



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO  
**GJYKATA KUSHTETUESE**  
**УСТАВНИ СУД**  
**CONSTITUTIONAL COURT**

Pristina, 22 December 2010  
Ref. No.: RK 77/10

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 88/10**

Applicant

**Agim Paca**

vs.

**Enver Hasani, former Rector of the University of Pristina**

### **THE 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 Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

#### **Applicant**

1. The Applicant is Mr. Agim Paca residing in Pristina.

#### **Opposing party**

2. The opposing party is the former Rector of the University of Pristina (hereinafter: "UP"), Mr. Enver Hasani (hereinafter: the "Opposing Party").

### **Subject matter**

3. The Applicant alleges that the opposing party has violated the following laws and by-laws:
  - a. The law on Civil Service of Kosovo;
  - b. The Law on Higher Education in Kosovo;
  - c. The Statute of UP;
  - d. Administrative Instruction on Equivalence and recognition of diplomas earned at the Higher Education Institutions of Kosovo, Science and Technology issued by the Ministry of Education Science and Technology (hereinafter: the "MEST") No. 15/2003 Article 4.1 under g); and
  - e. Election regulations and procedures of University of Pristina in 2009.

### **Legal basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the "Constitution"), Article 22 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 27 September 2010, the Applicant submitted a Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the "Court").
6. On 21 October 2010, the Referral was communicated to the Opposing Party, which has not submitted any comments.
7. On 17 December 2010, the Review Panel, consisting of Judge Snezhana Botusharova (Presiding), Deputy President Kadri Kryeziu and Judge Iliriana Islami, considered the Report of the Judge Rapporteur Ivan Čukalović and made a recommendation to the Court on the inadmissibility of the Referral.
8. Mr. Enver Hasani, in his official capacity as President of the Constitutional Court of the Republic of Kosovo has not participated in any stage after the Referral being registered and has requested the Court to be excluded from participation during the deliberations. The Court approved his request.

### **Summary of the facts**

9. Apart from his allegations, the Applicant has not submitted any documents in support of his claim.

### **Applicant's allegations**

10. On 5 July 2006, the Senate, chaired by the former Rector of UP, Dr. Enver Hasani, held a meeting, where Dr. Enver Hasani was elected for the academic title Associate Professor at the Philosophical Faculty, Department of Political

Sciences, although he did not provide any document proving that he possessed the equivalence assessment and nostrification/ acknowledgment of a PhD.

11. Furthermore, he obtained the academic title of a associated professor at the Philosophical Faculty of University of Pristina, while he was Rector of UP although he did not undergo the procedure of equivalence assessment and nostrification/ acknowledgment which is in contradiction of the Law on Higher Education in Kosovo, the MEST Article 4.1(g) and the Statute of the University of Pristina. In this way he managed, through the Senate of the UP – to ensure his election for the academic title of associated professor in an unlawful manner.
12. On 30 June 2009, at the Senate meeting of the UP, Dr. Enver Hasani, by way of misusing the responsibilities as former Rector of UP, managed to be elected for the academic title of Regular Professor in “International Public Law” at the Law Faculty of the UP in an unlawful manner. Based on the provisions of the statute of the UP and the Law on Higher Education in Kosovo, Dr. Enver Hasani could not be elected for this academic title due to the following reasons:
  - a. The 4 years period had not elapsed since his last election in 2006 for the academic title of associated professor (Article 182, 183, 184 and the Statute of University of Pristina);
  - b. There was no professional or scientific paper to be assessed as “professional or scientific contribution” which would enable the premature election for the academic title based on merits and success achieved;
  - c. During 2008 and 2009, there was no competition for the selection of a professor in the field of International Public Law at the Law Faculty of the UP;
  - d. The Professors' Council of the Law Faculty did not establish a review commission which would be responsible to assess whether the potential candidates meet the conditions foreseen in the Law on Higher Education and the Statute of the UP for the promotion to an academic title. As a result, in 2008-2009 no assessment report was drafted which would indicate whether it was Dr. Enver Hasani or some other candidate who would deserve to receive the academic title of regular professor in “International Public Law” at the Law Faculty (based on Article 180 and 181 item 5. of the statute of the UP);
  - e. During 2008-2009 the Professors' Council of the Law Faculty did not review any report of the review commission in order to see whether the legal conditions were met for Dr. Enver Hasani or any other candidate to be awarded the academic title of regular professor in “International Public Law’ at the Faculty of Law as requested based on the public competition announced by the University of Pristina; and
  - f. In 2008-2009 the Professors' Council of the Faculty of Law of the UP did not propose to the Senate to select Dr. Enver Hasani for the academic title of regular professor in “International Public Law”.
13. The Applicant further alleges that in May and June, 2009, all Faculties of the UP held elections for members of the Faculty Council, the presidency of faculties and the presidency of the UP. During these elections, Dr. Enver

Hasani by misusing the responsibilities as the former Rector of the UP and by falsely pretending that he was employed at the Faculty of Law of the UP, managed to be elected as a member at the Law Faculty Council, although he was appointed as a professor with the academic title of associated professor at the Philosophical Faculty of the UP on 5 July 2006. Whereas only at the Faculty of Philosophy he could apply for member of the Professors' Council. Although without competition and without the proposal of the Law Faculty Council he was, in an unlawful manner, appointed professor at the Law Faculty.

14. In 2009, the Applicant allegedly raised these issues with the Council of the Faculty of Law, but no review took place for the reason that it did not deal with the past.
15. Finally, the Applicant state that "Filing of Cases against Enver Hasani in the Kosovo Courts is in vain because he exercises a powerful influence over judges, since he was a member of the Kosovo Judicial Council for a long time and a member of the Commission for interviewing and nomination of judges and Prosecutors of Kosovo".

#### **Assessment of the admissibility of the Referral**

16. In order to be able to adjudicate the Applicants' Referral, the Court needs first to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.

17. In this respect, article 113.7 of the Constitution states:

*"Individual persons 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."*

18. Furthermore, article 48 of the Law states:

*"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."*

19. For the purposes of the Constitution, a victim is a natural or legal person (see case of AAB-RIINVEST University L.L.C., Pristina vs. Government of the Republic of Kosovo, Case No. KI. 41 /09) whose Constitutional Rights are personally or directly affected by a measure or act of a Public Authority. A person who is not affected in this manner does not have standing as a victim since the Constitution does not provide for actio popularis. In other words, an Applicant cannot complain in the abstract about measures by public authorities which have not been applied to them personally, such as is the case before this Court.
20. In the present case, the Applicant has not presented that he has been directly and currently violated by a public authority in his/her rights and freedoms

guaranteed by the Constitution (see Vanek v. Slovak Republic, ECHR Decision as to Admissibility of Application no. 53363/99 of 31 May 2005).

21. It follows that the Applicant is not an authorized party and the Referral must be rejected as Inadmissible.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 47 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. This Decision is effective immediately.

**Judge Rapporteur**

Ivan Čukalovič



**Deputy President of the  
Constitutional Court**

Mr. sc. Kadri Kryeziu

