

Case Note

RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS IN THE CASE LAW OF THE CONSTITUTIONAL COURT OF REPUBLIC OF KOSOVO

*Din Shahiqi**, *Zanita Fetahu* and *Reshat Fetahu*

ABSTRACT

Background: To respect international cooperation, human rights and legal certainty, it is possible to recognise the legal effects of foreign judicial decisions in another state, provided that the procedure for recognising a foreign judicial decision takes place and that such court decision fulfils the requirements set by local legislation.

Recognition, as a concept, entails acknowledging the rights and obligations established in the originating jurisdictions and accepting juridical consequences. Enforcement, on the other hand, means fulfilling the obligation, allowing the creditor to realise his/her right and to ensure that the debtor has obligations and obeys the decisions that have already been made.

International collaboration should facilitate the codification of Kosovo's legal framework on private international law, allowing for the recognition and enforcement of foreign decisions to be less complicated, more extensive, and more easily applicable.

In comparison to prior solutions, the new law makes significant adjustments. Previous norms are being abandoned in favour of open links and jurisdictional criteria. Some prior solutions are preserved and, if necessary, changed and improved.

Methods: The doctrinal approach involves the systematic identification, collection, and application of legal literature within the domain, encompassing statutes, texts, articles, and scholarly research by both local and international authorities. Additionally, the method involves a meticulous analysis of judicial practices, evaluating the practical implementation of legal standards and their judicial interpretations. Through examining legislation, our approach not only identifies legal issues but also furnishes a scholarly interpretation of the laws governing the field of study and its related institutions.

Results and conclusions: Kosovo, as a relatively new state, has established a legislative framework through which it attempts to address problems and the path that must be taken in the implementation of foreign judgments. In general, the goal of having a democratic and well-developed society also means respecting the rights and decisions of foreign citizens, the rights that originate from the judicial decisions of international courts and the internationally accepted conventions. The harmonisation of the legislation and its compliance with ECHR conventions creates real opportunities for Kosovo to be ranked among the countries that respect these decisions.

The legal system of Kosovo, as well as decisions made by the Constitutional Court, have produced results that can be used to influence future cases. The codification of private international law in Kosovo means that numerous circumstances will now have a legal basis for implementing foreign decisions.

1 INTRODUCTION

As a country with aspirations to join the European Union and other international organisations, Kosovo faces a variety of problems in all aspects of its daily existence. In private international law, a significant hurdle lies in the recognition of foreign decisions, a complicated process establishing legal conditions for enforcing decisions from other countries within the Republic of Kosovo.

Discussion of such a topic allows for the possibility of throwing light on the legislative framework and court decisions that determine the recognition and execution of these decisions. Recognising foreign decisions is an endeavour to respect international law while facilitating and establishing efficient justice in situations involving a foreign element.

The increasing intensity of the present relationship between international private law and domestic law is subject to a serious discussion about the best way in which Kosovo's domestic legal system could face the problems posed by the recognition and enforcement of foreign court decisions. The analysis of the legal aspect of this process is of great importance, as it provides an opportunity for legal certainty, facilitates various civil relations with foreign elements, and creates prerequisites for justice for decisions that different courts have decided.

To understand better recognition and enforcement of foreign decisions, we will try to analyse the following:

1. How are these issues addressed in private international law?
2. The special cases involving rulings from the Constitutional Court of Kosovo and their implications regarding compliance with the European Convention for Human Rights and Kosovo national law.

2 RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS ACCORDING TO PRIVATE INTERNATIONAL LAW: LITERATURE REVIEW

Private international law is governed by laws unique to each modern legal system, just like any other area of domestic law. Strong global efforts have been underway in recent years to harmonise the various conflicts of law systems.¹ A young democracy like the Republic of Kosovo is working nonstop to align and codify its laws to comply with international law.

With trade development, communication, and the opening of state borders, we are witnessing the enormous growth of international cooperation at the national and global levels. Private international law is a branch of law that will develop even more in the future since its implementation represents one of the basic conditions of the international economy and the unstoppable process of international cooperation.

Private international law, as a branch of the law of the legal system of a concrete state, represents the totality of legal norms regulating legal-private relations where a foreign legal-private element appears or is present.²

Legal norms belonging to the branch of private international law, as a neuralgic or problematic issue, have the determination of the competent law, namely the avoidance of the possible conflict of jurisdiction. In addition to the conflict of laws and jurisdiction, recognition of foreign decisions and their enforcement represent three main parts of private international law.³

Private international law does not impose the general obligation to recognise foreign court decisions, meaning that decisions made in one country do not automatically hold force in another. This is often unsatisfactory and insufficient. In general, there is a public interest in avoiding the expense of retrial, while states are interested in being promoters of interstate transactions. Generally speaking, states often have grounds to deny the legal effects of foreign judicial decisions and to consider these decisions equal to the judicial decisions of their courts. Foreign procedures are seen as deficient, and the results of the judicial process are deemed questionable. The interest of protecting state sovereignty imposes certain requirements or preconditions that the foreign judicial decisions must fulfil for such decisions to have effects even outside the country in which they were adopted.⁴

1 Abl J Mayss, *Principles of Conflict of Laws* (3rd edn, Cavendish 1999) <<http://ci.nii.ac.jp/ncid/BA39903985>> accessed 10 January 2024.

2 Asllan Bilalli dhe Hajredin Kuçi, *E Drejta Ndërkombëtare Private: (Pjesa e Përgjithshme)* (Universiteti i Prishtinës Fakulteti juridik 2012).

3 Tibor Varadi, Bernadet Bordaš i Gašo Knežević, *Medunarodno Privatno Pravo* (5 izd, Forum 2001).

4 Michael Douglas, 'Recognition and Enforcement of Foreign Judgments' (CLE presentation, Perth, 2 May 2018) doi:10.13140/RG.2.2.29522.66248.

Three possible effects or consequences of foreign court decisions should be distinguished. Firstly, the foreign court decision creates dispositive or mandatory effects since approving the judgment creates, modifies or even abolishes legal or status obligations. Secondly, the foreign court decision creates a number of procedural effects, starting from the impact of the principle *Res Judicata*, *Ne bis in Idem*, as well as enforcement ones. Thirdly, the foreign court decision creates factual effects since the final court decision can be used as a fact in another eventual court proceeding.⁵

It is necessary to emphasise that this matter is widely regulated in normative acts within the framework of the European Union ("EU"). The unhindered circulation of decisions in civil and commercial matters can also be called the heart of jurisdictional cooperation within the EU. EU law broadly regulates this matter in normative acts. These normative acts have legal force within the EU and express a tendency to automatically recognise foreign judicial decisions within the member states.⁶ Previously, this matter was regulated by the Brussels Convention on Jurisdiction, Recognition and Enforcement of Judicial Decisions in Civil and Commercial Matters from 1968.⁷

International legal cooperation in civil matters represents a topic of special importance for Kosovar jurisprudence, especially at the time when Kosovo has begun process of approximation and accession to various institutions and mechanisms of the EU, as is the case with the Agreement of Stabilization Association, the process of accession to the Apostils Convention, the process of membership or observer status in the "Hague Conference on Private International Law" for cases of legal cooperation in the civil field.⁸

In relation to the enforcement of the foreign court decision, the recognition of the latter is a preliminary matter, and it is very important to know where to begin and all disputes.⁹ That is the fundamental idea behind the notion of a judgment's finality. Until the foreign court decision is enforced, it cannot come without prior recognition. Only in cases where an international agreement has been concluded between the states in which the acceptance of court decisions of the parties to the agreement is included can the enforcement of foreign court decisions be considered without going through the procedure of recognition of that decision.¹⁰

5 *ibid.*

6 Hrvoje Sikirić, 'Priznanje sudskih odluka prema Uredbi Vijeća (EZ) br 44/2001 od 22 prosinca 2000 O sudskoj nadležnosti i priznanju i ovrsi odluka u građanskim i trgovačkim predmetima' (2012) 62(1-2) *Zbornik Pravnog fakulteta u Zagrebu* 289 <http://hrcak.srce.hr/index.php?show=clanak&id_clanak_jezik=137035> accessed 10 January 2024.

7 Brussels Convention on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters (1968) <<http://data.europa.eu/eli/convention/1972/454/oj>> accessed 10 January 2024.

8 Valon Totaj dhe Lumni Sallauka, 'Bashkëpunimi Juridik Ndërkombëtar në Çështjet Civile' (2016) 2 *Opinio Juris* 59 <<http://jus.igjk.rks-gov.net/745/>> accessed 10 January 2024.

9 R Lea Brilmayer and other, *Conflict of Laws: Cases and Materials* (Aspen Casebook, Wolters Kluwer 2019).

10 Andrew Dickinson and other, *The Effect in the European Community of Judgments in Civil and Commercial Matters: Recognition, Res Judicata and Abuse of Process: Report for England and Wales* (British Institute of International and Comparative Law 2008, February 20) <<https://ssrn.com/abstract=1537154>> accessed 10 January 2024.

3 RECOGNITION AND ENFORCEMENT OF FOREIGN COURT DECISIONS FROM THE PERSPECTIVE OF THE CONSTITUTIONAL COURT OF KOSOVO

The Constitution of the Republic of Kosovo obliges the implementation of signed international agreements, which guarantee protection, freedoms, and rights considered fundamental for human beings.¹¹ Moreover, these agreements have priority in case of collision with the acts approved in the Republic of Kosovo. Priority is given to human rights guaranteed and harmonised with the decisions of the European Convention on Human Rights (ECHR).

In its practice, the Constitutional Court has dealt with decisions from foreign courts, focusing on the main principles that emerge from the ECHR, namely Article 6, which covers the "Right to a fair trial."¹²

It must be noted that the European Convention on Human Rights is the first comprehensive convention for protecting human rights to come out of the post-Second World War legal system. ECHR has withstood the test of time and continues to be the gold standard for the global protection of human rights. It is a one-of-a-kind document that has significantly impacted the idea and practice of defending fundamental rights throughout Europe. Initially, the Convention provided for fifteen fundamental rights explained in its first section entitled "Rights and Freedoms".¹³

The right to a fair trial, enshrined in Article 6 of the Convention, is crucial, recognising that everyone who faces justice deserves such a right. Article 6 has played a pivotal role in shaping democratic societies and fostering the rule of law. Its practical significance is evident as many court decisions are grounded in its principles. While the first paragraph of Article 6 pertains to civil trials, it is crucial to underscore the importance of Articles 2 and 3 in criminal trials. The scope of the Article includes all civil rights and obligations that apply to relations between natural persons.

A more debatable issue is whether the enforcement procedure, particularly the *exequatur* procedure, should be in accordance with Article 6 of the ECHR. Article 6 applies from the moment the court proceedings begin. Yet, the wording of this provision does not distinctly indicate whether it also extends to procedural steps undertaken subsequent to the rendering of a judgment.

11 Constitution of Republic of Kosovo (2008) <<https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>> accessed 10 January 2024.

12 Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocols no 11 and no 14) [1950] ETS 5 <<https://rm.coe.int/1680063765>> accessed 10 January 2024.

13 Maria Louiza Deftou, *Exporting the European Convention on Human Rights* (Modern Studies in European Law, Bloomsbury Pub 2022).

3.1. Recognition and enforcement of foreign divorce decisions according to the Constitutional Court of Kosovo's practice (KI73/18)

Concerning the recognition of a foreign court decision, the expressed position of the Constitutional Court of Kosovo in the case KI73/18, dated 1 November 2019, is of particular importance.¹⁴ The case relates to the divorce between a citizen of Kosovo and a citizen of Albania and how the court recognised and enforced a decision from a foreign court. The Kosovo citizen, in the capacity of the applicant, claimed that the challenged decision on recognition of a foreign court decision violated his constitutional rights and freedoms, such as equality before the law and the concept of the right to a fair trial guaranteed by the Constitution of Kosovo and Article 6 of the ECHR. Although the Constitutional Court declared the referral inadmissible, its significance lies in the analysis of the application of the abovementioned Article, precisely, the first paragraph of the ECHR, then regarding the notion of dispute and the notion of rights and civil liabilities.

In its decision, the Constitutional Court of Kosovo expressed that, according to the ECtHR's case law, the application of the abovementioned Article in the civil domain (rights and obligations) implies the cumulative presence of the following conditions: a) there must be a dispute over any *right* or *obligation* that must be based on domestic law¹⁵ and b) the right or obligation must be of a *civil* nature.¹⁶

The Constitutional Court found that under the practice of the ECtHR, the expression of dispute concerning civil rights and obligations encompasses all procedures, the outcome of which is decisive for private rights and obligations. The result is decisive even if the procedure concerns the dispute between individuals and public authorities acting independently, regardless of whether, according to the domestic law system of the respondent State, it falls under private or public law or is of a mixed character.¹⁷

In terms of the concept of dispute, the Constitutional Court of Kosovo believes that "dispute" refers to a judicial procedure in which the regular court examines and decides on disputes arising from personal and family relations, work relations (with the employer),

14 Case KI73/18 *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* (Constitutional Court of the Republic of Kosovo, 1 November 2019) <<https://gjk-ks.org/en/decision/vleresim-i-kushtetutshmerise-se-aktvendimit-te-gjykates-supreme-cml-nr-36-2018-te-10-prillit-2018-ne-lidhje-me-aktvendimin-e-gjykates-themelore-ne-mitrovica-cn-nr-89-2015-te-14-gushtit-2015/>> accessed 10 January 2024.

15 *Bentham v the Netherlands* App no 8848/80 (ECtHR, 23 October 1985) paras 32-6 <<https://hudoc.echr.coe.int/tkp197/view.asp?i=001-57436>> accessed 10 January 2024; *Roche v the United Kingdom* App no 32555/96 (ECtHR, 19 October 2005) paras 116-26 <<https://hudoc.echr.coe.int/?i=001-70662>> accessed 10 January 2024.

16 *Ringeisen v Austria (Merits)* App no 2614/65 (ECtHR, 16 July 1971) para 94 <<https://hudoc.echr.coe.int/eng?i=001-57565>> accessed 10 January 2024.

17 *ibid*, para 56.

property relations, and other civil-legal relations of physical and legal entities. As a result, a judicial proceeding in the nature of a dispute must meet certain characteristics, including the action of three subjects: the claimant, the respondent and the court.¹⁸

The Constitutional Court, in the above-mentioned decision, specifically in paragraphs 56 and 57, referred to several other decisions of the ECHR, in which it defined the notion and nature of the dispute, namely what a judicial procedure must be to fulfil that criterion. The court underscored the ECHR's position in the case of *Ringeisen v. Austria* on 16 July 1971. In this decision, the ECHR delineated that "the phrase "contestation against" (des) droits et oblige de caractere civil" (contests regarding civil rights and obligations) includes all procedures whose outcome is decisive for (those) rights and obligations. Moreover, according to the Constitutional Court, the result of the procedure must be directly decisive for such a right. To support this assertion, the court referred to the ECHR Judgment *Le Compte, Van Lauven and De Meiere v. Belgium*.¹⁹

While addressing the notion of "civil rights and obligations", the Constitutional Court commences by explaining the notion of "civil rights". This notion concerns protecting all individual rights under applicable national law. On the other hand, the notion of "civil rights" extends considerably beyond civil cases in the narrow sense. The Constitutional Court referred to the ECtHR Judgment *Ringeisen v. Austria*, wherein it was established that any procedure whose outcome is "decisive for the determination of a civil right" must be harmonised with the requirements of the above-mentioned Article 6 of the ECHR.²⁰

In paragraph 81 of the aforementioned Judgment, the Court expressed the position that Article 6 of the ECHR applies regardless of the status of the parties, as well as irrespective of the nature of the legislation which regulates how the dispute will be categorised; what is important is the character of the right in question, as well as whether the outcome of the procedure would directly affect the rights and obligations within the framework of private law.²¹

Further, the Court considers that according to the ECHR, there must be a "contest" regarding the content of "civil rights and obligations", at least in the broad sense of the term. It is emphasised that Article 6 of the ECHR, in principle, would generally not apply to cases with a purely administrative and procedural character in which there are no substantial actions for factual or legal issues.²²

18 Case KI73/18 (n 14) para 55.

19 *Ringeisen v Austria* (n 16) para 94; *Le Compte, Van Leuven and De Meyere v Belgium* App nos 6878/75, 7238/75 (ECtHR, 23 June 1981) para 47 <<https://hudoc.echr.coe.int/?i=001-57522>> accessed 10 January 2024.

20 Case KI73/18 (n 14) para 80; *Ringeisen v Austria* (n 16).

21 *Baraona v Portugal* App no 10092/82 (ECtHR, 8 July 1987) paras 38-44 <<https://hudoc.echr.coe.int/?i=001-57428>> accessed 10 January 2024.

22 Case KI73/18 (n 14) para 82; *Le Compte, Van Leuven and De Meyere v Belgium* (n 19) para 41.

The Constitutional Court further emphasises that the ECHRt, in its many years of practice, concluded that Article 6 of the ECHR can be applied to the procedures initiated by the claimants, in which it is claimed that there was an omission or (negligence) of the courts when they decided for his "civil rights" in the judicial procedure that has the nature of a "contest", even in cases where the nature of rights has already been decided. In certain situations, the local court must determine whether the judicial processes have complied with the standards of Article 6 of the ECHR. The court also considers that when there is a serious and authentic dispute concerning the legality of this intervention related to the existence or the level and the extent of the civil rights disputed, Article 6 Paragraph 1 of the European Convention on Human Rights authorises an individual to have this matter determined under domestic law or by a domestic court.²³

3.2. Scope of application of Article 6 of the ECHR according to Constitutional Court case (KI122/17), in the preliminary proceedings concerning the application for recognition and enforcement of foreign arbitration decision

With regard to the recognition of foreign court decisions in the practice of the Constitutional Court of Kosovo, the Judgment of the Constitutional Court of Kosovo dated 30 April 2018, in case no. KI122/17 is considered of particular importance.²⁴

The applicant, a private company from the Czech Republic, entered into a commercial contractual agreement with a private company seated in Kosovo in 2020. The abovementioned contracting parties agreed that any dispute between them that arose and was unresolved within 30 days could be submitted to the Court of Arbitration at the Czech Chamber of Commerce. In accordance with contractual rules on disputes, the Applicant filed a lawsuit against the company from Kosovo before the Arbitration Court on 12 June 2012, and the Court ruled in favour on 30 January 2013.²⁵ Subsequently, on 18 June 2014, the Applicant filed a referral for recognition of the arbitration award from the Basic Court in Prishtina, which recognised the award and declared it an enforceable document in Kosovo. The Court of Appeals of Kosovo upheld the decision, recognising the arbitral

23 *Sporrong and Lönnroth v Sweden* App nos 7151/75, 7152/75 (ECtHR, 23 September 1982) para 81 <<https://hudoc.echr.coe.int/?i=001-57580>> accessed 10 January 2024; *Tre Traktörer Aktiebolag v Sweden* App no 10873/84 (ECtHR, 7 July 1989) para 40 <<https://hudoc.echr.coe.int/?i=001-57586>> accessed 10 January 2024.

24 *Case KI122/17 Constitutional review of Decision Ae no 185/2017 of the Court of Appeals of 11 August 2017, and Decision IV EK C no 273/2016 of the Basic Court in Prishtina of 14 June 2017* (Constitutional Court of the Republic of Kosovo, 30 April 2018) <<https://gjk-ks.org/en/decision/vleresim-kushtetutshmerise-se-aktvendimit-ae-nr-185-2017-te-gjykates-se-apelit-te-11-gushtit-2017-dhe-aktvendimit-iv-ek-c-nr-273-2016-te-gjykates-themelore-ne-prishtine-te-14-qershorit-20/>> accessed 10 January 2024.

25 *ibid*, paras 16-8.

award as a final and enforceable decision on 20 March 2015. In response, the Applicant submitted a proposal for enforcement of a certified arbitral award on 26 March 2015, and finally, on 1 March 2016, the enforcement order issued by the Private Enforcement Agent became final and enforceable.²⁶

On 21 March 2015, following recognition of the arbitration award, the private company's shareholders from Kosovo voluntarily dissolved their company. In response to this action, on 30 May 2016, the Applicant, by means of a new lawsuit, requested the Basic Court of Prishtina to annul the decision on voluntary dissolution and claimed compensation for material damage. As of now, the court has not ruled on the Applicant's claim to annul the decision on voluntary dissolution. All proceedings in regular courts until the aforementioned judgment of the Constitutional Court of Kosovo are related to the security measure.²⁷

In the abovementioned judgment, the Constitutional Court of Kosovo emphasises that pre-trial procedures, such as those relating to imposition of injunction - usually are not considered to establish civil rights and, therefore, do not fall within the scope of such protection.²⁸ However, in different cases, ECtHR applied Article 6 of ECHR in pre-trial proceedings when it was considered that security measures were crucial to the Applicant's civil rights. Constitutional Court has referred to ECtHR cases: *Aerts v. Belgium*, application no. 25357/94, Judgment of 30 July 1998; *Boca v. Belgium*, application no. 50615/99, Judgment of 15 November 2012.²⁹

According to the Constitutional Court of Kosovo, in 2009, the ECtHR knowingly changed its previous position on pre-trial proceedings by stating in response to whether there is a need for case law.³⁰

Constitutional Court concluded that the content of the right in question, in proceedings, is related to the annulment of the decision on voluntary dissolution, which is a civil right under applicable legislation in Kosovo. The security measure aimed to secure the applicant's main claim, which the latter found necessary to enforce the final arbitral award. To that end, the Constitutional Court notes that implementing a final arbitral award depends inherently on the results of the request for an injunction in the contentious procedure. In this case, the security measure procedures fulfil the criteria for implementing Article 31 of the Constitution of Kosovo under Article 6 of the ECHR.³¹

26 *ibid*, paras 19-23.

27 *ibid*, paras 33-7.

28 *ibid*, para 126.

29 *ibid*, para 127.

30 *ibid*, para 128.

31 *ibid*, paras 132-7.

The Constitutional Court's decision stands out for the first time because it has interpreted Article 31, Right to Fair and Impartial Trial, in the preliminary proceedings based on the ECtHR's previous practice.

Constitutional Court of Kosovo, in its Judgment No. KI122/17 has set implementation standards in Kosovo with regard to requirements of Article 6 of the ECHR in civil cases in so-called "preliminary proceedings", such as those relating to issuance of an interim measure or injunction relief. Referring to the position of the ECHR, the court finds that not all temporary measures determine rights, and not all cases result in obligations, and the implementation of Article 6 in relation to preliminary procedures also depends on certain conditions and criteria.

The right that people seek must be civil, both in the main trial and in proceedings concerning security measures. Secondly, ECtHR emphasises that the nature of the temporary measure must be examined, considering that whenever such a measure is considered to effectively determine civil rights and obligations, Article 6 will be implementable.³²

This case best established the basic rights principles for a fair trial. With its decision, the court has made it hard to escape legal obligations, creating a critical practice. There can be many cases in the arbitration court in Kosovo, and since we may face such a situation in the future, it is good that there is now a ruling on similar matters.

3.3. The Kosovo Constitutional Court's perspective on the recognition of contracts certified by foreign courts (KI161/11)

In another case involving a foreign element, a review was conducted over a property issue in one of Kosovo's cities. The party requested that the District Court in Prizeren recognise the contract of sale for an apartment. This contract was proven before the first municipal court in Belgrade, Republic of Serbia, on 25 June 1999, while Kosovo was at war and NATO's intervention had just finished.³³

The Court in Prizeren rejected the party's request. Similarly, the Court of Appeal dismissed the request for the same legal basis, citing the contract's certification by the Court in Belgrade as insufficient to qualify as a foreign decision. They specified in their legal opinion that:

" ... requirements for recognising 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."³⁴

32 *ibid*, paras 128-31.

33 Case KI161/11 *Constitutional review of the Resolution of Supreme Court of Kosovo Ac.br.2/2011 of 10 June 2011* (Constitutional Court of the Republic of Kosovo, 25 April 2012) <<https://gjk-ks.org/en/decision/constitutional-review-of-the-resolution-of-supreme-court-of-kosovo-ac-br-22011-of-10-june-2011/>> accessed 10 January 2024.

34 *ibid*, para 10.

After the review by the regular courts, the interested parties addressed the Constitutional Court; the legal basis used by the party was that this case is similar to divorce cases, which the Court in Kosovo had its practice, where it had recognised them.

To decide the case, the Constitutional Court first determined whether the administrative requirements for presenting the request to this Court were met, assuming there were no obstructions. The Court then informed the party that the Constitutional Court does not function as a Court of Appeal that re-judges cases but rather examines if there was a violation of the Constitution during the trial.

Consequently, the Court determined that the party exhausted all legal options in regular courts and found no violation of any part of the Constitution, thus declaring the party's request inadmissible.

Upon analysing the case, it is evident that the Constitutional Court made the correct decision as the parties had exhausted all their legal options before the regular courts. Moreover, property issues cannot be equated to matters arising from civil partnerships such as marriage. Therefore, we assert that the complainant's desire to compare is not justified by law, given the circumstances of the case. In the aforementioned example, the *Lex Rei Sitaes* could have been invoked to advise the party that since the object was located in the Republic of Kosovo, the contract would need to be confirmed by the courts of the country where the asset was situated.

4 GENERAL ANALYSIS

To address this situation clearly and adequately, it is crucial that the Constitutional Court of Kosovo's decisions regarding the issue of accepting foreign court decisions establish certain standards that serve regular courts during decision-making in future cases.

However, it should be noted that the case studies from the judicial practice of the Constitutional Court of Kosovo are cases that were decided before the entry into force of the Law on Private International Law in Kosovo (Law no. 08/L-028) which was adopted after a long series of years, in August 2022.³⁵

On the one hand, the new law serves as a guideline for the bodies that apply it, referring to supranational sources in force in Kosovo. On the other hand, the new law adopts rules adopted exclusively for the needs of the Kosovo legal order.

The laws adopt a rule regarding the recognition and execution of foreign decisions, declaring the application of European and international sources. Article 1 of the Law

35 Law of the Republic of Kosovo no 08/L-028 of 4 August 2022 'On Private International Law' [2022] Official Gazette of the Republic of Kosovo 30/21.

enumerates European regulations and multilateral international agreements that govern the recognition of foreign court decisions.

The provisions of the new Kosovo law on private international law embody contemporary trends in the recognition and implementation of the decisions of foreign courts regarding international jurisdiction and the recognition and enforcement of foreign judgments.

The essential concept by which the aforementioned law determines the recognition of foreign decisions is *a foreign judgment shall mean any decision rendered by a court of a foreign state*.³⁶

Kosovo has attempted to modernise its law by being flexible and granting favourable conditions to parties in the event of a request for recognition of foreign decisions. If specific requirements are met, all principles for the recognition of foreign decisions can be acknowledged in the Republic of Kosovo.

For a foreign decision to carry legal weight, it must officially be recognised by the Republic of Kosovo.³⁷ Article 159 poses a challenge due to the notion of reciprocity, which, in normal circumstances, creates equal standards for recognising foreign citizens' rights in the same way that domestic citizens' rights are governed. Given Kosovo's history and the difficult relations with its neighbours, we believe it is poorly stated and serves as a mini-obstacle in the law. The aforementioned law lacks direct clarifications on how the principle of reciprocity should be applied, being limited to two short articles. However, what is important and related to this principle is Article 165, which imposes constraints in circumstances where the foreign decision cannot be accepted. The essential concept is that it should not be contrary and violate public order.

In light of what we have mentioned, the case KI25/20 should also be examined, in which the court was already confronted with a decision made in another country, and the Court of Appeal of Kosovo was referred to on the principle of reciprocity.³⁸ The case included a building project in Montenegro, where one of the parties involved filed a complaint for debt compensation, which this court partially approved, and later, it was also partially supported by the High Court in Podgorica. The claimant then went to the Basic Court in Pristina to recognise the foreign decision, which was rejected in the first instance. He then went to the Court of Appeal, where the reasoning given in this court was very important, referring to the principle of reciprocity and stating that Kosovo and Montenegro do not have any reciprocity agreement in recognising foreign decisions. Following this decision, the party approached the Constitutional Court, but the procedural aspect was not respected because

36 *ibid*, art 157.

37 *ibid*, art 158.

38 *Case 25/20 Constitutional review of Decision Rev no 367/2019 of the Supreme Court of Kosovo of 10 December 2019* (Constitutional Court of the Republic of Kosovo, 16 November 2020) <<https://gjk-ks.org/en/decision/vleresim-i-kushtetutshmerise-se-aktvendimit-te-gjykates-supreme-te-kosoves-rev-nr-367-2019-te-10-dhjetorit-2019/>> accessed 10 January 2024.

the party did not meet the appropriate deadline of four months to file a complaint within the Constitutional Court, causing the Court to reject as inadmissible the request due to failure to appear on time.

What is more essential is that certain examples, however few, have established a procedure that can be used in the future. The instances discussed in the article lay the way for examining how the practice of accepting foreign rulings evolved in a new country such as Kosovo based on Constitutional Court decisions.

5 CONCLUSIONS

The recognition of foreign judicial decisions through the Constitutional Court in Kosovo has become a practice, with several decisions made by this Court. For the instances relating to Article 31 of the Constitution of Kosovo and Article 6 of the ECHR, which concerns the right to a fair and impartial trial, it is evident that the Court has established a judicial practice, showing that all the assessed cases had the legal basis of the aforementioned provisions.

What is essential is that Kosovo has approved the law on private international law, simplifying interactions involving foreign elements. This law has made it easier to recognise foreign decisions, contributing to the ongoing development of the legal framework. The harmonisation of the legislation and its compliance with the conventions gives genuine prospects for Kosovo to be ranked among the countries that respect these decisions.

Furthermore, certain examples, albeit limited, have established a procedural framework for future use. The instances discussed in the article examined how accepting foreign rulings evolved in a newly established country like Kosovo based on Constitutional Court decisions.

In general, the goal of having a democratic and well-developed society also means respecting the rights and decisions of foreign citizens, the rights that originate from the judicial decisions of international courts and the internationally accepted conventions. Harmonising the legislation and its compliance with the conventions creates real opportunities for Kosovo to be ranked among the countries that respect these decisions.

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AUTHORS INFORMATION

Din Shahiqi*

Dr.Sc. (Law), Alumni, Faculty of Law, South East European University, Tetovo, North Macedonia

dinn.sh@hotmail.com

<https://orcid.org/0000-0002-6152-601X>

Corresponding author, responsible for research methodology, data collection, writing, and supervising.

Zanita Fetahu

LL.M (Master) in Civil and Property Law, Alumni, Faculty of Law, University "Hasan Prishtina", Prishtina, Republic of Kosovo

zanitafetahu1@hotmail.com

<https://orcid.org/0009-0007-9855-7008>

Co-author, responsible for conceptualization, writing, and data collection.

Reshat Fetahu

LL.M (Master) in International Law, Alumni, Faculty of Law, University "Hasan Prishtina", Prishtina, Republic of Kosovo

fetahureshat@gmail.com

<https://orcid.org/0009-0008-5206-7799>

Co-author, responsible for writing and data collection.

Competing interests: No competing interests were disclosed.

Disclaimer: The authors declare that their opinion and views expressed in this manuscript are free of any impact of any organizations.

ABOUT THIS ARTICLE

Cite this article

Shahiqi D, Fetahu Z and Fetahu R, 'Recognition and Enforcement of Foreign Court Decisions in the Case Law of Constitutional Court of Republic of Kosovo' (2024) 7(2) Access to Justice in Eastern Europe 427-42 <<https://doi.org/10.33327/AJEE-18-7.2-n000207>> Last Published 1 May 2024

Submitted on 16 Jan 2024 / Revised 01 Feb 2024 / Approved 13 Feb 2024

Published ONLINE: 1 Apr 2024

DOI <https://doi.org/10.33327/AJEE-18-7.2-n000207>

Managing editor – Mag. Yuliia Hartman. **English Editor** – Julie Bold.

Summary: 1. Introduction. – 2. Recognition and enforcement of foreign court decisions according to private international law: literature review. – 3. Recognition and enforcement of foreign court decisions from the perspective of the Constitutional Court of Kosovo. – 3.1. *Recognition and enforcement of foreign divorce decision according to Constitutional Court of Kosovo's practice (KI73/18)*. – 3.2. *Scope of application of Article 6 of the ECHR according to Constitutional Court case (KI122/17), in the preliminary proceedings with regard to the application for recognition and enforcement of foreign arbitration decision*. – 3.3. *The Kosovo Constitutional Court's perspective on the recognition of contracts, certified by foreign courts (KI161/11)*. – 4. General analysis. – 5. Conclusions.

Keywords: *Foreign judicial decisions, recognition and enforcement of foreign court decisions, European Conventions, Constitutional Court of Kosovo.*

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