



REPUBLIKA E KOSOVËS
Republika Kosova - Republic of Kosovo
Gjykata Kushtetuese / Ustavni sud / Constitutional Court

Pristina, 15 October 2010
Ref. No.: RK 49/10

RESOLUTION ON INADMISSIBILITY

in

Case No. KI 18/09

Reshat Karanxha

vs.

Kosovo Judicial Council

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

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

Applicant

1. The Applicant is Mr. Reshat Karanxha, residing in Prizren.

Opposing Party

2. The Opposing Party is the Kosovo Judicial Council of the Republic of Kosovo (hereinafter: the "KJC").

Subject Matter

3. On 3 June 2009, the Applicant filed a Referral with the Secretariat of the Constitutional Court (hereinafter: the "Court"), alleging that his fundamental human rights protected by the Constitution, in particular, Article 49, his right to work, has

been violated by the KJC and the Special Representative of the Secretary General of the United Nations (hereinafter: the "SRSG"), since the KJC had withdrawn its recommendation to the SRSG to appoint him as a Minor Offences Judge in the Municipal Court in Prizren, although the Assembly of Kosovo had already approved the KJC's recommendation for his appointment on 21 September 2006.

Legal basis

4. Article 113 (7) of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"); Article 22 (7) and (8) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the "Law"); and Section 54(b) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

Proceedings before the Court

5. On 3 June 2009, the Applicant filed a Referral with the Secretariat of the Court.
6. By letter of 27 May 2010, the Applicant was asked by the Judge Rapporteur, assigned to the case, whether he had taken any steps to correct the record of his criminal conviction. In reply, the Applicant stated that the Municipal Court in Prizren did not have any record of his 1986 conviction. In the Applicant's opinion, there is, therefore, no court record to correct.
7. The KJC, to which the Referral was communicated, did not submit its comments to the Referral.
8. Although asked by the Judge Rapporteur, the Municipal Court in Prizren did not verify whether there still was a court record of the Applicant's conviction of 15 January 1986 (Judgment 317/85).
9. The Applicant, however, submitted evidence from the Ministry of Justice, Republic of Croatia, dated 25 January 2008, certifying that he had not been convicted. He further submitted a communication from the Ministry of Justice of the Republic of Serbia (Ministry of Internal Affairs, Police Administration Prizren 09 No.235-304/06, issued on 17.10.2006, IKM Krusevac) certifying that he had not been convicted. In addition thereto, the Municipal Court of Ferizaj issued a statement on 26 March 2009 certifying that the Applicant had not been convicted for a criminal act resulting in three (3) years of imprisonment or a fine.
10. On 14 June 2010, after having considered the Report of the Judge Rapporteur Robert Carolan, the Review Panel, composed of Judges Snezhana Botusharova (Presiding), Altay Surroy and Ivan Cukalovic, made a recommendation to the full Court on the inadmissibility of the Referral.

Summary of the facts

11. In June 2006, the KCJ recommended to the SRSG to appoint 22 persons, who had successfully completed the International Leadership Program (ILEP), as judges. The Applicant was one of those persons.
12. On 21 September 2006, the Assembly of Kosovo initially approved the Applicant's appointment to the position of Minor Offences Judge in the Municipal Court in Prizren, subject to final confirmation by the SRSG. Pursuant to Section 1(5) of UNMIK Regulation No. 2005/52 on the Establishment of the Kosovo Judicial Council

(hereinafter: "Regulation 2005/52"), the SRSG shall exercise final authority regarding the appointment and removal of judges from office.

13. In October 2006, the KJC was informed that the Applicant had been convicted of some criminal acts. It, therefore, requested the SRSG to postpone the appointment decision of the Applicant until further notice, since this information needed some investigation.
14. The information was that, between 1986 and 2002, the Applicant had been convicted in four separate cases. Three of the convictions had been expunged from his record, but the fourth one, a conviction of 15 January 1986 for use of violence in violation of Article 195 (1) of the Criminal Code of the Socialist Autonomous Province of Kosovo (Judgment K. 317/85), carrying a period of imprisonment of two months, had not been expunged.
15. In addition to this conviction, the Municipal Court in Zagreb, Croatia, by judgment of 15 October 1986, had, allegedly, convicted the Applicant to a fine of 50.000 dinars for a criminal act in violation of Article 163(1) and (3) of the Criminal Code of Croatia (K 537/85).
16. It further appears that the Municipal Court of Ferizaj convicted him in 2001 for the infliction of light bodily harm (Judgment P. No. 357/2001) and sentenced him to two (2) months imprisonment.
17. In his application for the position of judge in the Minor Offences Court in Prizren, the Applicant stated that he had not been convicted of a crime and that he was of Turkish origin.
18. In October 2006, a verification officer of the UNMIK Department of Justice went to the Municipality of Prizren to check the birth records of the Applicant and learned that his parents were of Albanian origin. Therefore, it was determined that the Applicant was of Albanian and not Turkish descent.
19. By letter of 24 March 2007, the KJC informed the Applicant, that, as he had been convicted on four separate occasions between 1986 and 2002 and as one of those convictions dated 15 January 1986 had not been expunged, it withdrew its preliminary recommendation for the Applicant's appointment as a judge in the Minor Offences Court in Prizren.
20. It also appears from the documents, that there was some confusion with respect to the Applicant's criminal record which seems to have been created in part by an error in the translation of one of the documents. Namely, before the Assembly of Kosovo preliminarily approved the Applicant's appointment as a judge, the original investigation report, drawn up in English, mentioned the prior criminal convictions. However, when this report was translated into Albanian and Serbian, it was erroneously stated that the Applicant had not been convicted.

Applicant's allegations

21. The Applicant alleges a violation of the following constitutional rights:
 - Article 22 (1), (2) and (4) [Chapter II, Fundamental Rights and Freedoms, Direct Applicability of International Agreements and Instruments];
 - Article 24 (1) and (2) - [Equality Before the Law]
 - Article 25 (1) - [Right to Life]

- Article 41 (1) and (2) - [Right of Access to Public Documents]
 - Article 49 (1) and (2) - [Right to Work and Exercise Profession]
 - Article 54 - [Judicial Protection of Rights]
 - Article 57 (1), (2) and (3) - [Chapter III, Rights of Communities and Their Members, General Principles]
 - Article 58 (2) - [Responsibilities of the State]
 - Article 61 - [Representation in Public Institutions Employment]
 - Article 104 (5) - [Appointment and Removal of Judges]
 - Article 108 (3), (4) and (5) - [Chapter VII, Justice System, Kosovo Judicial Council]
22. The Applicant further complains that the KJC acted contrary to Articles 22 (2) and (4), 49 and 54 (1) of the Constitution, by not appointing him as a judge in the Minor Offences Court in Prizren, although the Kosovo Assembly had already approved the KJC's recommendation for his appointment on 21 September 2006.
23. In addition to the alleged violation of his constitutional rights, the Applicant alleges a violation of the following laws in connection with the violation of his constitutional rights:
- Articles 9(2), 35(3), 37(1) and (2) and 77 of Law (No. 02/L-28) on Administrative Procedure;
 - Article 1(a)(i) of Law (No. 2003/12) on Access to Official Documents; and
 - Articles 2 (a), 4 (a) and (j) of the Anti-Discrimination Law (No.2004/3).
- Assessment of admissibility of the Referral**
24. In order to be able to adjudicate the Applicants' Referral, the Court need first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution that are further specified in the Law on the Constitutional Court and the Rules of Procedure.
25. As to the present Referral, the Court notes that the actions of the KJC, which, according to the Applicant, violated his constitutional rights, occurred in March 2007. This means that the Referral relates to events prior to 15 June 2008 that is the date of the entry into force of the Constitution.. It follows that the Referral is out of time and, therefore, incompatible "ratione temporis" with the provisions of the Constitution and the Law (see *Resolution on Inadmissibility, Case KI 25/09 Shefqet Haxhiu vs. Workers Organisation "Industria e akumulatoreve"* of 21 June 2010 and *Blecic v. Croatia, Application no. 59532/00, ECHR Judgment of 29 July 2004*).
26. Accordingly, the Applicants' Referral must be rejected as inadmissible.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 20 of the Law, and Section 54 (b) of the Rules of Procedure, unanimously,

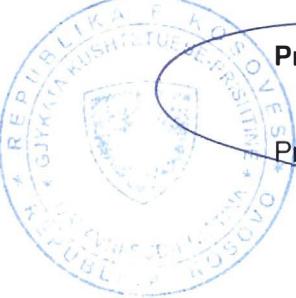
DECIDES

- 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. The Decision is effective immediately.

Judge Rapporteur


Robert Carolan

President of the Constitutional Court


Prof. Dr. Enver Hasani