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

Prishtina, on 1 November 2019
Ref. No.: RK1461/19

This translation is unofficial and serves for informational purposes only.

RESOLUTION ON INADMISSIBILITY

in

Case No. KI73/18

Applicant

N. S.

Constitutional review of Decision CML. No. 36/2018 of the Supreme Court of 10 April 2018 in conjunction with Decision CN. No. 89/2015 of the Basic Court in Mitrovica of 14 August 2015

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge and
Nexhmi Rexhepi, Judge

Applicant

1. The Referral was submitted by N. S. from Mitrovica (hereinafter: the Applicant).

Challenged decision

2. The Applicant challenges Decision CML. No. 36/2018, of the Supreme Court of 10 April 2018, in conjunction with Decision CN. No. 89/2015 of the Basic Court in Mitrovica of 14 August 2015.

Subject matter

3. The subject matter is the constitutional review of the challenged decision, which allegedly violates the Applicant's rights and freedoms guaranteed by Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as Article 6 (Right to a fair trial) of the European Convention on Human Rights (hereinafter: the ECHR).

4. The Applicant also requests that his identity be not disclosed to the public.

Legal basis

5. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 32 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

6. On 31 May 2018, the Court adopted in the administrative session the amendments and supplementation to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Constitutional Court

7. On 25 May 2018, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

8. On 9 August 2018, the President of the Republic of Kosovo appointed the new Judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Nexhmi Rexhepi and Remzije Istrefi- Peci.

9. On 16 August 2018, the President of the Court appointed Judge Remzije Istrefi-Peci as Judge Rapporteur and the Review Panel, composed of Judges: Arta Rama-Hajrizi (Presiding), Gresa Caka-Nimani and Safet Hoxha.

10. On 27 August 2018, the Court notified the Applicant about the registration of the Referral, and sent a copy of the Referral to the Supreme Court.

11. On 18 January 2019, the Court requested the Basic Court in Mitrovica to submit all the case files in case KI73/18. The Basic Court in Mitrovica submitted all the requested case files within the deadline.

12. On 8 October 2019, after considering the report of the Judge Rapporteur, the Review Panel made a recommendation to the Court on the inadmissibility of the Referral.

Summary of facts

13. The Court first notes that the Applicant is appearing for the second time as an Applicant before the Constitutional Court.

14. The Court examining the Applicant's Referral notes that there are two sets of the court proceedings in the present case. The first set of proceedings relates to the recognition of a decision of a foreign court (Decision No. 5799 of the District Court in Tirana), while the second set of proceedings concerns the enforcement procedure. Accordingly, the Court will present them separately in this report.

Proceedings concerning recognition of a foreign court decision

15. On 3 December 2012, the District Court in Tirana rendered Decision No. 5799, which dissolved the marriage between the Applicant and his former spouse, who resides in Tirana.

16. On 14 August 2015, the Applicant's ex-wife, through her legal representative, filed a proposal with the Basic Court in Mitrovica seeking the recognition and enforcement of Decision No. 5799, of the District Court in Tirana.

17. On 14 August 2015, the Basic Court in Mitrovica (by Decision CN. No. 89/2015) found that the *"proposal is grounded"*, recognized the decision of the District Court in Tirana *"within the meaning of Article 86-101 of the Law on Resolving Conflict of Laws with Regulations of other countries, and on the grounds of reciprocity"*

Proceedings regarding execution of Decision CN. No. 89/2015 of the Basic Court in Mitrovica

18. On 21 August 2015, the Applicant's minor children, represented by their mother (the Applicant's former spouse), filed a proposal with the Basic Court for the execution of the judgment of the District Court in Tirana. In the proposal of execution, they requested the realization of unpaid monetary obligation on the part of the Applicant.

19. On 05 October 2015, the Basic Court rendered Executive Decision P. No. 133/2015, in which it allowed the execution of the judgment of the District Court in Tirana.

20. Within the legal time limit, the Applicant filed an appeal with the Court of Appeals against the enforcement decision of the Basic Court P. No. 133/2015 of 5 October 2015, with a proposal that the Court of Appeals modifies the decision of the Basic Court in Mitrovica by rejecting the enforcement proposal and

ordering the mother to return the children to Kosovo or hand them over in custody of their father in Kosovo.

21. On 29 November 2016, the Court of Appeals rendered Decision Ac. No. 4970/15, in which it rejected the Applicant's appeal as ungrounded. The decision of the Court of Appeals reads:

> *„The first instance court has correctly established the fact that the decision of the District Court in Tirana No. 5799 of 21.07.2010, which is effective as of 03.12.2012, which dissolved the marriage, based on the executive body ordered the execution, is an executive document, as provided for in Article 22, paragraph 1.5 of the LEP "the judgments, acts, and memoranda on court settlements of foreign courts, as well as the awards of foreign arbitration courts and the settlements reached before such courts in arbitration cases, which have been accepted to enforcement within the territory of the Republic of Kosovo", in the specific case of the District Court in Tirana recognized by the decision of the Basic Court in Mitrovica CN. no. 89/2015 of 14.08.2015. Also, "an executive document is both an executive decision of the court and an enforceable court settlement" and constitutes the legal basis for determining enforcement in accordance with Article 21 if it fulfills the conditions of Article 24 para. 1 and 27 1 of the same law, which states that "Enforcement document shall be eligible for enforcement if it shows the creditor, the debtor, the object, means, amount, and deadline for settling the obligation", which is why there is no violation of legal provisions in permitting enforcement".*

22. On 1 February 2017, the Applicant submitted the Referral to the Constitutional Court, registered by the Court with number KI08/17.

23. In his Referral KI08/17, the Applicant stated that the decision of the Basic Court in Mitrovica violated the rights and freedoms guaranteed by Article 24 [Equality Before the Law] and Article 32 [Right to Legal Remedies] of the Constitution.

24. The Applicant requested the Court "*to declare invalid the foreign court's decision (...) because it approved in violation of the procedure and provision of the law in force*".

25. On 5 September 2017, the Court rendered the resolution on inadmissibility of the Referral in case KI08/07 on the grounds that the Applicant has not exhausted all legal remedies established by the Constitution, further specified by the Law and foreseen in the Rules of Procedure.

26. On 15 December 2017, the Public Prosecutor filed with the Supreme Court a request for protection of legality (KMLC No. 137/2017) against the decision (CN. No. 89/2015) of the Basic Court, on the grounds of erroneous application of substantive law under Article 247 paragraph 1 item a of the LCP, namely, on the grounds of erroneous violation of the provisions of the Law on Contested Procedure, with the proposal to annul the challenged decision and remand the case to the first instance court for reconsideration and retrial.

27. On 10 April 2018, the Supreme Court rendered decision (CML No. 36/2018), rejecting as ungrounded the request for protection of legality of the state prosecutor (KMLC. No. 137/2017), filed against the decision of the Basic Court in Mitrovica (CN. No. 89/2015 of 14 August 2015).

28. The decision of the Supreme Court reads:

> *i) „In this case, the provisions of the Law on the Resolution of the Collision of Laws with the Regulations of Other Countries on certain relationships "Official Gazette of SFRY no. 43 dated 23.07.1982". Article 101 paragraph 3 of this law foresees "Against the ruling on recognition, respectively the execution of the decision the parties may file a complaint within 15 days from the date of the sentencing.*
>
> *In the present case against the decision of the first instance court, no complaint has been filed even though the party has had knowledge of it, as before (Referral of the Constitutional Court dated 01.02 .2017 and the Enforcement Procedure) nor after the regular delivery of the ruling on 07.12.2017.*
>
> *ii) According to the provision of Article 101, paragraph 3, in conjunction with Article 96, paragraph 2 of this law, the decision of the foreign court is recognized – **approved by a ruling**. Against this decision the party can only file appeal within the meaning of the provision of Article 101 paragraph 3 and 4 of the Law. Therefore, in this case, we have to deal with non-contested issues where it is assessed whether the conditions for recognition of a court decision have been fulfilled.*
>
> *From the content of the request for protection of legality it is clear that the request for protection of legality has been filed for essential violation of the provisions of the contested procedure established by the provision of Article 182.1 of the LCP, in conjunction with Articles 177 and 206 of the LCP. However, with the provision of Article 247.1 item (a) of the LCP, the possibility of filing a request for protection of legality is limited only to certain violations which may serve as causes."*

Applicant's allegations

29. The Applicant alleges that the challenged decision violated his constitutional rights and freedoms guaranteed by Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution, as well as Article 6 (Right to a fair trial) of the ECHR.

30. The Applicant alleges that in recognizing the decision of a foreign court, the Basic Court referred to Articles 86-101 of the Law on Resolving Conflict of Laws with Regulations of Other Countries on the basis of reciprocity. According to the Applicant, Article 92 of the same Law states: "*A foreign court decision shall not be recognized if reciprocity is lacking*".

31. Accordingly, the Applicant adds "*that the Basic Court in Mitrovica neglected the fact that there is no reciprocity agreement for the recognition of decisions in civil cases between the Republic of Albania and the Republic of Kosovo*".

32. The Applicant alleges that "*the recognition of the decision of the Court in Tirana was sought not by him, as a citizen of Kosovo, but by a citizen of Albania. Therefore, the Basic Court in Mitrovica had no basis for recognizing this judgment*".

33. The Applicant states "*that a forged decision of the Basic Court of one foreign country was recognized by the Basic Court by neglecting due process (through the Ministry of Justice). Deliberately, I, as a citizen of Kosovo, was represented by a decision of a Kosovo court as a foreign citizen and foreign citizenship was Kosovo citizenship*".

34. The Applicant further submitted that the Basic Court is not competent to recognize a foreign court decision and that the procedure for recognizing a foreign court's decision was to go through the Ministry of Justice.

35. The Applicant considers that "*this decision should not have been recognized, as it affects me twice before the Kosovo courts and the Albania's courts*".

36. The Applicant requests the Court that the decision (CN. No. 89/2015) of the Basic Court in Mitrovica of 14 August 2015, which recognized the judgment of the District Court in Tirana, as a decision contrary to the laws of Kosovo. The Applicant requests compensation "*for all the legal effects this decision has produced*".

Admissibility of the Referral

37. The Court first examines whether the Referral fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and further specified in the Rules of Procedure.

38. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

> *1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
>
> *[...]*
>
> *7. 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.*

39. The Court further examines whether the Applicant has fulfilled the admissibility requirements as provided by the Law. In this regard, the Court refers to Articles 47 [Individual Requests], 48 [Accuracy of the Referral] and 49 [Deadlines] of the Law, which establish:

Article 47 [Individual Requests]

"1. Every individual is entitled to request from the Constitutional Court legal protection when he considers that his/her individual rights and freedoms guaranteed by the Constitution are violated by a public authority.

Article 48 [Accuracy of the Referral]

„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."

Article 49 [Deadlines]

„The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision... ."

40. As regards the fulfillment of these requirements, the Court finds that the Applicant has filed a claim in the capacity of an authorized party, challenging the act of a public authority, after exhaustion of all legal remedies. The Applicant also emphasized the rights and freedoms he claimed to have been violated in accordance with the requirements of Article 48 of the Law and submitted the Referral in accordance with the time limit prescribed in Article 49 of the Law.

41. In addition, the Court takes into account Rule 39 [Admissibility Criteria], paragraphs 2 and (3) (b) of the Rules of Procedure, which provides:

"(2) The Court may consider a referral as inadmissible if the referral is manifestly ill founded because the Applicant has not sufficiently proved and substantiated the claim."

(3) The Court may also consider a referral inadmissible if any of the following conditions are present:
[...]
(b) the Referral is incompatible ratione materiae with the Constitution".

42. Therefore, the Court notes that the Applicant alleges a violation of Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution in conjunction with Article 6 (Right to a fair trial) of the ECHR, since:

a) The Basic Court has no jurisdiction when it comes to the recognition of a foreign court decision due to the lack of reciprocity between the Republic of Kosovo and the Republic of Albania.

b) The Supreme Court and the Basic Court recognized the forged decision of a foreign court, neglecting regular process through the Ministry of Justice.

c) The Supreme Court, contrary to the fact that it is aware of his place of birth, changes his place of birth from Mitrovica to Tirana.

43. The Court first notes that the Applicant appears for the second time before the Court as the Applicant.

44. More specifically, as regards the first Referral, the Court recalls that on 1 February 2017, the Applicant submitted the Referral and requested the constitutional review of Decision CN. No. 89/2015 of the Basic Court in Mitrovica of 14 August 2015. The Court rejected the Referral on 5 September 2017, by the Resolution on Inadmissibility, for purely procedural reasons, that is, due to the lack of exhaustion of all legal remedies, without considering the very substance and the grounds of the Applicant's allegations.

45. The Court notes that, despite the fact that in the meantime he has received other decisions of the regular courts, which are directly related to the decision he is challenging, in the new Referral KI73/18, he again requests the constitutional review of Decision CN. No. 89/2015 of the Basic Court in Mitrovica of 14 August 2015, which arose as a result of the first court proceeding regarding the recognition of a foreign court's decision.

46. Accordingly, the Court will accept the Applicant's Referral, and accordingly, when considering the new Referral KI73/18, it will not solely limit itself to an assessment of the grounds of the Applicant's allegations, which is "*that Decision CN. No. 89/2015 of the Basic Court of 14 August 2015 violated his rights and freedoms guaranteed by Article 24 [Equality Before the Law] and Article 31 [Right to Fair and Impartial Trial] of the Constitution, as well as Article 6 (Right to a fair trial) of the ECHR*".

47. Having regard to the Applicant's allegations that can be analyzed by reference to the ECtHR case law, the Court recalls the obligation of Article 53 [Interpretation of Human Rights Provisions] of the Constitution, which reads as follows::

„Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".

48. Having regard to the very essence of the Applicant's allegations of alleged violations which he relates to a fair trial, the Court finds it necessary, to first answer the question whether the guarantees of Article 31 of the Constitution and Article 6.1 of the ECHR are applicable in the present case.

49. In this respect, the Court recalls that Article 31 (2) of the Constitution in the relevant part reads:

„Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations [...].“

50. The Court also recalls Article 6.1 of the ECHR, which stipulates:

„In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.“

51. It follows from the foregoing that the requirement for the application of Article 31 of the Constitution and Article 6 of the ECHR is that civil rights and obligations are determined in the present proceedings. Therefore, in this case the question arises whether, during the review by the Basic Court in Mitrovica, the legal requirements for recognizing the decision of a foreign court were fulfilled, and whether there was any obstacle for recognizing the decision of a foreign court, whether civil rights and obligations and, in the course of considering the proposal for recognition of a decision of a foreign court, Articles 31 of the Constitution and Article 6 of the ECHR are applicable.

Applicability of Article 6 paragraph 1 of the ECHR

52. The Court notes that, in accordance with the ECtHR case law, the applicability of Article 6 of the ECHR under item *civil (rights and obligations)* implies the cumulative presence of the following requirements: **a)** there must be a "*dispute*" over the "*rights*" or "*obligations*" which must have a basis in domestic law (see ECtHR Judgment *Benthem v. the Netherlands*, Application No. 8848/80, 23 October 1985, paragraphs 32–36 and *Roche v. the United Kingdom*, Application No. 32555/96 of 10 October 2005, paragraphs 116-126); and, **b)** the right or obligation must be "*civil*" in nature (see ECtHR Judgment, *Ringeisen v. Austria*, application 2614/65, of 16 July 1971, paragraph 94).

53. It follows from the foregoing that the Court must first determine whether the court proceedings instituted by the request for recognition of a foreign court judgment are a) "*dispute*" and, b) whether the "*civil rights and obligations*" were decided in the dispute?.

The notion "dispute"

54. With regard to the notion "dispute", the Court notes that the "dispute" is a court proceeding in which a regular court reviews and decided in disputes relating to personal and family relations, the employment relationship (with the employer), as well as the property and other civil-legal relations between natural and civil legal persons, socio-political communities, organizations of associated labor and other social legal entities.

55. The Court also recalls that in order for a judicial proceeding to have a "dispute" nature, it must meet certain criteria, namely, it should contain the action of three entities - the claimant, the respondent and the court. The claimant is a litigating party who requests that the court provides him protection for a "civil right", and

the respondent is the one from whom the claimant seeks such a protection. The claimant and the respondent are the parties to the dispute, therefore, the subjects whose right and obligation are concerned. The court is the third subject in the dispute, which examines whether the request for protection is justified and, according to the result of the examination, provides or rejects protection to the claimant. All the actions of the parties and of the court therefore seek one ultimate goal - judgment.

56. The Court further finds that, in accordance with the ECtHR case law, the term "dispute" over "civil rights and obligations" includes all proceedings which result is decisive for the private rights and obligations, even if the proceedings concern a dispute between an individual and a public authority acting independently and whether they fall under the domestic legal system of the respondent state into the sphere of private or public law or are of a mixed nature (see ECtHR judgment *Ringeisen v. Austria*, of 16 July 1971, application No. 2614/65, page 39, paragraph 94; as well as the ECtHR judgment *König v. Germany*, Series A, No. 27, pp. 30 and 32, paragraphs 90 and 94).

57. The Court also recalls several other decisions of the ECtHR, in which it determined the concept and nature of the dispute, that is, what all court proceedings must fulfill in order to satisfy that criterion. In the case of *Ringeisen v. Austria*, of 16 July 1971, the ECtHR found that *"... the expression "dispute against" (des) droits et oblig de caractere civil" [disputes on civil rights and obligations] cover all proceedings the result of which is decisive for [such] rights and obligations "(Series A No. 13, p. 39, paragraph 94). However, "tenuous connection or remote consequences are not enough to bring Article 6 paragraph 1 (Article 6-1) into play –"civil rights and obligations must be an object –or one of the objects-" of the contestation " (the result of the proceedings must be directly decisive for such a right"*(see judgment cited above *Van Leuven and De Meiere, v. Belgium* Series A No 43, p. 21, paragraph 47).

58. The Court also states that in the case *Sporrong and Lonnroth v. Sweden,* the ECtHR, concluded that the "contestation" (dispute) must be authentic and serious (see ECtHR judgment *Sporrong and Lonnroth v. Sweden*, of 23 September 1982, Series A no. 52, p. 30, paragraph 81).

59. In this regard, the Court in the present case should determine whether the proceedings regarding the recognition of the foreign court decision conducted before the Basic Court in Mitrovica have all the characteristics of a court dispute.

Defining the notion "dispute" in a present case

60. On the basis of all the case-files, the Court notes that the Applicant's former spouse has now filed a divorce suit for dissolution of marriage before the District Court in Tirana, pursuant to which the District Court was called to decide on the divorce, as well as on the rights and obligations consequently arising from such a community.

61. Accordingly, the District Court conducted the proceedings for dissolution of marriage involving the spouses (the applicant and his ex-wife), and

consequently the District Court rendered a decision resolving the issue of the marriage. By the same decision, the Court also determined the scope of rights and obligations of both parties in the proceedings for marriage dissolution.

62. It follows from the case file that Decision No. 5799, of the District Court in Tirana has become final defining all the rights and obligations of both parties involved in the proceedings for marriage dissolution.

63. Further, as regards the court proceedings before the regular courts in the Republic of Kosovo, namely the Basic Court in Mitrovica, the Court first notes that the request for recognition of a foreign court decision (Decision No. 5799 of the District Court in Tirana) was filed by the former Applicant's wife, who, as an interested party, has a legitimate legal interest in recognizing the decision of a foreign court in the Republic of Kosovo, which creates conditions for her and allows her to exercise certain rights defined in a decision of a foreign court.

64. Therefore, in order for her to be able to exercise her rights in full in the manner defined by the court of the foreign country in its decision, those rights must also be recognized by the court of the country in which territory the interested party (in the present case of the ex-wife of the Applicant), she seeks the recognition of that foreign court decision.

65. The Court recalls that such a right derives from the legal provision of Article 101 of the Law on Resolving Conflict of Laws with Regulations of Other Countries, which provides:

> *„... Everyone who has a legal interest is entitled to request the recognition of a foreign court decision relating to the personal status ".*

66. The Court also recalls that in order a decision of a foreign court in the territory of Kosovo would have legal effects, namely, the rights and consequences defined therein, it must be recognized by a competent court in the territory of Kosovo.

67. In this connection, the Court states that the issue of jurisdiction to recognize decisions of foreign courts is governed by Article 11 of Law on Courts No. 03/L-199,

> *Article 11*
> *Subject Matter Jurisdiction of the Basic Court [...]*
>
> *„2. The Basic Courts are competent to give international legal support and to decide for acceptance of decisions of foreign courts."*

68. It also follows the fact that it is within the jurisdiction of the Basic Court, as the competent court, to determine whether a decision of a foreign court meets all the conditions laid down in the law for it to be recognized. In this regard, the Court recalls that the "*Law on Resolving Conflict of Laws with Regulations of Other Countries*" prescribes all the conditions that the Basic Court must determine before deciding whether a foreign court's decision qualifies as such.

69. The Court, bringing the legal provisions in connection with the present facts of the Referral, finds that before the Basic Court in Mitrovica, as the competent court, there was exclusively a procedural issue related to the recognition of a foreign court's decision raised by an interested party.

70. Thus, in the opinion of this court, the Basic Court in Mitrovica was called upon to answer exclusively the question whether the decision of the foreign court, which recognition is requested by the Applicant's former spouse, meets all formal requirements for its recognition. Accordingly, it can be concluded that there are only two parties to the present court proceedings, namely the Applicant's ex-wife as an interested party seeking recognition of the decision of a foreign court, and the state, that is, the Basic Court in Mitrovica, which, as a competent court, should answer that procedural question.

71. On the basis of the foregoing, it can be concluded that in the present case the Applicant was not a party to the proceedings before the Basic Court in Mitrovica in recognition of the decision of a foreign court, and thus the Basic Court in Mitrovica did not even decide on his civil rights or obligations, which could arise from this court proceeding.

72. The Court, comparing the criteria established by the ECtHR case law (*Ringeisen v. Austria*) with the present case concerning the term "dispute", finds that the specific court proceedings before the Basic Court in Mitrovica were conducted solely between two parties, thus concluding that the absence of a third party in this court proceeding affects the very character of the proceedings, defining it as a court proceeding which, by this criterion and nature, has no element of a "dispute".

73. Likewise, the Court finds that also according to the second ECtHR criterion, the court proceedings before the Basic Court in Mitrovica is not a "dispute", on the ground that the Basic Court was not called upon to decide on any civil rights of a third party (the Applicant), and which is in any way protected by domestic law and, therefore, the Basic Court could not directly decide on it.

74. Similarly, the Basic Court in Mitrovica did not decisively determined the Applicant's civil rights and obligations, but as such, they were already decided in their scope in a divorce lawsuit, namely, the "dispute" brought before the courts of a foreign state, where based on the case file, it may be concluded that the Applicant was an active participant. Accordingly, the Court finds that the third criterion determining the nature of the dispute in this case is not met.

75. Furthermore, with regard to the criterion established by the ECtHR in case *Sporrong and Lonnroth v. Sweden*, "*that "the contestation" (dispute) must be authentic and serious*", the Court finds that the non-contentious court proceedings before the Basic Court in Mitrovica have elements of authenticity and seriousness, which are reflected in the fact that this decision (CN No. 89/2015 of 14 August 2015 of the Basic Court) realizes the rights and obligations defined in the decision of a foreign court, and that this decision at the same time protects the rights and the implementation of all obligations to the party who has applied for its recognition.

76. The Court recalls, in particular, that it would be an injustice if a party having a final decision as a result of a court proceedings that had the character of a "dispute", which defined all "rights and obligations", could not as such exercise and enjoy them to the extent that they are defined. Especially when bearing in mind that the nature of the dispute was a marriage dissolution proceedings whereby the defined rights directly affect, in addition to the parties to the proceedings (spouses), also the subjects that were indirectly parties to the proceedings (children of the spouses), but are directly affected by the defined rights.

77. Accordingly, the Court particularly wishes to note that from the moment when a domestic court renders a decision recognizing a foreign court's final decision, according to the law, it also becomes a final decision in the legal system of the state which court has recognized it as such.

78. Moreover, the recognition of a foreign court decision is not only a legal obligation of the court having a legal obligation under its jurisdiction to recognize it (provided that all procedural requirements defined by law are met), but it is also a duty of the state under private international law.

79. Based on the foregoing, the Court finds that the non-contentious court proceedings conducted before the Basic Court in Mitrovica regarding the recognition of a foreign court's decision do not constitute a "dispute" within the meaning of Article 31 of the Constitution and Article 6.1 of the ECHR.

The term "civil rights and obligations"

80. The Court recalls that the term "civil rights and obligations" starts from an explanation of the term "civil right". This term refers to the protection of all rights that an individual would enjoy under the applicable national law. On the other hand, the term "civil right" extends well beyond the scope of civil cases in the narrow sense. In the judgment of the ECtHR, *Ringeisen v. Austria*, it was held that any proceedings the outcome of which is "decisive for the determination of a civil right" must comply with the requirements of Art. 6. of the ECHR (see ECtHR judgment *Ringeisen v. Austria*, Application No. 2614/65, of 16 July 1971, Series A, No. 13).

81. Article 6 of the ECHR applies regardless of the status of the parties, and regardless of the nature of the legislation governing the manner in which the dispute will be categorized; what matters is the nature of the right in question, and whether the outcome of the proceedings will directly affect *the rights and obligations* under private law (see ECtHR judgment *Baraona* v. *Portugal*, application 10092/82, of 8 July 1987, paragraphs 38–44).

82. The ECtHR also requests that there is a "dispute" over the content of "civil rights and obligations", at least in the broad sense of the word, as found in the ECtHR judgment *Le Compte, Van Leuven and De Meyere v. Belgium*, where Article 6 of the ECHR would not, in principle, apply to cases of a purely administrative and procedural nature, in which there is no substantive action either on factual

or legal issues (see ECtHR judgment *Le Compte, Van Leuven and De Meyere v. Belgium*, application 6878/75 7238/75, of 23 June 1981, paragraph 41).

83. The Court, bringing the aforementioned principles of the ECtHR with the present case, finds that the fact that there was a court proceeding before the Basic Court in Mitrovica is not disputed, but also for this Court is not disputable the fact that the Basic Court in Mitrovica did not decide on the scope of civil rights and freedoms as established in ECtHR case *Le Compte, Van Leuven and De Meyere v. Belgium.*

84. Moreover, the Court finds that as far as the Applicant's civil rights and obligations are concerned, a decisive impact on their scope had the court proceedings conducted before the District Court in Tirana relating to the lawsuit for the dissolution of marriage to which he participated as a party. In this regard, the Court would like to add that during the divorce proceedings the Applicant had the opportunity, to the extent that he was dissatisfied with the way in which his civil rights and freedoms were treated by the competent courts, to apply to the competent institutions in the Republic of Albania to protect those rights.

85. In the present case, the Court has already concluded that the Applicant has not initiated the "dispute" over the "rights" envisaged by domestic law, within the meaning of Article 6 paragraph 1 of the ECHR, and accordingly, the cumulative conditions for the application of Article 6.1 of the ECHR have not been met, as established by the ECtHR judgment in *Ringeisen v. Austria*. More specifically, the courts did not take any substantive action on factual or legal issues, and accordingly did not decide on the Applicant's "civil rights or obligations, which would result from such a "dispute".

86. Accordingly, the Court finds that, in the present case, the procedure for recognizing a foreign court decision does not in itself constitute a "dispute" about "civil rights or obligations" within the meaning of Article 31 paragraph 2 of the Constitution and Article 6 paragraph 1 of the ECHR , because in the present case it was not a matter of determining the civil rights and obligations required by Article 31.2 of the Constitution and Article 6 paragraph 1 of the ECHR, namely, the merits of the lawsuit were not discussed (e.g. the grounds of the statement of claim or the grounds of the criminal charge, the divorce proceedings or any right or obligation that would have direct consequences for the Applicant), but only a pure procedural issue was reviewed, namely whether *the procedural requirements for recognition of a foreign court's decision were met.*

87. However, the Court also wishes to note that the ECtHR has concluded in its long-standing practice that Article 6 of the ECHR can be applied to proceedings initiated by the Applicants, in which it claimed that there was a failure (negligence) of the courts when have been deciding on his "civil rights" in the court proceedings having the character of a "*dispute*", even in cases where the scope of the right has already been decided. In such cases, it is for the domestic court to examine whether the requirements of Article 6 of the ECHR have been respected in these judicial proceedings.

88. Thus, for example, in the case Golder *(Golder),* the ECtHR considered that the procedural guarantees given in Article 6 of the ECHR relating to fairness, publicity and expediency would be meaningless if there were no protection of the preconditions for enjoying those guarantees, more specifically - access to court. The Court found that this was an inalienable form of the guarantees contained in Article 6 of the ECHR, invoking the rule of law principles and avoiding the discretionary powers underlying in a bigger part of the Convention (see ECtHR judgment in case Golder *(Golder)* v. *the United Kingdom* of 21 February 1975 , Series A No. 18, pp. 13-18, paragraphs 28-36).

89. Furthermore, on Article 6 paragraph 1 of the ECHR *"may... be relied on by anyone who considers that an interference with the exercise of one of his (civil) rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6.1"* (see ECtHR Judgment in case *Le Compte, Van Leuven and De Meyere v. Belgium* of 23 June 1981, Series A no. 43, paragraph 44).

90. Also, where there is a serious and authentic "dispute" as to the lawfulness of that interference, concerning either the very existence or extent and scope of the impugned "civil right", Article 6 paragraph 1 of the ECHR authorizes an individual *"to decide on a matter of domestic law before a domestic court"* (see ECtHR judgment in case *Sporrong and Lönnroth v. Sweden*, of 23 September 1982, Series A No. 52, paragraph 81; also see judgment in case *Tre Traktörer AB v. Sweden* of 7 July 1989, Series A No. 159, paragraph 40).

91. Likewise, when access to an individual to the court is limited, either by law or factually, when he cannot participate in a *"dispute"* where his *"civil rights" are directly decided",* the Court needs to examine whether the limitations touches on the essence of his rights and, in particular, whether that limitation has pursued a legitimate aim and whether there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (ECtHR judgment in case *Ashingdane v. the United Kingdom* of 28 May 1985, Series A no. 93, p. 24-25, paragraph 57). If the limitation is compatible with these principles, there will be no violation of Article 6 of the ECHR.

92. However, given that the Applicant before the Constitutional Court did not challenge any of the guarantees provided for in Article 6 of the ECHR, when in the *"dispute"* it was decided on the scope of his *"civil rights"*, but he exclusively challenged before the Court the proceedings of the recognition of the final decisions of a foreign court, which, in accordance with its jurisdiction, the Basic Court in Mitrovica has recognized by decision, leads to the conclusion that his allegations cannot qualify for the aforementioned principles and practice of the ECtHR (referred to in paragraphs 86, 87, 88, 89 and 90 of the report), which would make it possible to review whether in a court *"dispute"* when deciding on his *"civil rights"*, all his guarantees under Article 6 of the ECHR were respected.

93. Based on all the foregoing and on the basis of the conclusions above, the Court finds that the Applicant's allegations of violation of Article 31 of the Constitution and Article 6 of the ECHR, which, according to him, resulted from the

recognition of a foreign court decision, are incompatible *ratione materiae* with the Constitution.

94. The Court also noted that the Applicant alleged a violation of Article 24 [Equality Before the Law] of the Constitution, however, the Court also noted that the Applicant did not by a single word explain or provide any valid argument which would justify "*and substantiate the claim*".

95. Accordingly, the Court rejected the Applicant's allegation of violation of Article 24 of the Constitution as ungrounded, in accordance with Rule 39.2 of the Rules of Procedure.

96. The Court further notes that there are other decisions of the regular courts regarding the enforcement proceedings, but that the Applicant did not request their constitutional review in the referral, and accordingly the Court will not deal with them either.

Request to not disclose identity

97. The Court recalls that the Applicant requested for his identity not to be disclosed to the public, „*due to the reason that my name is irrelevant in reviewing the case, and publicity may indirectly affect my children*".

98. In this respect, the Court refers to Rule 32 (6) of the Rules of Procedure, which provides:

> *"Parties to a referral who do not wish their identity to be disclosed to the public shall so indicate and shall state the reasons justifying such a departure from the rule of public access to information in the proceedings before the Court [...]."*

99. The Court also refers to Article 8.1 of the Convention on the Rights of the Child, which foresees:

> *"States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."*

100. The Court considers that in a family case the publicity may, even indirectly, affect the identity, name and family relations of the children.

101. Therefore, pursuant to Article 8 (1) of the Convention on the Rights of the Child and Rule 32 (6) of the Rules of Procedure, the Court approves the Applicant's request for not disclosing his identity to the public.

FOR THESE REASONS

The Constitutional Court of Kosovo, in accordance with Article 113. 1 and 7 of the Constitution, Article 20 of the Law and Rules 32.6 and 39 (2) and (3) b of the Rules of Procedure, in the session held 8 October 2019, by majority of votes

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO APPROVE unanimously the request for non-disclosure of identity;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;

V. This Decision is effective immediately.

Judge Rapporteur	**President of the Constitutional Court**
Remzije Istrefi-Peci	Arta Rama-Hajrizi

This translation is unofficial and serves for informational purposes only.