



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

Prishtina, on 30 november 2010
Ref.Nr.RK.:40/10

RESOLUTION ON INADMISSIBILITY

for

Case no. KI 37/09

Applicant X

Vs.

Decision of the Senate of the University of Prishtina, dated 29/09/2009

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

Composed of:

Kadri Kryeziu, Deputy President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Ivan Cukalovic, Judge
Gjyljeta Mushkolaj, Judge
Iliriana Islami, Judge

Unanimously adopts the Resolution on Inadmissibility of the Referral.

President of the Court, Dr. Enver Hasani, pursuant to 18, paragraph 1 item 1.3 of the Law on the Constitutional Court of the Republic of Kosovo (Law no. 03/L -121) declared a conflict of interest and requested his exclusion for the proceedings of this case, and his request was approved by judges. The President did not participate during any stage of review or during the decision-making process for this case.

The Applicant

1. The applicant is resident of the Republic of Kosovo.

Challenged Decisions

2. The applicant challenged the Decision of the Senate of the University of Prishtina, dated 29.09.2008, which rejected the applicant's complaint on the selection of a candidate in the position of professor for the course "Criminology and Criminology Tactics", as per the vacancy announcement of 07.03.2008.

The subject matter

3. The applicant argues that the challenged decision has violated: the basic principles of the European Convention of Human Rights and the Universal Declaration of Human Rights; the basic principles of the Constitution of Kosovo and the Statute of the University of Prishtina.

The legal basis

4. Article 113 of the Constitution of the Republic of Kosovo (hereinafter "the Constitution"); Article 20 of Law 03/L-121 on the Constitutional Court of the Republic of Kosovo (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").

Summary of proceedings before the Court

5. The applicant submitted his referral before the Constitutional Court on 11 September 2009. The applicant requested from the Court not to disclose his identity in its decision and his request was approved.
6. On 13 May 2010 and following the review of the report by Judge Rapporteur Kadri Kryeziu, the Review Panel, composed of Judge Iliriana Islami, Judge Altay Suroy and Judge Gjyljeta Mushkolaj, presented its own recommendations to reject the case as inadmissible before the full Court.

Facts

7. On 29.10.2008, the applicant received the decision, ref. no.2/593, dated 6.10.2008, issued by the Senate of the University of Prishtina which rejected his complaint filed therein, on the selection of another candidate as professor of course "Criminology and Criminology Tactics", pursuant to the vacancy announcement published in media on 07.03.2008.
8. On 21.11.2008, the Applicant X addressed the Ministry of Education, Science, and Technology, respectively the Inspection Service, requesting the annulment of the decisions as per item 7 of the aforementioned decision and the reasoning of the Senate of the University of Prishtina, dated 07.03.2008, by considering them "**illegal, anti-scientific, inhumane and discriminatory**".
9. On 02.03.2009, the applicant of the referral addressed the Prime Minister of Kosovo and the Independent Oversight Board of Kosovo, requesting the annulment of decisions as per item 7 of the aforementioned decision and based on the same reasoning.
10. On 04.05.2009, the Independent Oversight Board of Kosovo, with the Decision A 02 (48) 09, declared itself incompetent for adjudication in relation to the applicant's complaint, challenging the selection of a candidate pursuant to the public vacancy announcement of the University of Prishtina, in line with Article 10.2 of UNMIK Regulation No.2008/12 amending UNMIK Regulation No.2001/36 on the Kosovo Civil Service; Article 25

paragraph 25.5 of the Law on Higher Education (Law no.2002/03 of Assembly of the Republic of Kosovo) and Article 178 of the Statute of University of Prishtina.

Contentions of the applicant

11. The applicant in his referral contends that his right to work, provided by Article 49.1 of the Constitution, has been violated. The applicant does not elaborate the matter further.

Preliminary assessment of the admissibility of referral

12. In order to decide about the applicant's referral, the Court must firstly review if the applicant has fulfilled the admissibility conditions provided by the Constitution. In relation to this, the Court refers to Article 113.7 of the Constitution which provides that:

"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."

13. Article 48 of the Law provides that:

"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."

14. On the basis of the documentation presented for this case, the Court concludes that, following the decision by the Independent Oversight Board (decision A 02(48)2009), the applicant did not use any legal remedy for appeal even though the legal instruction by the Independent Oversight Board clearly underlined that the decision is subject to "judicial review in conformity with the law."

15. The Court also emphasises that domestic legislation, especially the Law on Contested Procedure (Law no. 03/L-006 of Assembly of the Republic of Kosovo), prescribes the competence for disputes related to Labour Contracts to the ordinary courts, and also provides effective legal remedies of appeal for realizing the rights which are allegedly violated.

16. Moreover, Article 475 of this Law provides that: "In contentious procedures in work environment, especially in setting the deadlines and court sessions, the court will always have in mind that these cases need to be solved as soon as possible."

17. For the all foregoing, the Court assess that Applicant X has not addressed any competent court for adjudication in relation to the referral filed before the Constitutional Court.

18. The Court wants also to emphasize that the reasoning for the exhaustion of legal remedies is to provide the authorities in question, including the courts, an opportunity to prevent or correct the alleged Constitutional violations. This rule is based on the assumption that Kosovo's legal order shall provide effective legal remedies in case of violation of constitutional rights (see, *mutatis mutandis*, ECHR, Selmouni v. France no. 25803/94, Decision of 28 July 1999).

19. The Court determines that a mere suspicion with regards to the perspective of the matter is not sufficient to exclude an appellant from his obligation to appeal the competent domestic organs (see *Whiteside v. the United Kingdom*, decision of 7 March 1994, Application no. 20357/92, DR 76, p.80).

20. In addition, the applicant of the referral did not clarify accurately the referral nor did the applicant justify the referral either in its procedural or substantive aspect in order to prove that a right guaranteed by the Constitution had been violated.

FOR THAT REASON

21. On 13 May 2010, the Court following the review of all facts and presented proofs, and following the review of the case, concluded that the applicant of the referral did NOT exhaust all available legal remedies and therefore unanimously:

DECIDED

- I. To REJECT the Referral as Inadmissible.
- II. In conformity with Article 20.4 of the Law on the Constitutional Court, this decision shall be communicated to the parties and it shall be published in the Official Gazette.
- III. This Decision shall enter into force immediately.

Judge Rapporteur

Mr. Sc. Kadri Kryeziu



President of the Constitutional Court

Robert Carolan (as per authorization)

