitted a proposal for execution of the final decision to the Municipal Court in Skenderaj.
22. On 8 September 2009, the Municipal Court in Skenderaj (Decision E. No. 46/2009) approved the Applicant's proposal for execution of the final decision.
23. The MDE in Skenderaj, in a capacity of the debtor, filed an objection with the second instance of the Municipal Court of Skenderaj against the Decision of 8 September 2009 of the first instance of the same court.
24. On 15 October 2009, the second instance of the Municipal Court in Skenderaj (Decision E. No. 46/2009) rejected as ungrounded the objection of MDE in Skenderaj and confirmed the decision of 8 September 2009 of the first instance. The Decision provides: *"The creditor (the Applicant) submitted a proposal based on execution document - final Decision No. 112-158/1, of 12 June 2008, issued by the Appeals Commission of the Civil Servants of the Directorate for Administration and Personnel of MA of Skenderaj."*
25. The MDE in Skenderaj, within the legal deadline, filed an appeal with the District Court in Mitrovica against the Decision of 15 October 2009 of the second instance of the Municipal Court of Skenderaj.
26. On 19 April 2010, the MDE in Skenderaj complained to the Office of the Disciplinary Counsel because the judge of the case was delaying the submission of the case file E. No. 46/2009 of the Municipal Court of Skenderaj to the District Court in Mitrovica.
27. On 27 May 2010, the Office of the Disciplinary Counsel notified the MDE in Skenderaj that her appeal together with the case file were sent to the District Court in Mitrovica on 21 April 2010, but that the District Court in Mitrovica, on 22 April 2010, remanded the case temporarily to the Municipal Court of Skenderaj, until the creation of normal working conditions at the District Court in Mitrovica.
28. On 13 February 2012, the District Court in Mitrovica (Decision Ac. No. 76/11) rejected as inadmissible the Applicant's proposal for execution of the final

decision and modified the Decision of 15 October 2009 of the Municipal Court of Skenderaj, with the reasoning that *"where the employing authority concerned does not comply with the Board's decision and order, the Board shall report the matter to the Assembly, which shall forward the Board's report to the Prime Minister of Kosovo"*.

29. On 22 August 2012, the Applicant again notified the IOBK about the non-execution of the final decision, but according to her, the IOBK did not respond.
30. On 12 December 2012, the Applicant filed a claim with the Basic Court in Mitrovica, branch in Skenderaj, for the payment of unpaid salaries by the MDE in Skenderaj, relying on her right acquired by the final decision.
31. On 27 January 2014, the Basic Court in Mitrovica, branch in Skenderaj (Decision C. No. 109/2009), rejected the Applicant's claim as out of time, on the grounds that she missed the deadline to seek judicial protection of her rights to exhaust legal remedies, by which she would realize her rights acquired by the final decision. This decision was upheld by the Court of Appeals by Decision Ac. No. 1213/2014, of 5 May 2016), and by the Supreme Court by Decision Rev. No. 335/2016, of 14 July 2016.

Applicant's allegations

32. As to the allegations of the violation of Article 31 of the Constitution and Article 6 of the Convention due to non-execution of Decision no. 112-158/1 of ACCS-MA in Skenderaj, of 12 June 2008, by the authorities of Municipality of Skenderaj, the Applicant alleges, *"The Municipality of Skenderaj, without any reasoning, and by violating the law, has refused to implement its own Decision No. 112 – 158/1, by which it approved the appeal of the party (the applicant) as grounded, and concluded that the employment relationship of the party was terminated without legal grounds, and obliged the Municipal Directorate of Education to systemize Ms. Sadije Shabani, at the municipal administrative service."*
33. As to the allegations of the violation of Article 31 of the Constitution and Article 6 of the Convention due to non-execution of Decision no. 112-158/1 of ACCS-MA in Skenderaj, of 12 June 2008, by the regular courts of enforcement, the Applicant alleges, *"...considering the fact that in a democratic state, the competent authorities are obliged to establish a system for the execution of decisions, which is effective in the legal sense, as well as in the practical sense... Furthermore, I consider that a right acquired should not only remain in paper, but it should be realized in practice as well... In addition, the courts which the party addressed, have failed to ensure a fair and impartial trial for the latter."*
34. As to the allegations of violation by the regular courts of the rights protected by Article 54 of the Constitution, the Applicant alleges, *"...since the time of the termination of the employment relationship, continuously and without any interruption, has taken all the legal and other necessary actions for the realization of her lawful and grounded right. This fact can be confirmed by the relevant evidence contained in the case files of this case."*

35. In addition, the Applicant alleges that the Municipality of Skenderaj and the regular courts violated her right to protection of property which is guaranteed to individuals by Article 46 of the Constitution due to non-execution of Decision No. 112-158/1 of the ACCS-MA of Skenderaj, of 12 June 2008, from which decision the Applicant claims that she had legitimate expectations to receive compensation for the unpaid salaries.
36. Furthermore, the Applicant alleges that the Municipality of Skenderaj and the regular courts through their actions violated her right guaranteed by Article 49 of the Constitution because it cannot be her fault that the competent authorities have failed to protect her legitimate rights to work and to exercise her profession.
37. The Applicant requests, *inter alia*, "...the Constitutional Court of Kosovo to declare the Referral admissible, to hold that there has been a violation of Article 24, Article 31, Article 54, and Articles 49 and 46 of the Constitution, and a violation of Article 6 of the ECHR ..."

Applicable legal provisions

UNMIK Regulation 2001/36 of 22 December 2001

(a) "Civil servant" means any employee of an employing authority, whose salary is paid from the Kosovo Consolidated Budget, except for: (i) members of the Board; (ii) exempt appointees; and (iii) members of the Kosovo Protection Corps.

Section 11 Appeals

11.1 A civil servant who is aggrieved by a decision of an employing authority in breach of the principles set out in section 2.1 of the present regulation may appeal such decision to the Board in accordance with the provisions of the present section.

Law No. 03 /L-008 on Executive Procedure

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 .1

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 26.3 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

294.1 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 return to work. By the same decision, the court assigns execution for realization of monthly amounts assigned.

294.2 Proposal for reward might be attached with the execution proposal, or might be presented latter until the conclusion of the execution procedure.

Article 295

The effect of execution proposal

295.3 Reward of monthly salary is assigned in amount which the worker would realize if at work.

Admissibility of the Referral

- 38. The Court shall examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.
- 39. The Court must first determine whether the Applicant is an authorized party and whether she has exhausted all legal remedies to file the Referral with the Court in accordance with Article 113.7 of the Constitution, which establishes:

“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”.
- 40. The Court further takes into account the requirements of Article 49 of the Law, which stipulates:

“The referral should be submitted within a period of four (4) months (...)”.
- 41. The Court also takes into account the requirements of 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.”

42. In addition, the Court refers to Rule 36 (1) (d) of the Rules of Procedure, which establishes:

"The Court may consider a referral if:

(...)

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

43. Based on the abovementioned requirements, the Court considers that the Applicant has exhausted all legal remedies available under applicable laws, and in the absence of any other effective remedy, in accordance with the requirements of Article 113 (7) of the Constitution, she addressed the Court with a request for the realization of her rights guaranteed by the Constitution.
44. The Court further considers that the requirement for the submission of the Referral within the time limit of 4 (four) months does not apply because we are dealing with a continuing situation of non-execution of a final decision of the public authority (see, *mutatis mutandis*, *Iatridis v. Greece*, No. 59493/00, ECtHR, Judgment of 19 October 2000). ECtHR explicitly noted in a similar situation arising in *Iatridis v. Greece*, that the time-limit rule does not apply where there is a refusal of the executive to comply with a specific decision.
45. In fact, in a similar situation, the Court refers to its case law when it decided on the non-execution of the decisions of the Independent Oversight Board, decisions which were rendered in an administrative procedure but which by nature resolved disputes from employment relationship of the civil servants. In those cases, the Court found that there existed a continuing situation as a result of which the four-month time limit was not applicable. (See Judgments of the Constitutional Court in the cases KI50/12, *Agush Lllolluni*, Judgment of 16 July 2012; KI94/13 *Avni Doli, Mustafa Doli, Zija Doli and Xhemile Osmanj*, Judgment of 24 March 2014).
46. Therefore, the time limit of 4 (four) months is not applicable to the case of the Applicant due to the existence of the continuing situation which is a result of the non-execution of the final decision.
47. The Court also notes that the Applicant has shown accurately what constitutional rights were violated by the non-execution of Decision ACCS-MA in Skenderaj of 12 June 2008, citing also public authorities allegedly denying her constitutional rights.
48. In sum, the Court considers that the Applicant is an authorized party, she has exhausted all legal remedies, fulfilled the time-limit requirement as a result of the continuing situation and has accurately explained the alleged violation of rights and freedoms, and has mentioned the public authorities allegedly violating her rights.
49. From the foregoing, the Court finds that the Applicant's Referral meets all admissibility requirements, and, therefore, the Court will further assess the merits of the Referral.

Assessment of merits of Referral

50. In the present case, the Court notes that the dispute regarding the employment relationship was finally resolved by the ACCS-MA in Skenderaj, by decision of 12 June 2008, in the administrative procedure, based on UNMIK Regulation 2001/36, of 22 December 2001, regulating the legal status of civil servants. By this decision, the Applicant was granted the right to be reinstated to work in the administration services of the Municipality of Skenderaj.
51. The Court notes that all the Applicant's allegations of violation of her rights as guaranteed by the Constitution and the Convention relate precisely to the non-execution of the decision of ACCS –MA in Skenderaj by the Municipality of Skenderaj itself and by the regular courts in execution proceedings.
52. In the light of these circumstances, the Applicant can legitimately claim to be a victim of violations of the fundamental rights guaranteed by the Constitution and the Convention.
53. First of all, the Court refers to Article 53 of the Constitution, which provides that *“Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”*
54. In this regard, the Court will examine the merits of the Referral only with respect to the constitutional violations related to the non-execution of Decision of ACCS-MA of Skenderaj, of 12 June 2008.
55. In this respect, the Court refers to Article 31 of the Constitution, in conjunction with Article 6 of the Convention, which establish:

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

6 (1) “In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”
56. From the case file it is clear that Decision No. 112-158/10f ACCS-MA of Skenderaj, of 12 June 2008, was an executable decision, also through execution proceedings in the regular courts.
57. According to the applicable laws, a decision becomes final and executable, *inter alia*, also in the case where the parties do not challenge it by appeal before higher instances, as it is the case with the Applicant.
58. Based on this fact, the Court considers that Decision No. 112-158/10f ACCS-MA of Skenderaj, of 12 June 2008, constitutes an adjudicated matter (*res judicata*), which should have been executed by the competent authorities without undue delay in order to fulfill their obligations under Article 31 of the

Constitution and Article 6 of the Convention, that a right acquired through a final decision should not remain unfulfilled even in practice.

59. In this regard, the Court notes that the Applicant used all the legal remedies at her disposal seeking the execution of the final decision. However, all the legal remedies used by her proved to be unsuccessful and ineffective as they did not provide her with a practical solution as required by the above mentioned Articles.
60. After analyzing the circumstances of the case, the Court considers that there was no reason for the authorities of the Municipality of Skenderaj and the regular courts in execution proceedings to delay and refuse to execute Decision No. 112-158/1 of ACCS-MA of Skenderaj, of 12 June 2008, for more than 8 years from the time this decision had become final and an executive title under the applicable law.
61. In this respect, the Court emphasizes that the execution of a final decision must be seen as an integral part of the right to fair trial guaranteed by Article 31 of the Constitution and Article 6 of the Convention. The above principle is of even greater importance in the context of administrative proceedings concerning a dispute whose outcome is decisive for a litigant's civil rights. (See, *mutatis mutandis*, ECtHR Judgment, in the case of *Hornsby v. Greece*, of 19 March 1997 Reports 1997-II, f 510, para 40. See also Judgment of the Constitutional Court, in the case KI112/12 *Adem Meta*, of 5 July 2013).
62. The Court recalls that Article 6 of the Convention also applies to administrative phases of judicial process, respectively is within the framework of the right to a fair trial. From this it follows that the non-implementation of final decisions is a constituent element of Article 6 of the Convention, and is in violation of it (see, *mutatis mutandis* Judgment of the Constitutional Court, in the case KI47/12, *Islam Thaçi*, of 11 July 2012, paragraph 48). Furthermore, the Court emphasizes that a final decision issued by an administrative authority established by law produces legal effects on the parties, and as such is enforceable (See, Judgment of the Constitutional Court in Case KIO4/12, *Esat Kelmendi*, of 20 July 2012).
63. The Court underlines that the right to initiate court proceedings in civil cases, as provided by the abovementioned Articles, would be illusory if the legal system of the Republic of Kosovo would allow that a final judicial decision remains ineffective in disfavor of one party. The interpretation of the above-mentioned Articles exclusively deals with the access to the court, administration and non-effectiveness of judicial procedures. Therefore, the non-effectiveness of judicial procedures would result in situations that are inconsistent with the principle of the rule of law, a principle which the authorities of the Republic of Kosovo are obliged to respect (see, *mutatis mutandis*, ECtHR Judgment in the case *Romashov v. Ukraine*, of 25 July 2004, Submission No. 67534/01).
64. The Court reiterates that the rule of law is one of the core principles of a democratic society that presupposes the respect of the principle of legal

certainty, in particular as regards final decisions that constitute an adjudicated matter (*res judicata*). No party is entitled to seek a reconsideration of a final decision merely for the purpose of obtaining a rehearing and a fresh determination of the case. (See, *mutatis mutandis*, *Sovtransavto Holding v. Ukraine*, No. 48553/99, paragraph 72, ECHR 2002-VII; and *Ryabykh v. Russia*, Appeal No. 52854/99, paragraph 52, ECHR 2003-IX).

65. In addition, the Court notes that the case law of the ECtHR requires that a person who has obtained a judgment against the State at the end of legal proceedings may not be expected to bring separate enforcement proceedings (See, ECtHR Judgment in case *Burdov v. Russia* of 15 January 2009, submission no.33509/04, (no. 2), § 68). The burden to ensure compliance with a judgment against the State lies with the State authorities (See ECtHR Judgment in case *Yavorivskaya v. Russia*, of 21 July 2005, no. 34687/02, § 25), starting from the date on which the judgment becomes binding and enforceable (See, *Burdov v. Russia* submission no.33509/04, (no. 2), § 69).
66. 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 implementation within a reasonable time, without unnecessary delays (See, *mutatis mutandis*, case *Pecevi v. Former Yugoslavian Republic of Macedonia*, of 6 November 2008, Submission No. 21839/03, as well as case *Martinovska v. the Former Yugoslavian Republic of Macedonia* of 25 September 2006, Application no. 22731/02).
67. Regarding the other allegations of the Applicant for violations of Articles 24, 46, 49 and 54 of the Constitution, the Court does not consider it necessary to examine them, as it has already found a violation of Article 31 of the Constitution in conjunction with Article 6 of the Convention in respect of the non-execution of Decision No. 112-158/1 of the ACCS-MA of Skenderaj of 12 June 2008.
68. In sum, the Court finds that the Applicant has been denied of her rights guaranteed by Article 31 of the Constitution, in conjunction with Article 6 of the Convention, because the Municipality of Skenderaj and the regular courts in execution proceedings have failed to execute Decision No. 112-158/1 of ACCS-MA of Skenderaj, of 12 June 2008, for more than eight (8) years.

Conclusion

69. The Court reiterates that in its case law it has held on many occasions 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 a constitutional obligation to make sure that in proceedings conducted before public authorities the fundamental human rights and the supremacy of the Constitution have been respected.

70. In conclusion, for all the reasons elaborated above, the Court finds that the failure of the competent authorities of the Republic of Kosovo to provide effective mechanisms for the execution of a final decision which has become *res judicata* is contrary to the principle of the rule of law, legal certainty and constitutes a violation of fundamental human rights guaranteed by the Constitution and the Convention.
71. Therefore, the Court concludes that the non-execution of Decision No. 112-158/1 of the Appeals Commission of Civil Servants of the Municipality of Skenderaj, of 12 June 2008, by the Municipality of Skenderaj itself and the former District Court in Mitrovica violates the Applicant's rights as guaranteed by Article 31 of the Constitution in conjunction with Article 6 of the Convention.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56 (1) of the Rules of Procedure, in its session held on 13 November 2017, unanimously:

DECIDES

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that there has been a violation of Article 31 of the Constitution in conjunction with Article 6 of the Convention;
- III. TO DECLARE that Decision No. 112-158/1 of the Appeals Commission of Civil Servants of the Municipality of Skenderaj, of 12 June 2008, constitutes an adjudicated matter (*res judicata*) which must be executed by the Municipality of Skenderaj;
- IV. TO DECLARE invalid Decision Ac. No. 76/11 of the former District Court in Mitrovica, of 13 February 2012, and TO REMAND the Applicant's case in execution proceedings to the Court of Appeals for consideration in accordance with the Judgment of the Constitutional Court, namely to take into account that Decision No. 12-158/1 of the Appeals Commission of Civil Servants of the Municipality of Skenderaj, of 12 June 2008, must be executed within the time limits prescribed by law;
- V. TO REMIND the competent authorities of their obligations, in accordance with Article 116 [Legal Effect of Decisions] of the Constitution and Rule 63 [Enforcement of Decisions] of the Rules of Procedure of the Court;
- VI. TO REMIND the Municipality of Skenderaj and the Court of Appeals, in accordance with Rule 63 (5) of the Rules of Procedure, to submit information to the Constitutional Court regarding the measures taken to implement the Judgment of the Constitutional Court, within six (6) months;
- VII. TO NOTIFY this Judgment to the Parties and to publish it in the Official Gazette, in accordance with Article 20 (4) of the Law on the Constitutional Court;
- VIII. TO DECLARE this Judgment effective immediately.

Judge Rapporteur

Selvetë Gërxhaliu-Krasniqi

President of the Constitutional Court

Arta Rama-Hajrizi

