



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

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Prishtina, on 13 February 2018  
Ref. No.: RK 1199/18

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI123/17**

Applicant

**Hasim Eljami**

**Constitutional review of Decision Rev. No. 95/2017,  
of the Supreme Court of Kosovo, of 15 May 2017**

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

composed of:

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy President  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Bekim Sejdiu, Judge  
Selvete Gërxhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge.

### **Applicant**

1. The Referral was submitted by Hasim Eljami (hereinafter: the Applicant), represented by Miftar Islami, a lawyer from Ferizaj.

## **Challenged decision**

2. The challenged decision is Decision Rev. No. 95/2017, of the Supreme Court of Kosovo of 15 May 2017 (hereinafter: the Supreme Court), which rejected as inadmissible the Applicant's request for revision filed against the Judgment of the Court of Appeals (Ac. No. 73/2016, of 29 December 2016). The challenged decision was served on the Applicant on 13 June 2017.

## **Subject matter**

3. The subject matter is the constitutional review of the challenged decision, which allegedly violated the Applicant's rights guaranteed by paragraph 1 of Article 3 [Equality before the Law], Article 24 [Equality before the Law], Article 46 [Protection of Property] and paragraph 2 of Article 102 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution, Articles 22 and 47 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 13 October 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 18 October 2017, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.
7. On 24 October 2017, the Court notified the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court of Kosovo. On the same date, the Court requested the Basic Court in Prizren, Branch in Dragash, to submit a letter of receipt, which shows when the Applicant was served with Decision Rev. No. 95/2017 of the Supreme Court of 15 May 2017.
8. On 6 November 2017, the Basic Court in Prizren, Branch in Dragash, notified the Court that the abovementioned Judgment of the Court was sent to the Applicant's legal representative on 13 June 2017.
9. On 11 January 2018, the Review Panel considered the report of the Judge Rapporteur and made a recommendation to the Court on the inadmissibility of the Referral.



## Summary of facts

10. On 24 November 1988, the Municipal Court in Dragash (Judgment C. No. 263/81) confirmed the co-ownership in the name of two brothers over a parcel in the village of Leshtan of the Municipality of Dragash.
11. On an unspecified date, the three (3) descendants of one of the two co-owners filed a claim with the Municipal Court in Dragash for confirmation of the co-ownership on their behalf for the  $\frac{1}{2}$  part of the parcel.
12. Meanwhile, the five descendants of the second co-owner, of which one is the Applicant (hereinafter: the Applicant and others), filed with the abovementioned court a counterclaim for the confirmation of ownership over the entire disputed parcel on the basis of acquisition by prescription. In their counterclaim, they alleged that since 1968 they had possessed, held and used the disputed plot.
13. On 29 May 2013, the Basic Court in Prizren, Branch in Dragash (hereinafter: the Basic Court) by Judgment (C. No. 143/07) approved the statement of claim of the claimants, confirming that they were the co-owners of  $\frac{1}{2}$  of the aforementioned parcel, namely each for the ideal part of  $\frac{1}{6}$  of the parcel. The Basic Court further obliged the Applicant and others, to recognize to claimants this ownership right, to hand over to them the joint ownership and unimpeded use, and to allow the registration of the property in the Directorate for Geodesy, Cadastre and Urbanism. Subsequently, the Basic Court rejected the counterclaim of the Applicant and others as ungrounded, finding that they are co-owners only for the  $\frac{1}{2}$  part of the parcel.
14. In its Judgment, the Basic Court found that the legal requirements for acquiring ownership on the ground of the acquisition by prescription were not met. Regarding the allegations filed in the counterclaim, the Court reasoned that *"[...] based on the final Judgment C. No. 263/81 [of 24 November 1988] the Court has not admitted as grounded because the current parcel was purchased with funds [...] of claimants' father and respondents' father and the same have used this parcel for many years until 2001 when in the occasion of filing the proposal for determining the boundaries of the contested parcel the dispute had arisen between [the parties to the contested proceedings]..."*
15. On an unspecified date, against the aforementioned Judgment of the Basic Court, the Applicant and others filed an appeal with the Court of Appeals. In their appeal, the Applicant and others alleged substantive violation of the provisions of the contested procedure, erroneous and incomplete determination of factual situation and erroneous application of the substantive law.
16. On 29 December 2016, the Court of Appeals (Judgment Ac. No. 3424/2013) rejected as ungrounded the appeal of the Applicant and others as ungrounded and approved the appeal of the claimants as grounded.
17. In its Judgment, the Court of Appeals found that the Basic Court had completely and correctly determined the factual situation. The Court of Appeals when referring to the determination of the factual situation and ascertaining that the

disputed parcel was used by the claimants, confirmed that the Applicant and others did not acquire the ownership right on the basis of acquisition by prescription. Therefore, the Court of Appeals found that the Basic Court did not violate the provisions of contested procedure and had correctly applied the substantive law.

18. On an unspecified date, the Applicant and others submitted a request for revision to the Supreme Court against the abovementioned Judgment of the Court of Appeals.
19. On 15 May 2017, the Supreme Court (Decision Rev. No. 95/2017) rejected as inadmissible the request for revision.
20. Referring to the provisions of the Law on Contested Procedure (hereinafter: the LCP), the Supreme Court found that the revision in this legal matter is not permissible, because the value of the subject of dispute, which both the claimants and the Applicant and others had mentioned in their respective claims and counterclaims before the Basic Court, is below the threshold value of the subject of dispute set forth in the provisions of the abovementioned Law.

### **Applicant's allegations**

21. The Applicant alleges that the challenged decision of the Supreme Court “[...] *drastically violates my constitutional rights described in the provisions of Article 3, paragraph 1; Article 24, paragraph 1; Article 46, paragraph 1 and Article 102, paragraph 2, of the Constitution by violating the rights guaranteed by the Constitution such as the Equality Before the Law, the Right to Guaranteed Property and the Right to Fair and Impartial Trial, which during the issuance of the Decision upon the case in question, as basic principles, have not been applied.*”
22. The Applicant alleges that the Basic Court and the Court of Appeals had erroneously determined the factual situation.
23. As for the issue of the value of the subject of the dispute, the Applicant claims that: “[...] *if the Court, especially the first instance court, considers that the value of the case does not correspond with the true market value of this immovable property, then based on the provisions of Article 36 of the LCP, it should have requested the determination of the real value of the contest, as the first instance acted.*”

### **Admissibility of the Referral**

24. The Court first examines whether the admissibility requirements established by the Constitution, and as further provided by the Law and foreseen by the Rules of Procedure have been fulfilled.
25. 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.”*

26. The Court also examines whether the Applicant has met the requirements for submission of his Referral in accordance with the deadlines established by Article 49 of the Law, which provides:

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...”*

27. As to the fulfillment of these requirements, the Court finds that the Applicant is an authorized party, who challenges an act of a public authority, namely Decision Rev. No. 95/2017 of the Supreme Court of 15 May 2017, after exhausting all legal remedies. The Applicant has also filed his Referral in accordance with the deadlines established in Article 49 of the Law.
28. However, the Court further has to assess whether the requirements provided in Article 48 [Accuracy of Referral] of the Law and Rule 36 [Admissibility Criteria] of the Rules of Procedure have been met:

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.”*

Rule 36  
[Admissibility Criteria]

*(1) The Court may consider a referral if*

*[...]*

*(d) the referral is prima facie justified or not manifestly ill-founded.*

*(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:*

*[...]*

*(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, [...]*

*(d) the Applicant does not sufficiently substantiate his claim.*

29. The Court recalls that the Applicant alleges that the regular courts violated his rights guaranteed by paragraph 1 of Article 3 [Equality Before the Law], Article 24 [Equality Before the Law], Article 46 [Protection of Property] and paragraph 2 of Article 102 [General Principles of the Judicial System] of the Constitution.
30. In this regard, the Court notes that the Applicant has only mentioned the above-mentioned provisions and the rights guaranteed by the Constitution, but has not reasoned at all or provided evidence as to how the constitutionally guaranteed rights have been violated in his case.
31. The Court recalls that the Applicant in substance alleges erroneous determination of factual situation by the Basic Court and the Court of Appeals. In this regard, the Court notes that the Basic Court, in its Judgment after determining the factual situation and referring to the relevant legal provisions, found that the claimants are co-owners in 1/2 of the parcel. This statement of the Basic Court was also upheld by the Court of Appeals, which in detail has reasoned and also addressed the allegations of the Applicant filed in their appeal.
32. Whereas, with regard to the challenged decision of the Supreme Court, the Court notes that the Supreme Court, referring to the relevant provisions of the procedural law, rejected the request for revision of the Applicant as inadmissible, because the value of the subject of dispute, which the claimants mentioned in their claim, and which value was confirmed also by the Applicant is lower than the threshold value of the subject of dispute required before revision is allowed, as established in the provisions of the LCP.
33. Therefore, the Court notes that the Applicant is mainly dissatisfied with the legal qualification of the facts and the law applied by the regular courts.
34. In this regard, the Court emphasizes that it is not the role of the Constitutional Court to deal with errors of fact or law (legality) allegedly committed by the regular courts, unless and in so far as they may have infringed the rights and fundamental freedoms protected by the Constitution (constitutionality). The Court cannot itself assess that law that lead a regular court to issue one decision instead of another. If this were different the Court would act as “fourth instance court,” which would result in exceeding the limitations provided for its jurisdiction. In fact, it is the role of regular courts to interpret and apply the relevant rules of procedural and substantive law (See case, *Garcia Ruiz v. Spain*, ECtHR, no. 30544/96, of 21 January 1999, para. 28; see also, case KI70/11, Applicants *Faik Hima, Magbule Hima dhe Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
35. The Court notes that the mere fact that the Applicant does not agree with the outcome of the decisions of the regular courts and the mere mentioning of relevant articles of the Constitution, without further explanation as to how these violations occurred, is not sufficient to raise an allegation based on a



constitutional violation. When alleging such violations of the Constitution, the Applicant must provide a reasoned allegation and a compelling argument (See Case of the Constitutional Court, KI136/14, *Abdullah Bajqinca*, Resolution on Inadmissibility of 10 February 2015, paragraph 33).

36. In addition, the Court considers that the Applicant has not proved and substantiated his allegations that the proceedings completed before the regular courts were unfair or arbitrary, or that his rights and fundamental freedoms protected by the Constitution have been infringed as a result of the decisions of such courts. The Court reiterates that, the interpretation of law is a matter for the regular courts and is a matter of legality. No constitutional matter was substantiated by the Applicant (See case KI63/16, Applicant *Astrit Pira*, Resolution on Admissibility, of 8 August 2016, para. 44. and also Case KI150/15; KI161/15; KI162/15; KI14/16; KI19/16; KI60/16 and KI64/16, Applicants *Arben Gjokaj, Hysni Hoxha, Driton Pruthi, Milazim Lushtaku, Esat Tahiri, Azem Duraku and Sami Lushtaku*, Resolution on Admissibility, of 15 November 2016, para. 62).
37. For the foregoing reasons, the Court concludes that the facts presented by the Applicant do not in any way justify his allegation of violation of his rights as guaranteed by Articles 3, 24, 46 and 102 of the Constitution, and that the Applicant has not sufficiently substantiated his allegations.
38. Therefore, pursuant to Article 48 of the Law and Rule 36 (1) (d) and (2) (b) and (d), the Referral is manifestly ill-founded on a constitutional basis and, therefore, inadmissible.

## **FOR THESE REASONS**

In accordance with Article 113 (7) of the Constitution, Article 48 of the Law and Rule 36 (1) (d) and (2) (b) and (d) of the Rules of Procedure, the Constitutional Court in the session held on 11 January 2018, unanimously

## **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. TO DECLARE this Decision effective immediately;

**Judge Rapporteur**

Ivan Čukalović

**President of the Constitutional Court**

Arta Rama-Hajrizi

