



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

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Prishtina, 25 April 2012  
Ref. no.: RK224/12

## RESOLUTION ON INADMISSIBILITY

in

**Case KI 161/11**

Applicant

**Milan Petrović**

**Constitutional review of the Resolution of Supreme Court of Kosovo  
Ac.br.2/2011 of 10 June 2011**

### 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  
Ivan Čukalović, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge.

#### **Applicant**

1. The Applicant is Milan Petrović from Prizren, represented before the Constitutional Court of Kosovo by lawyer Ymer Koro from Prizren.

## **Challenged decision**

2. The challenged decision is the Resolution of the Supreme Court of Kosovo Ac. no. 2/2011 of 10 June 2011 served on the Applicant on 10 August 2011, by which it was confirmed the Resolution of District Court in Prizren Ndr. no. 302/10 of 23 November 2010 and it was rejected the proposal of the Applicant to recognize to him the purchase contract Leg. no. 1255/99 of 25 June 1999 certified with the First Municipal Court in Belgrade as a Resolution of a foreign state.

## **Subject matter**

3. The Applicant challenges the Resolution of the Supreme Court of Kosovo Ac. no. 2/2011 of 10 June 2011, without specifically stating Articles of the Constitution which have been allegedly violated, however from the Referral it may be inferred that the subject matter is a legal property dispute for which the Applicant considers that “...*the case of the contested contract must be considered as a decision of a foreign country, in this particular case of state of Serbia and the court must recognize this contract as a decision of a foreign country.*”

## **Legal basis**

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

## **Proceedings before the Court**

5. On 10 December 2011, the Applicant sent by mail from Prizren a Referral to the Constitutional Court of Republic of Kosovo (hereinafter: the Court) which was registered with the Court on 13 December 2012.
6. On 27 January 2012, the Constitutional Court notified the Applicant, the District Court in Prizren and the Supreme Court of Kosovo that a proceeding of constitutional review of decisions in case KI 161/11 has been initiated.
7. On 19 April 2012, after considering the report of the Judge Rapporteur Altay Suroy, the Review Panel composed of Judges: Ivan Čukalović (presiding), Iliriana Islami and Gjyljeta Mushkolaj made a recommendation to the full Court on inadmissibility of the Referral.

## **Summary of the facts**

8. The Applicant submitted a proposal to the District Court in Prizren for recognition of apartment purchase contract Leg. No. 1255/99 of 25 June 1999 certified with the First Municipal Court in Belgrade. By the said contract the Applicant purchased the contested apartment from the Secretariat of Internal Affairs in Prizren which was the owner of the apartment. The apartment concerned is located in Prizren but the Applicant certified the said contract at the First Municipal Court in Belgrade due to the circumstances created following the intervention of NATO troops.
9. District Court in Prizren by Resolution Ndr. no. 302/10 of 23 November 2010 rejected Applicant’s proposal as unfounded considering that the contract does not meet the requirements provided in Law on resolving conflicts of laws with regulations of other countries, Official Gazette SFRY no. 43/1982 which in Article 86 provides the following:

*“A decision of a foreign court shall have the same status as the decision of the court of the Federal Republic of Yugoslavia and it shall produce legal effects in the Federal Republic of Yugoslavia only if recognized by a court of the Federal Republic of Yugoslavia.*

*A settlement reached before a court (a court settlement) shall also be considered a foreign court decision within the meaning of paragraph 1 of this Article.*

*A decision of another authority which is equivalent to the court decision in the country where it was taken shall also be considered a foreign court decision or court settlement respectively if it governs the relationships referred to in Article 1 hereof.”*

10. Against this Resolution the Applicant filed an appeal with the Supreme Court of Kosovo which, by Resolution Ac. No. 2/2011 rejected the proposal of the Applicant as unfounded and upheld the Resolution of the District Court in Prizren Ndr. No. 302/2010 of 23 November 2010, with the following reasoning:

*“...requirements for recognizing the apartment purchase contract as a decision of foreign court are not met, because such contract cannot be considered as a court decision nor as a court settlement as the petitioner claims in the appeal.”*

### **Applicant’s allegations**

11. The Applicant challenges the Resolution of the Supreme Court of Kosovo Ac. No. 2/2011 of 10 June 2011, alleging:

*“In territory of Kosovo we have hundreds of cases when citizens of Kosovo approach the District Court which is competent for recognition of decisions of foreign countries in the state of Kosovo and mainly these are court decisions on divorces and so far every such decision has been considered as a foreign decision and the District Court as the competent court has recognized them as such.*

*Also the case of the disputed contract must be considered as a decision of a foreign country, namely of state of Serbia and the court must recognize this contract as a decision of a foreign country.*

*Based on all the foregoing, the Applicant is of the opinion that his rights as guaranteed by the Constitution of Republic of Kosovo have been violated and because of this it is proposed that the Constitutional Court of Kosovo approve this Referral as grounded and in its decision assess and find that the resolutions presented in this Referral are in violation of the Constitution of Republic of Kosovo and therefore annul them as such”*

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

12. 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 as further specified in the Law and the Rules of Procedure.
13. Applicant’s Referral is in compliance with time limits prescribed in the Constitution, the Law or in the Rules of Procedure. Rule 27 paragraphs 3 and 6 stipulate the way how time limits are calculated:

*“3. When a period is expressed in months, the period shall end at the close of the same day of the month as the day during which the event or action from which the period to be calculated occurred or when appropriate the first day of the following month;*

*6. When a time period would otherwise end on a Saturday, Sunday or official holiday, the period shall be extended until the end of the first following working day.”*

14. Article 48 of the Law on Constitutional Court of Republic of Kosovo provides:

*“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.”*

15. Under the Constitution the Constitutional Court is not a court of appeal, when reviewing the decisions taken by ordinary courts. It is the role of the latter to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, Garcia Ruiz v. Spain [GC], no. 30544/96, § 28, European Court on Human Rights [ECHR 1999-1]).
16. The Applicant has not provided any *prima facie* evidence which would point out to a violation of their constitutional rights (see Vanek vs. Slovak Republic, ECHR Court on admissibility, Application no. 53363/99 of 31 May 2005). The Applicant does not state which Articles of the Constitution support his Referral as it is required with Article 113.7 of the Constitution and Article 48 of the Law.
17. In the present case, the Applicant was provided numerous opportunities to present his case and challenge the interpretation of the law, which he considers as being incorrect, before the District Court in Prizren and the Supreme Court of Kosovo. After having examined the proceedings in their entirety, the Constitutional Court did not find that the pertinent proceedings were in any way unfair or arbitrary (see *mutatis mutandis*, Shub v. Lithuania, ECtHR Decision as to the Admissibility of Application no. 17064/06 of 30 June 2009).
18. Finally, admissibility requirements have not been met in this Referral. The Applicant has failed to point out and substantiate the allegations that his constitutional rights and freedoms have been violated by the challenged decision.
19. It follows that the Referral is manifestly ill-founded in accordance with Rule 36 (2b) of the Rules of Procedure which provides that *“The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that: b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights”*.


## **FOR THESE REASONS**

The Constitutional Court of Kosovo, pursuant to Article 113 (7) of the Constitution, Article 20 of the Law and Rule 56 paragraph 2 and Rule 36 (2b) of the Rules of Procedure, on its session held on 19 April 2012, unanimously,

### **DECIDES**

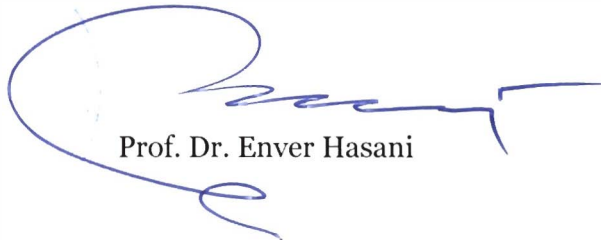
- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Altay Suroy

**President of the Constitutional Court**



Prof. Dr. Enver Hasani