



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court
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Prishtina: 20 April 2010
Ref. no.: RK 12 /10

RESOLUTION ON INADMISSIBILITY

Case No. KI. 05/09,

Ahmet Ismail Rexhepi

vs.

Kosovo Police and
The Municipal Public Prosecutor Office Pristina

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

The Constitutional Court composed of:

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

Applicant

1. The Applicant, Ahmet Ismail Rexhepi, is residing in Pristina.

Responding Party

2. The Responding parties are Kosovo Police and the Office of Public Prosecutor Kosovo.

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Subject matter

3. The Applicant complains that his rights guaranteed by Article 27 of the Constitution (Prohibition of Torture, Cruel, Inhuman and Degrading Treatment) have been violated. The applicant argues that there was a lack adequate action of Kosovo Police and the Municipal Public Prosecutor Office in Pristina in founding and prosecuting persons who attacked and beaten his son on 30 October 2006. According to the medical reports, at that time his son was still a minor having been born on 11 November 1991.

Legal basis

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter referred to as: the Constitution); Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic Kosovo (hereinafter referred to as: the Law), and Section 54(b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

Summary of the proceedings before the Court

5. The Applicant submitted his Referral to the Constitutional Court on 24 February 2009. On 27 February 2009 the Applicant was informed by the Provisional Secretariat of the Constitutional Court that his case would be considered once the Court becomes fully functional.

6. On 23 December 2009 the Reporting judge communicated the case to the Respondent Parties. They replied to the Court a day after this communication.

7. On 18 February 2010, after having considered the Report of the Reporting Judge, Kadri Kryeziu, the Review Panel, composed of Judges Ivan Čukalović (Presiding), Enver Hasani and Iliriana Islami recommended to the full Court to reject the case as inadmissible.

Facts

8. It appears from the documents submitted by the Applicant that, on 30 October 2006, certain individuals (who according to the applicant's allegations are- well known to the police) beat the Applicant's minor son. According to the copies of medical findings the Applicant son suffered from, inter alia, *Cefalea* (i.e. headache in English) and *Stres ulcus vomitus*.

9. A day after the attack the Applicant together with his son went to the police to provide them with additional information regarding the case. However, the Applicant did not receive any further information.

10. On 13 November 2006 the Applicant submitted his complaint to the Ombudsperson Office in Kosovo. The Ombudsperson Office communicated the case to the Deputy Police Commissioner on 2 April 2007.

11. The Applicant alleges that up to recent times he has visited the Police station at least 9 times, the Public Prosecutor Office at least 3 times but, he alleges, without any success. The Applicant submitted his complaints also to the EULEX police and the Kosovo Judicial Council of Kosovo.

12. However, it appears that until now the Police have not identified persons who attacked the Applicant's son and consequently no one has been prosecuted yet.

Applicant's allegations

13. The Applicant complains that his rights guaranteed by Article 27 of the Constitution (Prohibition of Torture, Cruel, Inhuman and Degrading Treatment) have been violated

Comments by the Responding Parties

14. On 24 December 2009 the Municipal Public Prosecutor replied to the Constitutional Court. According to the Prosecutor they communicated on this case several times (i.e. on 8 May 2005, 5 February 2008 and 18 March 2009) with the Police. The Public Prosecutor further alleges that in order to find the individuals who attacked the Applicant's son they took a statement from a witness identified by the Applicant. However, this witness did not identify the persons who attacked the Applicant's son.

15. Furthermore in its reply to the Court, General Director of Kosovo Police states that the police took all necessary investigative actions and interviewed victim and witness. However, the Police did not have enough evidence and facts to identify the suspects. Consequently on 27 April 2007 the case was sent to the Public Prosecutor against "unknown perpetrators".

Assessment of the Admissibility of the Referral

16. In order to be able to adjudicate the Applicant's Referral, the Court needs first to examine, whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution.

17. In this connection, the Court refers to Article 113.7 of the Constitution, which provides:

"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";

and to Article 47.2 of the Law, stipulating that:

"The individual may submit the referral in question only after he/she has exhausted all legal remedies provided by the law."

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18. As indicated in Case No. KI.41/09, AAB-RIINVEST University vs. the Government of the Republic of Kosovo (Resolution Nr. RK-04/10 of the Constitutional Court of the Republic of Kosovo, dated 27 January 2010), the Court wishes to emphasize that the rationale for the exhaustion rule, as interpreted by the European Court of Human Rights (see Article 53 of the Constitution), is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution. (see, *mutatis mutandis*, ECHR, *Selmouni v. France*, no. 25803/94, decision of 28 July 1999). However, it is not necessary for the constitutional rights to be explicitly raised in the proceedings concerned. As long as the issue was raised implicitly or in substance, the exhaustion of remedies is satisfied (see, *mutatis mutandis*, ECHR, *Azinas v. Cyprus*, no. 56679/00, decision of 28 April 2004).

19. It appears from the Applicant's allegations and from the Respondent Parties reply that the Applicant case is still pending.

20. Even assuming that the Court would extend its authority to hear the Applicant's Referral on the theory that the Applicant's exhausted all available remedies, it seems that the Referral must be rejected for the following reasons.

21. Taking into account the allegations stated in the Referral, an issue may arise as to whether the suffering imposed upon the Applicant may be considered torture, inhuman or degrading treatment or punishment for the reason that no progress has been made in the relevant investigation 4 years after the attack of the Applicant's son.

22. The Court recalls that Article 27 of the Constitution is identical to Article 3 of the European Convention on Human Rights which reads:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

23. It is well established that Article 3 of the European Convention enshrines one of the fundamental values of democratic society. This implies one of the "absolute rights" of the European Convention and the states can never depart from compliance with it even in times of war.

24. Taking into account the replies of the Respondent Parties the Constitutional Court is of the view that the authorities used their best endeavors and followed all relevant procedures to establish the identity of the perpetrators and to bring them to justice.

26. Furthermore, the Applicant, as the father of then minor who was the victim of the attack, had not submitted any *prima facie* evidence indicating a violation of his rights under Article 27 of the Constitution and Article 3 of the Convention (see *Vanek v. Slovak Republic*, Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005). It follows that this complaint is ill-founded and must be rejected.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Article 55 of the Rules of Procedure, unanimously,

DECIDES

- I. TO REJECT the Referral as inadmissible.
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law.
- III. This Decision is effective immediately.

Judge Rapporteur

President of the Constitutional Court

Mr. Sc. Kadri Kryeziu

Prof. dr. Enver Hasani

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