



The Court rejects application concerning Serbia's responsibility for non-enforcement of final decision given by a Kosovo court in 2002

In its decision in the case of [Azemi v. Serbia](#) (application no. 11209/09) the European Court of Human Rights, by a majority, declared the application inadmissible. The decision is final.

The case concerned the non-enforcement of a final decision given by a Kosovo court in 2002.

The Court had to determine whether, as alleged by Mr Azemi, the Serbian authorities could be held responsible for the non-enforcement of a decision ordering the applicant's employer to reinstate him in his previous position. It pointed out that Serbia had ratified the European Convention on Human Rights in 2004. The Serbian authorities could not therefore be held responsible for any damage caused to Mr Azemi between 1990, when he had been dismissed, and 1999, when Kosovo had been placed under international administration. As regards the period after 1999, there was no evidence that Serbia had exercised effective control over Kosovo's institutions since the international administration had assumed all executive, legislative and judicial powers in the country. Kosovo's proclamation of independence in 2008 did not alter that situation. Moreover, the Court was unable to point to any positive obligations that Serbia might have had towards the applicant. It therefore concluded that Serbia could not be held responsible for the non-enforcement of the Kosovo court's decision.

Principal facts

The applicant, Ali Azemi, is a national of Kosovo¹ who was born in 1946 and lives in Ferizaj (Kosovo).

In February 1990 Mr Azemi and a number of his colleagues were dismissed by their employer. They subsequently challenged the termination of their employment before the domestic courts but their request was never examined.

In 1998 an armed conflict broke out between Serbian and Kosovo Albanian forces. On 8 June 1999, the Federal Republic of Yugoslavia troops agreed to withdraw from Kosovo. Following a Resolution adopted by the United Nations Security Council on 10 June 1999 – UNSC Resolution 1244 – Kosovo was then placed under international administration. As a result, the "United Nations Mission in Kosovo" – UNMIK – was established. All legislative and executive authority with respect to Kosovo, including the judiciary, was vested in UNMIK.

In January 2002 the Municipal Court of Ferizaj – Municipal Court – found that the dismissal of Mr Azemi and his colleagues had been unlawful and ordered their reinstatement. It further ordered their employer to restore all the entitlements for a period between 1990 and 2001. Since no appeal was filed against it, the decision became final in March 2002. However, it was never enforced.

In March 2004 Serbia ratified the European Convention on Human Rights. In February 2008 Kosovo proclaimed its independence and in June 2008 the Constitution of Kosovo was adopted. In December 2010, following Mr Azemi's request, the Constitutional Court of Kosovo found that the non-enforcement of the 2002 decision had amounted to a breach of Mr Azemi's right to a fair hearing and ordered the Kosovo authorities to enforce it.

1. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 February 2009.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), Mr Azemi complained about the non-enforcement of the Municipal Court's 2002 decision concerning his reinstatement.

The decision was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
İşıl **Karakaş** (Turkey),
Peer **Lorenzen** (Denmark),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland)

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 6 § 1 (right to a fair trial within a reasonable time)

The Court had to determine whether the facts of the case came under Serbia's "jurisdiction" within the meaning of Article 1 of the Convention (obligation of Contracting States to ensure respect for human rights to everyone within their jurisdiction). It had previously emphasised that a State's jurisdictional competence was presumed to be exercised throughout the State's territory. However, it had also acknowledged that this presumption could be limited in exceptional circumstances, particularly when a State was prevented from exercising its control over part of its territory. In such cases, the Court had to examine all the objective facts capable of limiting the effective exercise of a State's control over its territory. It also had to assess whether the State had taken all the measures which were still within its power to ensure respect for Convention rights.

The Court first examined Mr Azemi's complaint in respect of the period between 1990, when he was dismissed by his employer, and 10 June 1999, when UNSC Resolution 1244 was adopted. It reiterated that the European Convention did not impose obligations on a Contracting State to provide redress for damage caused prior to its ratification. Serbia had ratified the Convention in March 2004 and, therefore, it could not be held responsible under the Convention for any damage caused to Mr Azemi during this period.

The Court then examined Mr Azemi's complaint as regards the period between 10 June 1999 and the present day. The Court noted that, under UNSC Resolution 1244, UNMIK had assumed all executive, legislative and judicial powers in Kosovo. Moreover, there was no evidence that Serbia had exercised any control over UNMIK or any other institutions established by UNMIK, including the judiciary. Nor had the Serbian authorities ever provided any military, economic or political support to Kosovo's institutions. Indeed, Serbian courts had confirmed that Serbia had not exercised any effective control in Kosovo since 1999. The Court was therefore satisfied that Serbia had been objectively prevented from ensuring respect for Convention rights in Kosovo throughout this period. It also pointed out that no positive obligations arose out of the circumstances of this case requiring Serbia to take other appropriate measures. In so far as the complaints were to be taken to be directed against UNMIK, an international civil administration, the Court, reiterating its established case-law to the effect that alleged violations of the Convention have to be committed by contracting States or attributable to them, declared it inadmissible pursuant to the provisions of the Convention.

Accordingly, the Court considered that Serbia could not be held responsible for the non-enforcement of the Municipal Court's 2002 decision concerning Mr Azemi's reinstatement. Consequently, the application was declared incompatible *ratione personae* with the provisions of the Convention and rejected under Article 35 §§ 3 (a) and 4 thereof.

The decision is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Jean Conte (tel: + 33 3 90 21 58 77)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.