



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
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Prishtina, date: 18 March 2010
Ref. No. AGJ 07/10

Judgment

Case No. KO 01/09,

Ćemailj Kurtiši

And

The Municipal Assembly of Prizren

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Constitutional Court composed of

Enver Hasani, President
Snezhana Botusharova, Judge
Robert Carolan, Judge
Ivan Čukalović, Judge
Iliriana Islami, Judge
Kadri Kryeziu, Judge
Gjylieta Mushkolaj, Judge
Almiro Rodrigues, Judge and
Altay Suroy, Judge

Having deliberated on the referral of Mr Ćemailj Kurtiši, Deputy Chairperson for Communities of The Municipality of Prizren gives JUDGMENT as follows:

Introduction

The Applicant

1. The Applicant is Mr Ćemailj Kurtiši, the Deputy Chairperson for Communities of the Municipal Assembly of Prizren, Republic of Kosovo.

The Opposing Party

2. The Opposing Party is the Municipal Assembly of Prizren, Republic of Kosovo.

Date of Filing of the Referral

3. The referral was filed with the Constitutional Court on 22 April 2009.

Date of Hearing

4. The Constitutional Court held a public hearing in relation to the case on 30 November 2009.

Deliberations of the Court

5. The Court deliberated on the case in private session on 27 January 2010.

Summary of the Proceedings

6. On 22 April 2009, Ćemailj Kurtiši, Vice Chairperson of the Municipality of Prizren, filed a referral to the Constitutional Court of Kosovo. Mr Kurtiši claimed that Article 7 of the Statute of the Municipality of Prizren was in violation of Articles 3.1, 6.1, 58.1 and 59.1 of the Constitution. On 4 August 2009, the Constitutional Court informed the Municipality of Prizren of the making of the referral by Mr Kurtiši and requested the Municipality to reply to the referral. On 2 October 2009, the President and the Mayor of the Municipality replied to the referral.
7. The President of the Court appointed¹ Judge Almíro Rodrigues as Judge Rapporteur and a Review Panel consisting of Judges Altay Suroy, Snezhana Botusharova and Ivan Cukalovic was established. On 7 October 2009, the Applicant was requested to clarify and supplement the referral by stating how and why the alleged violation was unconstitutional, in what capacity he signed the referral and to provide evidence of his position in the Municipality of Prizren. On 12 October 2009, Mr Kurtiši replied and provided the information requested. On 12 November 2009, Judge Rodrigues presented a report, for the consideration of the Review Panel. On 26 November 2009, the Review Panel convened to consider the Judge Rapporteur's report. On 30 November 2009, a public hearing was held. Mr Kurtiši appeared on his own behalf; the Municipality of Prizren was not present. On 27 January 2010, the Court met in private session to deliberate.

Presentation of the Facts and Statement of Arguments of the Parties

8. Mr Kurtiši provided to the Court a Decision of the Municipal Assembly of Prizren, dated 11 September 2008, signed by the Chair of the Assembly and the Mayor of the Assembly. That decision reads as follows: "We state that the Vice Chairman of the Communities in the Municipal Assembly of Prizren, in compliance with the provisions of the Law on Local Self Government, is Mr Ćemailj Kurtiši, a qualified lawyer." The same officers of the Municipal Assembly, in their reply to the referral, made no objection to the status of Mr Kurtiši arising out of his referral of the matter to the Constitutional Court. The Court is therefore satisfied that Mr Kurtiši has the proper legal standing and authority to bring this referral to the Constitutional Court.
9. Mr Kurtiši made his claim² as Deputy Chairperson for Communities of a Municipality, being a person authorised to refer acts or decisions of the Municipality that are alleged to be in violation of their rights to the Constitutional Court.

¹ Pursuant to Article 22 of the Law of the Constitutional Court and Section 7 of the Rules of Procedure of the Constitutional Court

² Pursuant to Article 55.4 of the Law on Local Self Government, Law Nr. 03/L-040, in the event that the Municipality chooses not to review acts or decisions that violate the constitutionally guaranteed

10. Articles 54 and 55 of the Law of Local Self Government state as follows:

Article 54

Deputy Chairperson for Communities

54.1. In municipalities where at least ten per cent (10%) of the citizens belong to Communities not in the majority in those municipalities, a post of the Chairperson of the Municipal Assembly for Communities shall be reserved for a representative of these communities.

54.2. The post of the Deputy Chairperson of the Municipal Assembly for Communities shall be held by the non-majority community's candidate who received the most votes on the open list of candidates for election to the Municipal Assembly.

Article 55

Duties of the Deputy Chairperson of a Municipality for Communities

55.1. The Deputy Chairperson of a Municipality for Communities shall promote inter-community dialogue and serve as formal focal point for addressing non-majority communities' concerns and interests in meetings of the Assembly and its work.

55.2. The Deputy Chairperson of a Municipality for Communities shall be responsible for reviewing claims by communities or their members that the acts or decisions of the municipal assembly violate their constitutionally guaranteed rights.

55.3. The Deputy Chairperson of a Municipality for Communities shall refer such matters to the Municipal Assembly for its reconsideration of the act or decision.

55.4. In the event the Municipal Assembly chooses not to reconsider its act or decision, or the Deputy Chairperson of a Municipality for Communities deems that even upon reconsideration the act or decision presents a violation of a constitutionally guaranteed right, the Deputy Chairperson of a Municipality for Communities may submit the matter directly to the Constitutional Court, which may decide whether to accept the matter for review.

11. On 15 October 2008, the Municipality of Prizren³ delivered a Decision adopting the Municipal Statute. Article 7 of that Statute provides:

Article 7

The Municipality has an emblem, flag and symbol.

The emblem of the Municipality is "The House of the League of Prizren" circled by the following wording "1878 – Prizren".

The use of Municipal symbols shall be further regulated by special decision of the Assembly.

rights of Communities that have been referred to it by the Deputy Chairperson he or she may then submit the matter directly to the Constitutional Court.

³ Pursuant to Article 12.3 of the Law on Local Self Government, Law Nr. 03/L-040

12. The referral submitted by Mr Kurtiši states that the non-majority Communities proposed at the time that the wording "Komuna", "Opština", "Belediye" be written within the circle of the emblem without the year "1878", thus signifying that several communities live in that Municipal area and that the Municipality is multiethnic. That proposal was not accepted. Furthermore, he maintains that the members of the Municipal Assembly from the majority community ignored the fact of the traditional presence of non-majority communities in the Municipality. Mr Kurtiši maintains that the provision and symbol of the League of Prizren glorifies the identity of only one community in Prizren Municipality. He states that the League of Prizren recognizes the cultural-historical significance of the Albanian community only and that the emblem carries no elements that signify the other communities who live in the Municipality. He maintains that the Municipal emblem should symbolise and transmit the message of co-existence of communities and community members and the presence of multi-ethnicity, multiculturalism, multi-religiousness and multilingualism. The emblem, he says, does not transmit a message or multi-ethnicity in the very multiethnic area that is the Municipality of Prizren.

13. Mr Kurtiši also maintained that, the symbol was not approved by a two-thirds (2/3) majority of the Assembly⁴. He states that only 24 out of 41 members of the Assembly voted for the adoption of the Decision in question. In fact, Article 7.4 provides as follows:

7.4. The symbols of a municipality may be approved or changed by two thirds (2/3) majority vote of the Municipal Assembly after extensive public consultation has taken place.

14. However, the reply of the Municipality stated that, on 15 October 2008, 29 members of the Assembly voted for the proposal and 5 voted against it. Notwithstanding this apparent conflict between Mr Kurtiši and the Municipality about the numbers voting for and against the adoption of the Decision on the Statute, the Court does not decide on grounds arising from an alleged irregularity in the voting procedure and, therefore, nothing is to be taken from this Judgment as either a finding in favour or against this part of the referral.

15. Mr Kurtiši, in the substantive body of his referral, sets out a number of different legal bases for the grounding of his referral. He says that Article 3 of the Constitution was violated. Article 3 states:

Article 3 [Equality Before the Law]

1. The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.

2. The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.

16. Secondly, he states that Article 4.3 of the Law on Local Self Government was violated. Article 4.3 of that Law states as follows:

4.3. Municipalities shall implement their policies and practices to promote coexistence and peace between their citizens and to create appropriate conditions

⁴ Pursuant to Article 7.4 on the Law on Local Self Government, Law Nr. 03/L-040

enabling all communities to express, preserve, and develop their national, ethnic, cultural, religious, and linguistic identities.

17. Continuing, he submits that Article 1.1, 1.4 and 2.1 of the Law on The Protection and Promotion of the Rights of Communities and their Members in Kosovo⁵ was violated. At this stage, it is relevant to quote Articles 1 and 2 of that Law in their entirety.

Article 1

General provisions

1.1 The Republic of Kosovo shall guarantee full and effective equality for all people of Kosovo. Kosovo regards its national, ethnic, linguistic and religious diversity as a source of strength and richness in the further development of a democratic society based on the rule of law. In the development of the Republic of Kosovo, the active contributions of all persons belonging to communities is encouraged and cherished.

1.2 The Republic of Kosovo shall take special measures to ensure the full and effective equality of communities and their members, taking into consideration their specific needs. Such measures shall not be considered act of discrimination.

1.3 Persons belonging to communities in the Republic of Kosovo shall be entitled to enjoy individually or jointly with others the fundamental and human rights and freedoms established in international legal obligations binding upon the Republic of Kosovo. These rights and freedoms are guaranteed by the constitution, other laws, regulations and state policies.

1.4 For the purposes of this law, communities are defined as national, ethnic, cultural, linguistic or religious groups traditionally present in the Republic of Kosovo that are not in the majority. These groups are Serb, Turkish, Bosnian, Roma, Ashkali, Egyptian, Gorani and other communities. Members of the community in the majority in the Republic of Kosovo as a whole who are not in the majority in a given municipality shall also be entitled to enjoy the rights listed in this law.

1.5 Every person belonging to a community shall have the right to freely choose to be treated or not to be treated as such, and no disadvantage or discrimination shall result from the choice to exercise or not to exercise the rights that are connected with that choice.

1.6 In their free exercise of rights and freedoms enshrined in this law, communities and their members shall respect the rights of others.

1.7 The authorities in the Republic of Kosovo, including the Courts, shall interpret this law in accordance with the guarantees of human rights and fundamental freedoms and the rights of communities and their members established in the Constitution of the Republic of Kosovo with applicable international human rights obligations including the provisions of the Council of Europe Framework Convention for the Protection of National Minorities.

Article 2

Identity

⁵ Law No. 03/L-047

2.1 Communities and their members shall have the right to freely maintain, express and develop their culture and identity, and to preserve and enhance the essential elements of their identity, namely their religion, language, traditions and cultural heritage. In addition to the specific rights enumerated in this law, fundamental human rights shall be exercised freely and equally, including freedom of thought; of expression; of the media; of association and assembly; of religious belief and practice; and the right to manifest, in public or private, individually or in community with others, the cultural attributes of the respective community.

2.2 The Republic of Kosovo shall create appropriate conditions that enable communities and their members to freely maintain, express and develop their identities.

2.3 Measures intended to alter the proportions of the population in areas inhabited by persons belonging to communities to their disadvantage are prohibited. Kosovo shall protect persons belonging to communities from policies or practices aimed at, or having the effect of, assimilation against their will.

2.4 Persons belonging to communities have the right to have personal names recognized in their original form and in the script of their language as well as to revert to their original names if they have been changed. This includes the right to freely choose their given and family names and the names of their children, and the right to enter such names into public registries, personal identification and other official documents in their own language and script in accordance with the law.

18. Mr Kurtiši further maintains that, at the time of the adoption of the Statute, the Communities Committee was not enabled to review the Statute and Decision in the drafting phase, despite the fact that the Communities Committee members insisted on the necessity of their review. Thereby, he alleges, Article 53 of the Law on Local Self Government was violated. That Article states:

Article 53

Communities Committee

53.1. The membership of the Communities Committee shall include the members of the Municipal Assembly and community representatives. Any community living in the municipality shall be represented by at least one representative in the Communities Committee. The representatives of communities shall comprise the majority of the Communities Committee.

53.2. The Communities Committee shall be responsible to review compliance of the municipal authorities with the applicable law and review all municipal policies, practices and activities related with the aim to ensure that rights and interests of the Communities are fully respected and shall recommend to the Municipal Assembly measures it considers appropriate to ensure the implementation of provisions related to the need of communities to promote, express, preserve and develop their ethnic, cultural, religious and linguistic identities, as well as to ensure adequate protection of the rights of communities within the municipality.

19. Finally, Mr Kurtiši states, in general terms that Articles 6, 58⁶ and 59.1⁷ of the

⁶ Article 58.1. The Republic of Kosovo ensures appropriate conditions enabling communities, and their members to preserve, protect and develop their identities. The Government shall particularly support cultural initiatives from communities and their members, including through financial assistance.

Constitution were violated. No exposition of the reasons how these Articles violated the Constitution was presented to the Court.

20. The Municipality of Prizren disputes, in their reply, the entirety of the claim made by Mr Kurtiši. They maintain that the appropriate numbers required for the passing of the Statute of the Municipality voted in its favour. They state that, on 10 November 2008, the decision of the Assembly of Prizren was sent to the Ministry of Local Government Administration (MLGA) for a compulsory evaluation of legality.
21. They concede that, on 27 November 2008, MLGA recommended to the Municipal Assembly the reconsideration of Article 7 of the Statute. Following this they point out that, at a meeting of 20 February 2009, the Assembly approved the decision reconfirming Article 7 of the Statute. They also state that, on 16 March 2009, the MLGA delivered to the Municipal Assembly an opinion finding that "the abovementioned decision was issued in accordance with the legal procedures, i.e. with Article 7 of the Municipal Statute, and Article 7 4 of the Law on Local Self-government and in accordance with the request of MLGA minister for review of Article 7 of the Municipal Statute adopted on 15 10 2008". That opinion from the MLGA seems to indicate that all matters were properly addressed by the Municipality and that all was in order with the Statute of Prizren Municipality and that the original concerns of the MLGA were dealt with.
22. However, as early as 27 November 2008, it was brought to the attention of the Municipality that there was concern, at a very high level, about the adoption of Article 7 of the Municipal Statute. Important questions about the proper level of extensive public consultation and the obligations of the Municipality to take cognizance of such consultation were raised. The Municipality ought to have had serious concerns about how it would treat such consultations pursuant to its obligations under the Law in relation to the symbol of the Municipality, particularly, in light of the concerns raised by the Municipal Communities.
23. As regards Article 3.1 of the Constitution, the Municipality states that no violation has occurred because no Community has been favored over another Community. They do not address how the actions of the Municipality might have had an effect of exclusion of Communities in the Municipality of Prizren.
24. As regards Article 6 of the Constitution, they state that any violation under this Article does not apply because it applies only to the State Symbols of Kosovo. The implication is that Mr Kurtiši does not make a complaint about the State Symbol of Kosovo and therefore there cannot be a violation of Article 6.
25. As regards the other alleged breaches of Articles of the Constitution and the Law, the Municipality states that they "do not stand". They request that the referral of Mr Kurtiši be denied as ungrounded. They do not, in any substantial way, address the concerns about the breach of the rights of the Communities which are set out in the referral of Mr Kurtiši and which are summarised in the preceding paragraphs.

Reasoning and Justification

26. It is appropriate here to point out the powers and functions of this Court. The main provisions of Comprehensive Framework for Kosovo Status Settlement proposed

⁷ Article 59 (1) Members of communities shall have the right, individually or in community, to: (1) express, maintain and develop their culture and preserve the essential elements of their identity, namely their religion, language, traditions and culture.

constitutional, economic and security provisions, all of which were aimed at contributing to the development of a multiethnic, democratic and prosperous Kosovo. What was proposed for Kosovo was a multi-ethnic society, governing itself democratically and with full respect for the rule of law and the highest level of internationally recognized human rights and fundamental freedoms. As regards the rights of communities, the Settlement was to address key aspects to be protected, including culture, language, education and symbols.

27. The Assembly of Kosovo adopted the Constitution on 9 April 2008. It entered into force on 15 June 2008. The doctrine of the separation of powers⁸ as to the exercise of judicial power is given effect by the Constitution⁹ which clearly states that such power is exercised by the Courts. The remit of this Constitutional Court is to be the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution. It goes without saying that the Court is fully independent and must also be completely impartial when performing its functions. The Constitution¹⁰ clearly sets out the Jurisdiction of the Constitutional Court. Certain bodies, including individuals, may refer matters to the Court or violations by public authorities of their rights and freedoms guaranteed by the Constitution¹¹. Additional jurisdiction may also be determined by law.
28. It is up to the Court, as "*the final authority for the interpretation of the Constitution and the compliance of laws with the Constitution*"¹², to assess whether Laws or Statutes are in conformity with the Constitution. Thus, it will make determinations on violations by public authorities of the individual rights and freedoms guaranteed by the Constitution, "*but only after exhaustion of all legal remedies provided by law*"¹³. That means that state organs and the Courts, when making their decisions, are obliged to act within the Constitutional framework. In order to comply with that obligation there are parties who are authorised to refer some matters to the Court¹⁴. On the other hand, "*Courts shall adjudicate based on the Constitution and the law*"¹⁵ and they "*have the right to refer questions of constitutional compatibility of a law to the Constitutional Court*"¹⁶, thereby having regard to the fundamental rights and freedoms enshrined in the Constitution.
29. The State organs "*will guarantee the rights of every citizen, civil freedoms and equality of all citizens before the law...*"¹⁷ Article 3 of the Constitution states:

Article 3 [Equality Before the Law]

1. *The Republic of Kosovo is a multi-ethnic society consisting of Albanian and other Communities, governed democratically with full respect for the rule of law through its legislative, executive and judicial institutions.*
2. *The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognized fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.*

⁸ As expressed in Article 4 of the Constitution

⁹ In Article 102

¹⁰ Article 113 and Article 62.4

¹¹ Including rights enshrined in the International Conventions enumerated in Article 22.

¹² Article 112 (1) of the Constitution

¹³ Article 113 (7) of the Constitution

¹⁴ Article 113 of the Constitution

¹⁵ Article 102 (3) of the Constitution

¹⁶ Article 113 (8) of the Constitution

¹⁷ The Preamble of the Constitution

30. Throughout the Constitution there are references to the principals of equality and multi-ethnicity, for example, when describing the multi-ethnic character of the state symbols of Kosovo¹⁸, when dealing with basic values¹⁹, when dealing with equality before the law²⁰, when dealing with equality before the courts²¹ and many others.
31. The Constitution is the basic law and it is the source of the fundamental rights and freedoms of the citizens and of the communities of Kosovo²². . These fundamental rights are "*indivisible, inalienable, and inviolable and are the basis of the legal order of the Republic of Kosovo.*"²³ Furthermore, Chapter 3 sets out further "Rights of Communities and Their Members."²⁴ These further rights of Communities supplement, augment and are in addition to all other rights that are expressed in the Constitution.
32. Article 57.3 of the Constitution specifically gives Members of Communities "...*the right to freely express, foster and develop their identity and community attributes.*" One of the ways that Communities "express, foster and develop their identity and community attributes" is by becoming involved in the political process, participating in deliberations on the adoption of the Statute of a Municipality and by making constructive suggestions about the form of the emblem that the Municipality chooses to adopt. Article 58.4 obliges the Republic of Kosovo to "...*adopt adequate measures as may be necessary to promote, in all areas of economic, social, political and cultural life, full and effective equality among members of communities.*" This obligation extends to the Municipality of Prizren as an emanation of the State having constitutional recognition as one of the basic units of local government. Article 124.1 obliges the Municipality of Prizren, and all Municipalities, "...*to encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies.*"
33. Furthermore, Article 22 of the Constitution incorporated into the constitutional law of Kosovo, and makes directly applicable, a further substantial body of human rights and fundamental freedoms. This Article provides:

Article 22 [Direct Applicability of International Agreements and Instruments]

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly

¹⁸ In Article 6. 1. The flag, the seal and the anthem are the state symbols of the Republic of Kosovo all of which reflect its multi-ethnic character.

¹⁹ In Article 7. 1. The constitutional order of the Republic of Kosovo is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law, non-discrimination, the right to property, the protection of environment, social justice, pluralism, separation of state powers, and a market economy. 2. The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.

²⁰ In Article 24. 1. All are equal before the law. Everyone enjoys the right to equal legal protection without discrimination. 2. No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status. 3. Principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

²¹ In Article 31.1 Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

²² Fundamental Rights are dealt with in Chapter 2 of the Constitution, which comprises Articles 21 through Article 56

²³ As expressed in Article 21.1 of the Constitution

²⁴ Chapter 3, in Article 57 through Article 62

applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- (1) *Universal Declaration of Human Rights;*
 - (2) *European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;*
 - (3) *International Covenant on Civil and Political Rights and its Protocols;*
 - (4) *Council of Europe Framework Convention for the Protection of National Minorities;*
 - (5) *Convention on the Elimination of All Forms of Racial Discrimination;*
 - (6) *Convention on the Elimination of All Forms of Discrimination Against Women;*
 - (7) *Convention on the Rights of the Child;*
 - (8) *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;*
34. These Conventions therefore have direct applicability in Kosovo and they have priority over provisions of laws and other acts of public institutions. The Decisions which emanate from the courts that adjudicate on these Conventions, principally the European Court of Human Rights sitting in Strasburg, aid and assist not only all the Courts of Kosovo but other State organs as to how fundamental rights and freedoms must be interpreted and applied in Kosovo.
35. Apart from the Chapter 2 "Fundamental Rights and Freedoms" and the Chapter 3 "Rights of Communities and Their Members" there are two Laws which are of assistance to this Court in coming to its Judgment in this case. They are the Law on the Use of Languages²⁵ and the Law on the Protection and Promotion of the Rights of Communities and Their Members in Kosovo²⁶
36. The purpose of Law on the Use of Languages, as stated in clear terms, gives special recognition to the languages of Communities. This is so even at the Municipal level which authorises Community languages in official use under conditions specified in the law. The full text of Article 1 provides:

Law on the Use of Languages

Article 1

1.1. The purpose of this law is to ensure:

- i. The use of the official languages, as well as languages of communities whose mother tongue is not an official language, in Kosovo institutions and other organizations and enterprises who carry out public functions and services;*
- ii. The equal status of Albanian and Serbian as official languages of Kosovo and the equal rights as to their use in all Kosovo institutions;*
- iii. The right of all communities in Kosovo to preserve, maintain and promote their linguistic identity;*

²⁵ Law No. 02/L-37 adopted by the Assembly of Kosovo on 27 July 2006

²⁶ Law No. 03/-047 adopted by the Assembly of Kosovo on 13 March 2008.

iv. The multilingual character of Kosovo society, which represents its unique spiritual, intellectual, historical and cultural values.

- 1.2. At the Municipal level, other community languages, such as Turkish, Bosnian and Roma will be languages in official use under conditions specified in this Law.*
37. The Court gives particular recognition of the wording, used in Article 1.1.iii, "*The right of all communities in Kosovo to preserve, maintain and promote their linguistic identity.*" By using these words the legislator chose to give a particular right to Communities to promote their linguistic identity. The question must be posed as to whether the Municipality of Prizren when it made the decision to adopt Article 7 of its Statute had any or any proper, regard to that right. This is particularly so because of the special position that the Law confers on Communities in Kosovo.
38. The Law on the Protection and Promotion of the Rights of Communities and Their Members in Kosovo was adopted by the Assembly of Kosovo on 13 March 2008. The General Provisions in Article 1 and the rights in relation to identity in Article 2 are strong and robust expressions of the will of the Assembly of the Republic of Kosovo to protect and promote rights of Communities and their members as citizens of Kosovo. The obligations on the Republic of Kosovo to recognize the rights contained in this law do not apply only to the Government and the Ministries established by Law. They not only apply to all the state organs and but also to the Municipalities.
39. The Municipalities are the basic unit of local government in the Republic of Kosovo. In fact, Article 124.1 of the Constitution states: "*1. The basic unit of local government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-governance and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies.*" The Municipalities therefore have special recognition at the constitutional level with the attendant rights and obligations under the constitutional framework. These obligations include the obligation to act in a constitutional manner in relation to the fundamental rights and freedoms granted by the Constitution and the Law. Having given these rights to the Communities and their members and bearing in mind the obligations of all public bodies to act in a lawful and constitutional manner, a further question must be asked: whether the Municipality of Prizren had regard, or any proper regard, to these rights when it made the decision to proceed to adopt Article 7 of its Statute.
40. The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, as earlier stated, were incorporated into the law of Kosovo at the Constitutional level, it being given priority over provisions of laws and other acts of public institutions. This Court must interpret the Constitution and the Convention in a complementary manner bearing in mind the necessity to protect the fundamental rights and freedoms enumerated in both. Many of the countries of Europe which emerged from totalitarian rule over the last number of years have adopted European standards for the protection of human rights. Kosovo has done the same. The constitutional system is one, like others, based on the pillars of democracy, human rights and the rule of law.
41. The Framework Convention for the Protection of National Minorities is also part of the domestic law of Kosovo being one of the international agreements and instruments referred to in Article 122. Articles 1 to 6 of the Framework Convention give power expression to the ideals underpinning the reasons why Communities ought to be given special protection. They state:

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

Article 3

- 1 *Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.*
- 2 *Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.*

Article 4

- 1 *The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.*
- 2 *The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.*
- 3 *The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.*

Article 5

- 1 *The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.*
- 2 *Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.*

Article 6

- 1 *The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those*

persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

- 2 *The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.*
42. The Law on the Use of Languages and the Law on the Protection and Promotion of the Rights of Communities and Their Members in Kosovo, to a large extent, gave concrete effect to the Framework Convention. The Court will interpret the actions of the Municipality of Prizren in light of the Constitution, the International Conventions incorporated into the law of Kosovo, the case law from the European Court of Human Rights and these Laws.
43. Prizren is located in the South of Kosovo and because of its geographical location it is an important commercial and business centre. It has a long history and tradition of ethnic diversity. It is culturally rich, not least because of the diversity and the ethnic heterogeneity of its population. It has a long tradition of co-operation and tolerance among its different communities. The Municipality of Prizren has members from many of its different Communities and the Applicant, Mr Kurtiši, is the Deputy Chairperson for Communities of the Municipality.
44. The particular complaint in this case is in relation to the symbol of the Municipality of Prizren. Symbols are closely related to the fostering and preservation of tradition, culture, distinctive characteristics of every people and they have an influence on assembling and joining in one idea and one belief. It is beyond any doubt that symbols convey certain emotions and meaning which are experienced in a specific way by those who recognize their history, tradition and culture in those symbols. The symbols are not pure images and decorations but each of them carries certain deeper and hidden meaning.
45. The emblem represents in many ways the achievements, hope and ideals of all citizens of a country or of a region of the country. As such the emblem ought to have respect for all citizens, that is, in the instant case, the citizens of the Municipality as "a basic territorial unit of local self-governance in the Republic of Kosovo"²⁷. In order to make it possible for the citizens of Prizren to see it and feel it in that way, the emblem of the Municipality ought to be a symbol of all the citizens.
46. It is not the local symbol of only one Community that should be reflected in the tradition and historical heritage of that people but the official symbol ought to reflect the multi-ethnic nature of the Municipality. This Court is aware that Albanians identify with the "1878" portrayed on the emblem of the Municipality of Prizren, as described in Article 7 of the Statute of the Municipality. 1878 was the year of the founding of the League of Prizren. Albanian leaders gathered in Prizren on 10 June of that year seeking to achieve an autonomous Albanian state. No one in Prizren could doubt that the inclusion of "1878" sought to favour the Albanian Community to the exclusion of the non-majority Communities. The Court considers that the other Communities in the Prizren Municipality have the legitimate right to preserve their tradition, culture and identity through the Emblem. When the Municipality decided to proceed with the emblem promoting the Albanian heritage and tradition without regard to the other Communities it infringed their statutory and constitutional rights.

²⁷ Article 12 (1) of the Constitution

47. The Constitutional Court reiterates that the right of Communities to freely express, foster and develop their identity and community attributes belongs to all Communities in Kosovo. Indeed, both Albanian and other communities should be equally able to preserve their tradition, culture and identity through their respective symbols. Proper protection of such Community rights undoubtedly and inherently necessitate a concerted, coherent and sustained action by public authorities aimed at providing equal opportunities and a range of cultural, linguistic and other rights for all Communities.²⁸
48. Moreover, the Framework Convention for the Protection on National Minorities, provides that "*a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a minority, but also create appropriate conditions enabling them to express, preserve and develop this identity.*"²⁹
49. In this connection, the Court also recalls that the Constitution establishes that "The Republic of Kosovo is a *multi-ethnic society consisting of Albanian and other Communities*"³⁰ and equally guarantees the right of communities to use and display Community symbols, in accordance with the law and international standards. The Constitution³¹ further spells out the State's responsibility to ensure appropriate conditions enabling Communities and their members to preserve, protect and develop their identities; it also emphasises the responsibility of the State to promote a spirit of tolerance and dialogue, and to support reconciliation among communities.
50. The Constitutional Court, therefore, has to consider to what extent Article 7 of the Municipal Statute of Prizren complies with these standards by creating appropriate conditions enabling all communities to preserve their identity under a common symbol, i.e. the emblem of the Municipality of Prizren.
51. It appears, however, that the Albanian Community has been put in a privileged position only because this community has a distinct majority in the Assembly and a dominant position in the Municipality. The Court considers that the Municipal Assembly of Prizren did not address properly the legitimate concerns expressed by the Applicant. Indeed, the Applicant maintains that the members of the Municipal Assembly from the majority community ignored the traditional presence of non-majority Communities in the Municipality.³²
52. The Constitutional Court considers that a prerequisite for a pluralist and genuinely democratic multiethnic society, be it a country, region, municipality or other territorial unit, is non-majority Community participation in the political, social, economic and cultural life³³ in order to develop a sense of belonging to and having a stake in that society. Such participation cannot be achieved if the common symbol of that society does not represent the rights of all communities, but, instead, ignores the rights of non-majority Communities.
53. Consequently, the emblem of Prizren Municipality, constituting the most powerful expression of the identity of all communities, should portray the symbol of a multiethnic

²⁸ See e.g. Venice Commission Report on Non-Citizens and Minority Rights Adopted by the Venice Commission at its 69th plenary session (Venice, 15-16 December 2006)

²⁹ See Preamble of the Framework Convention for the Protection of National Minorities

³⁰ See Art. 3 of the Constitution

³¹ See Article 58

³² See Para 12 of the Judgment

³³ Cf. Article 15 of the Framework Convention for the Protection of National Minorities

society, representing majority and non-majority communities, and should promote a spirit of tolerance, dialogue and reconciliation among communities.

54. The Court recalls the proposal of the non-majority Communities in Prizren that the wording "Komuna", "Opstina", "Belediye" be written within the circle of the emblem of the Municipality without the year "1878". The Court is of the view that this was a reasonable proposal that would have met the legitimate concerns of the Communities.
55. Accordingly, the Court finds that the Municipal Assembly, when making the decision on adopting Article 7 of its Statute, imposed an emblem which cannot be considered as a common symbol of all Prizren communities, and outweighed the identity of the ethnic Albanian Community over the identity of other Communities in Prizren. Thereby, the Court finds that the Municipal Assembly violated the Constitution.
56. Bearing all this in mind, having considered all the facts and the law in the present case, the obligations of Municipality to have regard to the rights of non-majority Communities, the Articles of the Constitution previously referred to the International Conventions and the relevant case law from the ECHR, the Court concludes that the Municipality of Prizren did not have any or any proper regard to the fundamental rights and freedoms granted by the Constitution when dealing with the right of the non-majority Communities to preserve, maintain and promote their identity.

Holding

57. For these reasons the Court gives Judgment unanimously, with a concurrent opinion of Judge Rodrigues, as follows;

1. **Decides** that the referral is admissible;
2. **Finds** that there has been a violation of the rights of the non-majority Communities in Prizren to preserve, maintain and promote their identity;
3. **Decides** that Article 7 of the Statute of the Municipality of Prizren is incompatible with the Constitution of the Republic of Kosovo, in particular Articles 3, Article 7.1, Article 58 and Article 59;
4. **Orders** the Municipality of Prizren to amend its Statute and its emblem within the period of three months from the delivery of this Judgment in order to bring them into conformity with the Constitution and to not exclude the non-majority Communities;
5. **Requires** the Municipality of Prizren to report to the Court on progress in relation to compliance with that Order prior to the expiry of the period of three months from the delivery of this Judgment and
6. **Remains seized** of the matter pending compliance with that Order.

This Judgment shall have effect immediately on delivery to the parties.

Done at Prishtina this day of March 2010.

Judge Rapporteur

Judge Almíro Rodrigues



President of the Court

Prof. Dr. Enver Hasani