



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

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Prishtina, on 13 July 2012  
Ref. No.: RK/276/12

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI 38/10**

Applicant

**Milan Vasić**

Dobratin, Municipality of Lipjan

**Request for review of the court proceedings in the Municipal Court in Prishtina  
with regard to case E. No. 34/2001 dated 19 April 2001 (delay of proceedings)**

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

composed of:

Enver Hasani, President  
Kadri Kryeziu, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge and  
Ivan Čukalović, Judge

### **Applicant**

1. The Applicant is Mr. Milan Vasic from village Dobrotin Municipality of Lipjan represented with power of attorney by practicing lawyer Mr. Ndue Kurti from Prishtina residing in quarter Ulpiana A-3, no. 1/1.

### **Subject matter**

2. Subject matter of the Referral filed with the Constitutional Court by Mr. Vasic is the Resolution of the Municipal Court in Prishtina E 54/2001 dated 19 April 2001 by which the Municipal Court imposed interim measure prohibiting to the Applicant Mr. Milan Vasic the mortgaging or the sale of an immovable property, an apartment in quarter "Bregu i Diellit"(Sunny Hill) in Prishtina, described as East Area A-17, first floor, no. 8.

### **Alleged violations of the constitutionally guaranteed rights**

3. The Applicant alleges that the failure of the Municipal Court to take further actions violates the unspecified rights guaranteed by the European Convention on Human Rights, in particular Article 6 of the ECHR (Right to a Fair Trial), Article 24 of the Constitution of Kosovo (Equality before the Law) and Article 31 and 32 of the Constitution of Kosovo (Right to Fair and Impartial Trial and the Right to Legal Remedies).

### **Legal basis**

4. Article 113.7 of the Constitution of Republic of Kosovo (hereinafter referred to as: the Constitution), Article 47 of the Law No. 03/L-121 on Constitutional Court of 16 December 2009 which entered into force on 15 January 2010 (hereinafter referred to as: the Law) and Rule 29 of Rules of Procedure of the Constitutional Court of Republic of Kosovo (hereinafter referred to as: the Rules of Procedure).

### **Applicant's complaint**

5. The Applicant has alleged that the Municipal Court in Prishtina by rendering Resolution on interim measure E 54/2001 dated 19 April 2001, by which it prohibited him from mortgaging, selling or alienation of the immovable property, an apartment located in quarter "Kodra e Diellit" with area 56, 56 m<sup>2</sup>, and for which he claims to be the lawful owner, has unjustly violated his rights as guaranteed by the European Convention and the Constitution of Kosovo (Articles 24, 31 and 32).
6. The Applicant further emphasizes that the proceedings before the Municipal Court in Prishtina has been excessively lengthy and according to him every reasonable time limit for rendering a decision on merits has expired, which has damaged him.

### **Proceeding before the Court**

7. On 10 June 2010, the Constitutional Court received a Referral from Mr. Milan Vasic and it registered it under no. KI 38/10.
8. On 11 November 2010, by Decision GJ.R. 38/10 the President of the Court appointed Judge Robert Carolan as Judge Rapporteur.
9. On the same date the President of the Court appointed the Review Panel composed of Judges Altay Suroy (Presiding), Almiro Rodrigues and prof. Dr. Enver Hasani, members of the Panel.
10. The Constitutional Court informed the Municipal Court on 4 August 2011 on the registration of the Referral requesting written reply as to the current status of proceedings in the case before the Municipal Court which is related to the Referral filed with Constitutional Court. The Court sent such notification also to the Applicant's representative.

11. On 22 August 2011 the Constitutional Court received the written reply from the Municipal Court in which it is explained chronologically the case and copies of decisions rendered until this point are attached.
12. On 27 September 2011 the Constitutional Court received an additional reply from the Municipal Court in which Judge Zenel Leku explained that, with regard to the lawsuit for confirmation of ownership filed by Mr. Beke Hasanaj this court received the said lawsuit on 11 May 2001 and that the assigned Judge to this case held a session on 20 April 2004 and suspended the proceeding in this case until UN-HABITAT adjudicated the same matter, whereas the authorized representative of Mr. Vasic filed a reply on lawsuit on 9 February 2009. Judge Leku also emphasized that due to frequent staff changes in this court he was assigned to this case on 30 November 2010 and that he was not aware of the priority nature of the case.
13. The Constitutional Court sent these comments to the representative of the Applicant on 27 September 2011.
14. On 3 October 2011, the Constitutional Court received the reply from the representative of Mr. Vasic, lawyer Ndue Kurti on the comments of the Municipal Court.
15. On 30. 04.2012 the Constitutional Court received the decision C.nr 500/2001 dated 16.04.2012 of the Municipal Court in Pristina declaring itself incompetent regarding the subject matter of this case.
16. In section II of its decision the Municipal Court determined that once the decision becomes final and binding it will be sent to a special chamber of the Supreme Court ,while in the legal advice was stated that unsatisfied party has the right to appeal within 15 days in the District Court of Pristine.
17. The Constitutional Court has no information whether the decision is made final and was sent to a special chamber of the Supreme Court or if a party has filed a complaint against him.
18. On the session of the 12, July 2012 the review panel unanimously recommended to the full Court for the inadmissibility of the referral.

### **Summary of facts**

19. The Applicant, Mr. Milan Vasic, claims to be the owner of an apartment located in Prishtina in quarter "Kodra e Diellit"- East Area A-17 first floor, apartment no. 8 with area 56.56 m<sup>2</sup> and he supports his claim with a purchase contract concluded between him and the MMCP "Trepca" D.D certified with the Municipal Court in Prishtina vr. No. 2190/98 dated 9 June 1998 and with an annex to the contract vr. No. 413/99 dated 26 March 1999 Which he did not attach to the Referral) and which, according to him, declare him owner of this apartment, as well as the Decisions of UN -Habitat HPCC in Prishtina DS 000111 and DS 000631 dated 12 December 2003 and the Decision of the second instance HPCC DS 000111 and DS00031 dated 16 November 2006 recognize to him the right to possession of the abovementioned apartment.
20. On 19 April 2001, Municipal Court in Prishtina acted upon the proposal of a creditor Mr. Bekë Hasanaj from Prishtina, who claimed to have been the lawful owner of the said apartment before Mr. Vasic moved in it, rendered Resolution E. No. 54/2001 imposing an interim measure and at the same time it prohibited to the debtor, Mr.

Milan Vasic, from village Dobratin, Municipality of Lipjan from depositing (mortgaging), the sale of the immovable property.

- 21 According to the service note of the Municipal Court, Mr. Milan Vasic received this Resolution on 24 May 2007.
- 22 On 29 May 2007, Mr. Vasic filed an objection with the Municipal Court in Prishtina against the Resolution of Municipal Court E. no. 54/01 dated 15 April 2001 on the imposition of interim measure.
- 23 On 6 December 2007 Municipal Court in Prishtina by Resolution E. No. 54.2001 rejected the objection of Mr. Vasic and left in force the Resolution on imposition of interim measure with same number dated 19 April 2001.
- 24 After the approval of the request and the imposition of interim measure, Mr. Bekë Hasanaj filed a lawsuit against the first respondent “Miniera me Flotacion” (Mines with flotation) in Kishnica dhe Novobërda and against the second respondent Mr. Milan Vasic, namely for “the confirmation of the ownership and annulment of the decision on allocation of the apartment and the sales contract” with a lawsuit before the Municipal Court is processed under file number C. No. 500/2001.

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

- 25 In order to be able to adjudicate the Applicant’s Referral, the Court needs first to examine whether the Applicant has fulfilled all admissibility requirements laid down in the Constitution.
- 26 In this regard, 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.*

The Court also takes into consideration:

Rule 36 of the Rules of Procedure of the Constitutional Court which stipulates that:

*“(1) The Court may only deal with Referrals if:*

*c) the Referral is not manifestly ill-founded.”*

- 27 After reviewing the documentation presented by the Applicant it is established that the last Resolution of the Municipal Court in Prishtina, by which it was rejected the objection of Mr. Vasic on the imposition of the interim measure, has been rendered on 6 December 2007 and based on the submissions filed in the case file the Court does not find any evidence that the legal remedy of appeal against this Resolution was exhausted, an effective legal possibility to which the Applicant was instructed in the legal remedy of the Resolution and which should have been filed to the District Court in Prishtina pursuant to the provisions of the Law on Execution Procedure.

- 28 The Court also considers that after the issuance of the Resolution C.nr 500/2001 from the Pristina Municipal Court, dated 16.04.2012 despite of fact whether the Resolution is made final and case was sent to a special chamber of the Supreme court for competence , or the fact that either parties could have filed appeal in District Court in Pristina we are dealing with a case pending before the court and consequently as result the Applicant still has not exhausted all legal remedies
- 29 Based on this fact the Court finds that the Applicant has not fulfilled the admissibility requirement for the exhaustion of legal remedies prescribed by Article 113.7 of the Constitution and Rule 36.1 (a) Rules of Procedure of the Constitutional Court.
- 30 The Court wishes to emphasize that the rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the Kosovo legal order will provide an effective remedy for the violation of constitutional rights. (see, *mutatis mutandis*, ECHR, Selmouni v. France, no. 25803/94, decision of 28 July 1999).
- 31 This Court has used this reasoning when adjudicating earlier Referrals and namely in the following cases: KI 55/10 Hamide Osaj in the request for Review of the constitutionality of the Judgment of the Supreme Court of Kosovo, Pkl. No. 43/2010, dated 4 June 2010; Case No. KI 20/10 Muhamet Bucaliu against the Decision of the State Prosecutor KMLC. No. 09/10 dated 24 February 2010 (Decision of the Constitutional Court of 15 October 2010).
- 32 The Court notes that as to the Applicant's allegation for "unreasonable delay of proceedings" the "length of proceedings in most of the cases depends on the specific circumstances of the case" (see. Cerin v. Croatia No. 54727000.08.03.2001 par 2), and therefore a violation of Article 6 of ECHR (Right to a fair trial ), in the present case Mr. Vasic as an Applicant has not provided any relevant evidence that would substantiate his allegation except for mentioning the time span within which the case has not been settled.
- 33 The Court recalls that the European Court of Human Rights regarding the issue of the delay of proceedings before national authorities has established some criteria such as: complexity of the matter, the Applicant's conduct, the conduct of the relevant authorities, what is at stake for the Applicant, status (stage) of proceedings, etc.
- 34 As to the Applicant's conduct, the Court refers to a case of ECHR (Darnell v. U.K. 15058/89, 10/04/91) where it is specified that " However, even if the national court itself is responsible for the delays in proceedings, the Applicant has to have objected thereto in order to prove undue delay... and that he would not be held responsible for the undue delay"
- 35 Having in mind that Mr. Vasic through his legal representative had filed the objection on the lawsuit in case C. No. 500/2001 in which he was in the capacity of the respondent, only on 9 February 2009, whereas he filed the first and the only urgency note for expediting the proceedings in this case on 15 2009 even though the case was pending since 11 May 2001, the Court concludes that also Mr. Vasic himself by his inaction has influenced the length of proceedings.
- 36 As to the criteria "the conduct of the relevant authorities", the Court evaluates that the Municipal Court in its reply dated 27 September 2011 had explained chronologically

the actions before it regarding this case and stated the reasons for the delays, from which it does not appear that the proceedings before the Municipal Court was intentionally delayed.

- 37 The Constitutional Court however recalls that it is the obligation of national public authorities including the regular courts to make final decisions on issues raised before them, in accordance with Article 31.2 of the Constitution of Kosovo *“Everyone is entitled to a fair and impartial public hearing as to the determination of one’s rights and obligations or as to any criminal charges within a reasonable time by an independent and impartial tribunal established by law”*.
- 38 The Resolution of the Constitutional does not prevent applicant that after eventual completion of the procedure in the Supreme Court to address his complaint again to the Constitutional Court.
38. Under these circumstances, the Applicant at this time has not exhausted all legal remedies available to him, therefore Court should reject the Referral as premature

### **FOR THESE REASONS**

Pursuant to Article 113.7 of the Constitution, Article 20 of the Law and Rule 36 of the Rules of Procedure, the Constitutional Court in its session held on 12 July 2012 unanimously:

### **DECIDES**

- I. TO DECLARE the Referral 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; and
- III. This Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

  
Robert Carolan

  
Prof. Dr. Enver Hasani