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Contact: Ireneusz Kondak
Tel: 03.90.21.59.86

Date: 04/10/2024

DH-DD(2024)1117

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Meeting: 1514th meeting (December 2024) (DH)

Communication from the applicant (03/10/2024) concerning the case of Besnik Cani v. Albania (Application No. 37474/20).

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1514^e réunion (décembre 2024) (DH)

Communication du requérant (03/10/2024) relative à l'affaire Besnik Cani c. Albanie (requête n° 37474/20)
[anglais uniquement]

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

Tirana, on 3 October 2024

DGI

03 OCT. 2024

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

To: **Mrs. Dimitrina LILOVSKA**
Head of Division
Department for the Execution of Judgments of the ECHR
DGI – Directorate General of Human Rights and Rule of Law
Council of Europe

From: **Mr. Besnik CANI.**

Subject: On the execution of the ECHR final judgment *Besnik Cani v. Albania*, application no. 37474/20, dated 4 October 2022.

Dear Mrs. Lilovska,

I learned about the repeated communication from the Albanian Government concerning the execution of the ECHR final judgment *Besnik Cani v. Albania*, via the Committee of Ministers Secretariat's notice dated 10 September 2024, DH-DD(2024)1025, specifically about the letter from the State Advocature of the Republic of Albania no. 1278/6 prot., dated 9 September 2024, requesting again the closing of the CM's supervision for this case, **with the argument that the applicant Besnik Cani has not initiated a request for the reopening of proceedings at the Special Appeals Chamber (SAC), as well as considering the date when the ECHR decision became final, the time limit to make a request at the SAC has now expired.**

It is unfortunate to note that the State Advocature continues to ignore or intentionally misinterpret the nature of the individual measures taken by me to execute the ECHR final judgment *Besnik Cani v. Albania*, despite my exhaustive clarifications accompanied by evidence.

The Albanian Government refers to my request dated 4 February 2023 to the High Prosecutorial Council (HPC), baselessly considering it as a request for the immediate reinstatement to my previous position, whereas per my letter dated 30 October 2023 to the Committee of Ministers, following the final judgment *Besnik Cani v. Albania*, application no. 37474/20, dated 4 October 2022, I have, in fact, requested, based on Article 144 of Law No. 144/2015 "Code of Administrative Procedures of the Republic of Albania" (CAP)¹, the administrative revision of the HPC decision no. 76, dated 4 March 2020, "On the ending of the mandate of a Council member", which declared the ending of my mandate as a member of the HPC due to the Special Appeal's

¹ The text of the CAP can be accessed in the Official Gazette link below:
qbz.gov.al/share/hf_80XwMShulCFHXAtt4_g

Chamber (SAC) decision no. 2, dated 27 February 2020, HPC being the competent authority to review its previous decision.

In doing so, I have expressed my will and intention to reopen the proceedings before the authority I have deemed competent since February 2023, and have not stayed idle, thereby accepting every eventual consequence from this process, including a retrial.

As the CM and the Government are aware by now, the HPC put on the agenda of the meeting dated 30 March 2023, the assessment of my revision request and the approval of the draft decision of the Career Committee. In this meeting, the request was removed from the agenda to be assessed in another HPC meeting. Up until now, the HPC has not yet ruled on my request for the revision of decision no. 76/2020, confirmed with their letter.

The former HPC chair confirmed their jurisdiction to assess my revision request in the HPC's 2022 annual report before the Albanian Assembly, and with their reply no. 1156/1, dated 17 May 2024, both communicated to you. If the HPC now deems that they aren't the competent authority, then it is their responsibility to transfer my request to the competent one, also considering that the legal deadlines for new requests have passed, as noted by the Government.

Article 24 of the CAP provides that: **"When a public body administers a request, for a matter deemed outside its competence, it immediately, and in any case no later than 2 days from receipt, refers the request to the competent public body and notifies the applicant."**

Furthermore, in the second paragraph of this article it is provided that: **"Time limits for the applicant are considered to have been respected if the request has been submitted in time to the non-competent body, while the respective deadlines for the competent public body start from the date of receiving the request."**

Considering that I have submitted the revision request to a public body like the HPC within the time limitations provided in Article 145 of the CAP, even if the HPC, when assessing my request, would deem that it isn't the competent body, then according to the cited law, it is considered that I have respected the time limit for the revision request if and when this request is referred due to competence to the SAC or another body, contrary to the Government's arguments that I have not acted and that the time limit for a revision request before the SAC has expired.

After submitting the revision request, I have no other remedies at my disposal to advance the process, but it's the HPC who should act by assessing my revision request and then to decide on the issue of competence.

It is the obligation of the Albanian institutions to find the right ways and tools to execute the ECHR judgment. This obligation derives from Article 47 of the ECHR and Articles 5, 121 and 122 of the Albanian Constitution. The institutions, including the State Advocature, should have coordinated with one another with the aim to fulfill the constitutional obligation to execute the ECHR judgment. The fact that my case concerning the execution of the ECHR

judgment is still in assessment by the HPC is not only a public fact in the Republic of Albania but has also been made known to the Committee of Ministers and the State Advocature by me, hence the latter is also aware of the presented evidence. Despite this, from the communications it is evident that not one time has the State Advocature requested official information from the HPC regarding my revision request, because if it had it wouldn't keep misinterpreting it.

Regarding The Albanian Government's argument for similarities in my case with *Sevdari v. Albania*, application no. 40662/19, allow me to state as follows: In the case *Sevdari v. Albania* the Court has only found an Article 8 violation, while in *Besnik Cani v. Albania* the Court has found an Article 6 violation, deeming the SAC in that case not "a tribunal established by law." Moreover, my revision request was submitted on 4 February 2023, which is earlier in time than Mrs. Sevdari's request before the SAC was assessed.

I have not addressed the SAC for the reopening of the proceedings, seeing as neither the Government nor the Court in the judgment have directly established that the Special Appeals Chamber is the competent authority to consider requests for the reopening of proceedings. The Government has even acknowledged in paragraphs 146-7 of the ECHR judgment that there are no specific legal provisions that provide for the reopening of vetting proceedings and that it could have been a deliberate choice on the part of the legislature. In these circumstances, I have deemed that it's the High Prosecutorial Council being the prosecutorial government that should consider the ECHR judgment and execute it.

Similarities can't be drawn between the Sevdari case and mine, because while it may have been an effective remedy for Mrs. Sevdari where the SAC body only had to correct their excessive investigation, in my case, a request for the reopening of proceedings before the SAC, as an individual measure, could potentially still lead to another violation of the principle of "a tribunal established by law" and not cease the violation. This is mainly due to the fact that the SAC would not be able to guarantee a fair and impartial retrial, seeing as the institution currently only has six judges, three of whom have ruled on the merits of the case and two others have ruled on my preliminary requests for the exclusion of certain members of the SAC, while a trial requires five members. In any possible composition, my case would be reassessed by judges sitting in an illegal judicial panel per the ECHR, who have already expressed their opinion on the SAC decision no. 2/2020, having to decide on the same matter now as a legal judicial panel.

By not acknowledging my use of an individual measure to execute the ECHR final judgment, considering that it's been more than a year and a half and the HPC has not yet ruled on my revision request, and by rushing to close the CM's supervision, it is my opinion that the Albanian Government is refusing to abide by the *Besnik Cani v. Albania* ECHR final judgment and hasn't fulfilled its obligations per Article 46 of the ECHR for the execution of this judgment.

For the same reasons, I once again request that the Committee of Ministers consider initiating infringement proceedings against per Article 46 § 4 and Article 11 of the Rules of the Committee

of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

Please accept the assurance of my highest considerations.

BESNIK CANI
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