



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

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Prishtina, 12.December 2011  
No. ref.: RK169/11

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 17/11**

Applicants

**Shefkat Perdibuka and Suhejla Morina**

**Constitutional review of the Resolution of the Supreme Court of Kosovo  
Rev. No.228/2007 of 13 May 2010**

**THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

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

### **Applicant**

1. The Applicants are Shefkat Perdibuka and Suhejla Morina from Prizren, represented by the practicing lawyer Naim Qelaj from Prizren.

## **Challenged decision**

2. The Applicants challenge the Resolution of the Supreme Court of Kosovo Rev. No. 228/2007 of 13 May 2010, by which was rejected the claim against the Resolution of the District Court in Prizren Ac. No. 490/2006 of 16 May 2007, regarding the determination of rights to the immovable property concerned.

## **Subject matter**

3. The Applicants challenge the Resolution of the Supreme Court of Kosovo Rev. No. 228/2007 of 13 May 2010, alleging that this decision violates Article 24, Article 31 and Article 46 of the Constitution of the Republic of Kosovo, as well as the Article 6 of the European Convention on Human Rights (hereinafter: the ECHR).

## **Legal basis**

4. The Referral is based on Article 113.7 and Article 21.4 of the Constitution, and Art. 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo of 16 December 2008 (hereinafter: the „Law“) and Rule 56 paragraph 2 of the Rules of Procedure.

## **Proceedings before the Constitutional Court**

5. On 14 February 2011, the Applicants filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter: the „Court“).
6. On 24 March 2011, the Constitutional Court notified the lawyer Naim Qelaj, Supreme Court of Kosovo, District Court in Prizren and the Municipal Court in Prizren that proceedings on reviewing the constitutionality of the Resolution of the Supreme Court of Kosovo Rev. No.228/2007, of 13 May 2010, have been initiated.
7. The President, by Decision No.GJR.17/11, of 2 March 2010, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, the President, by Decision No.KSH.17/11 appointed the review Panel composed of Judges Snezhana Botusharova (Presiding), Prof. Dr. Ivan Čukalović and Prof. Dr. Iliriana Islami.
8. On 31 March 2011, the Supreme Court of Kosovo, in its reply to the Constitutional Court of Kosovo, stated that they have nothing to add and that its opinion on the subject matter is presented in the Judgment of the Supreme Court of Kosovo.
9. On 4 April 2011, the District Court in Prizren, in its reply to the Constitutional Court of Kosovo, stated that they have nothing to add and that its opinion on the subject matter is presented in the Judgments that are subject of the constitutional review with the Constitutional Court.
10. On 13 April 2011, the lawyer Naim Qelaj, in his letter to the Constitutional Court requested exemption of Judge Altay Suroy, since Judge Altay Suroy was the lawyer of the opposite party in the regular court proceedings.
11. On 5 May 2011, Judge Altay Suroy, based on Article 18.1.3 of the Law on Constitutional Court of the Republic of Kosovo, requested exemption from this case.

12. On 4 August 2011, the Constitutional Court obtained evidence (the return receipt) that the lawyer of Applicants, Gani Tigani, on 3 July 2010, received the Resolution of the Supreme Court of Kosovo Rev. No. 228/2007 of 13 May 2010.
13. The President, by Decision No.GJR.17/11 of 10 October 2011, appointed Judge Robert Carolan as the new Judge Rapporteur.
14. Judge Altay Suroy did not participate in any stage after the registration of the Referral and requested from the Court to be exempt from participation in deliberation. The Court approved his request.
15. On 23 November 2011, after reviewing the report of Judge Robert Carolan, the Review Panel composed of Judges Snezhana Botusharova (Presiding), Prof. Dr. Ivan Čukalović and Prof. Dr. Iliriana Islami, proposed to the full Court to reject the Referral as inadmissible.

### **Summary of the facts**

16. The Municipal Court in Prizren, by Judgment P.No.671/89 of 21 January 1993, rejected as unfounded the suit of plaintiffs B.K., Y.K., G.K., M.K, N.M. maiden name K., and M. D. maiden name K., requesting to determine that they were the owners of the house and the yard in Prizren, in „ The League of Prizren Square “ street, No.13, on cadastral parcel No. 1911, arable land of IV class with surface of 24,30 acres and arable land of V class with surface of 50 acres, both at the place called „Kamenica“ cadastral parcel No.5190, requesting that the respondents (Applicants of this Referral) Shefkat Perdibuka and Suhejla Morina maiden name Xhana recognize the right to the property and allow plaintiffs to enroll as owners.
17. On the Judgment of the Municipal Court in Prizren P.No.671/89 of 21 January 1993, the plaintiffs B.K., Y.K., G.K., M.K, N.M. maiden name K., and M.D. maiden name K. have filed a complaint with the District Court in Prizren.
18. The District Court in Prizren, by judgment Ac. No. 658/93 of 30 December 1993, reversed the Judgment P.No.671/89 of 21 January 1993, of the Municipal Court in Prizren, adopted the claim of plaintiffs B.K., Y.K., G.K., M.K, N.M. maiden name K., and M.D. maiden name K. and determined that they were owners based on the heritage of the house with the yard in Prizren, in „ The League of Prizren Square “ street, No.13, on cadastral parcel No. 1911, arable land of IV class with surface of 24,30 acres and arable land of V class with surface of 50 acres, both at the place called „Kamenica“ cadastral parcel no.5190, ordering that the respondents (Applicants of this Referral) Shefkat Perdibuka and Suhejla Morina maiden name Xhana recognize the right to the property and allow plaintiffs to enroll as owners with the relevant authorities.
19. On the Judgment of the District Court in Prizren Ac. No. 658/93 of 30 December 1993, the respondents (Applicants of this Referral) Shefkat Perdibuka and Suhejla Morina declared two extraordinary legal remedies: request for revision and suggestion for retrial.
20. Deciding upon the request on the revision the Supreme Court of Serbia, by Resolution Rev. No. 5088/94 of 28 April 1995, rejects as inadmissible the revision on judgment of the District Court in Prizren Ac. No. 658/93 of 30 December 1993.
21. Deciding upon the suggestion for retrial the Municipal Court in Prizren, by Resolution C. No. 248/94 of 6 March 2006, rejects the suggestion for retrial as ungrounded.

22. The respondents (Applicants of this Referral) Shefkat Perdibuka and Suhejla Morina filed a complaint with the District Court in Prizren, against the Resolution of the Municipal Court in Prizren C. No. 248/94 of 6 March 2006.
23. The District Court in Prizren, by Resolution Ac. No. 490/2006 of 16 May 2007, changes the reasoning of the Resolution of the Municipal Court in Prizren C. No. 248/94 of 6 March 2006, and rejects the suggestion for retrial as out of time.
24. The respondents (Applicants of this Referral) Shefkat Perdibuka and Suhejla Morina filed for a Revision with Supreme Court of Kosovo, of the Resolution of the District Court in Prizren Ac. No. 490/2006 of 16 May 2007.
25. The Supreme Court of Kosovo, by Resolution Rev. No. 228/2007 of 13 May 2010, rejects as inadmissible the revision of the Resolution of the District Court in Prizren Ac. No. 490/2006 of 16 May 2007.
26. On 3 July 2010, the lawyer Gani Tigani, who represented the respondents (Applicants of this Referral) Shefkat Perdibuka and Suhejla Morina received the Resolution of the Supreme Court of Kosovo Rev. No. 228/2007 of 13 May 2010 (evidence; the receipt of the Supreme Court of Kosovo).
27. In the case file is also the statement of the lawyer Gani Tigani that, the Resolution of the Supreme Court of Kosovo Rev. No. 228/2007 of 13 May 2010, was served upon the Applicants with delay "around the 1 November 2010 " (case file – marked page 49).

### **Applicants' allegations**

28. The Applicants allege that with the Resolution of the Supreme Court of Kosovo Rev. No. 228/2007 of 13 May 2010, by which is rejected the complaint on Resolution of the District Court in Prizren Ac. No. 490/2006 of 16 May 2007, concerning the determination of ownership rights to the immovable property concerned, was violated the Constitution of the Republic of Kosovo, and that Article 24 (Equality before the Law), Article 31 (Right to Fair and Impartial Trial) and Article 46 (Protection of Property), as well as Article 6 ECHR (Right to Fair and Impartial Trial).

### **Preliminary assessment of the admissibility of the Referral**

29. In order to be able to adjudicate the Applicants' Referral, the Court needs to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law on the Constitutional Court and the Rules of Procedure.
30. With regard to Applicants' Referral, the Court refers to Article 49. of the Law which provides as follows:
 

*„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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force.“*
31. From the submission can be found that the Referral was not filed within the time lines provided by the Article 49 of the Law.

32. The latter decision is the Resolution of the Supreme Court of Kosovo Rev. No. 228/2007 of 13 May 2010, what the Applicants received through their lawyer Gani Tigani, on 3 July 2010, (evidence; the return receipt of the Supreme Court of Kosovo), the Applicants submitted their Referral to the Constitutional Court on 14 February 2011. This means that they submitted their Referral to the Court beyond the deadline provided by Article 49 of the Law.
33. It follows that the Referral is inadmissible pursuant to Article 36 (1b) of the Rules of Procedure, providing that *“The Court may only deal with Referrals if: b)the Referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant,“*

### FOR THESE REASONS

The Constitutional Court pursuant to Article 113.7 of the Constitution, Article 49 of the Law on Constitutional Court, Rule 36 (1b) and Rule 56 (2) of the Rules of Procedure, in session held on 23 November 2011, unanimously

### DECIDES

- I. To REJECT this Referral as inadmissible;
- II. The Secretariat shall notify the Parties of the Decision and shall publish it in the Official Gazette in accordance with Article 20.4 of the Law; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Robert Carolan

**President of the Constitutional Court**

  
Prof. dr Enver Hasani

