



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

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Pristina, 31 august 2012  
Ref. No. RK289/12

## **RESOLUTION ON INADMISSIBILITY**

In

**Case No. KI151/11**

Applicant

**Sahit Emini**

**Constitutional Review of Judgments of the Municipal Court in Gjilan C. no. 494/06, dated 11 April 2007, the District Court in Gjilan Ac. No. 219/07, dated 11 September 2009 and Supreme Court, A. no. 1120/83, dated 19 January 1984**

### **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

#### **The Applicant**

1. The Applicant is Sahit Emini of Gjilan. The Applicant is represented by a Lawyer, Avdullah Ismajh, of 15, S. Brestovci Street, Gjilan.

## **Subject Matter**

2. The subject matter of the Referral concerns a claim over the ownership of a parcel of land in Qeremindane, Gjilan, arising from a change in the course of a river in 1962. The Supreme Court of Kosovo ultimately found against the Applicant in its Judgment of 5 September 2011.
3. The Applicant alleges that there has been a violation of his constitutional rights guaranteed under Article 46 [Protection of Property] of the Constitution.

## **Legal Basis**

4. The Referral is based on Art. 113.7 of the Constitution, Article 20 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Law), and Rule 56 (2) of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter referred to as the Rules of Procedure).

## **Procedure before the court**

5. On 14 November 2011 the Lawyer for the Applicant sent correspondence to the Court concerning a proposed Referral. The Court requested the Applicant, on 14 November 2011 to complete the Referral Form.
6. On 23 November 2011, the Applicant filed the completed Referral with the Constitutional Court.
7. On 17 January 2012 the President of the Constitutional Court appointed Judge Gjyljeta Mushkolaj as Judge Rapporteur and a Review Panel composed of Judges Snezhana Botusharova (presiding), Ivan Cukalovic and Iliriana Islami.
8. A report prepared by the Judge Rapporteur was considered by the Review Panel on 18 June 2012 which made a recommendation on inadmissibility of the Referral to the full Court. The full Court considered the Referral on the same date.

## **Summary of the facts of the case as evidenced by the documents filed by the Applicant**

9. In 1962 a river adjoining property of the Applicant and his father in Qeremindane, Gjilan changed its course and “took” the property of the Applicant. The Applicant maintains that the old river bed was filled in and transformed into their property.
10. The Applicant commenced proceedings in the Municipal Court in Gjilan claiming the recognition of the property right based on the augmentation and possession of the real estate. The Respondent in the proceedings was the Municipality of Gjilan. A hearing was held on 11 October 2005 and on 24 January 2006. Reports from geodesy experts were considered by the Court. A visit to the site was conducted. During this hearing witnesses were heard.
11. The Court concluded, in its Judgment C. No. 76/04, dated 24 January 2006, that the Applicant was unfounded because he failed to offer relevant evidences that proved his right for the recognition of the socially owned property. The Court found that the relevant Law on Basic Property Relations did not permit a property right could be acquired by a statute of limitations over property that was socially owned.

12. The Applicant appealed this Decision to the District Court in Gjilan which in its Judgment V. No. 494/06 reversed the Decision of the Municipal Court and returned the case for re-trial. It also added further Respondents to the proceedings.
13. At a re-hearing in the Municipal Court in Gjilan on 11 April 2007 by Judgment C. no. 494/06, the Municipal Court again rejected the Applicant's claim. This hearing again heard extensive evidence from witnesses and geodesy experts who had prepared new reports.
14. The Applicant appealed to the District Court which by its Judgment, Ac. No. 218/07, dated 11 September 2007 rejected the Applicant's claim.
15. This Judgment was appealed to the Supreme Court of Kosovo and it issued its Judgment, Rev. No. 42/2008, dated 5 September 2011 and it also rejected the claim of the Applicant as unfounded.

### **Allegations of the Applicant**

16. The Applicant alleges, inter alia, that the Municipal Court at the second hearing did not conduct a site investigation, that the Courts did not fully give reasons for their Judgments and that there was wrongful and incomplete confirmation of the factual situation.

### **Assessment of the admissibility of the referral**

17. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure.
18. In this relation, the Court refers to Article 113.7 of the Constitution, which stipulates 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."*

19. The Constitutional Court notes that it is not a fact verifying Court, the Constitutional Court wishes to reiterate that the correct and complete determination of the factual situation is a full jurisdiction of regular courts, and that the role of the Constitutional Court is solely to ensure compliance with the rights guaranteed by the Constitution and other legal instruments and cannot, therefore, act as a "fourth instance court" (*see, mutatis mutandis, i.a., Akdivar v. Turkey, 16 September 1996, R. J. D, 1996-IV, para. 65, also see Resolution on Inadmissibility in Case. NO. KI-86/11 – Applicant Milaim Berisha – Request for Constitutional Review of Judgment of the Supreme Court of Kosovo, Rev. nr. 20/09, dated 1.3.2011 – issued by the Court on 5 April 2012*).
20. From facts submitted with the Referral, the Applicant has used all legal remedies available, and that the regular courts took into account all the evidence presented by the Applicant and heard the witnesses offered by all the parties to the proceedings. Reasons were given for the Decisions that were taken. Indeed, the Municipal Court in its Judgment of 11 April 2007 gave its reasons for not accepting the evidence of one witness called on behalf of the Applicant.

21. In this regard, the Applicant has not substantiated his claim, explaining how and why a violation has been committed, or furnished evidence to prove that a right guaranteed by the Constitution has been violated.
22. Moreover, the Referral does not indicate that the Courts acted in an arbitrary or unfair manner. It is not within the province of the Constitutional Court to substitute its own assessment of the facts for that of the regular courts and, as a general rule, it is for these courts to assess the evidence before them. The Constitutional Court's task is to ascertain whether the regular court's proceedings were fair in their entirety, including the way in which evidence was taken (*see Judgment ECHR App. No 13071/87 Edwards v. United Kingdom, para 34, of 10 July 1991*).
23. The fact that the applicant is dissatisfied with the outcome of the case cannot of itself raise an arguable claim of a breach of Article 31 [Right to Fair and Impartial Trial] of the Constitution (*see mutatis mutandis Judgment ECHR Appl. No. 5503/02, Meztur-Tiszazuqi Tarsulat vs. Hungary, Judgment of 26 July 2005*).
24. In these circumstances, the Applicant has not substantiated his claim nor the violation of Article 46 of the Constitution [Protection of Property], because the facts presented by him do not show in any way that the regular courts of the three instances had denied him rights guaranteed by the Constitution.

#### **FOR THESE REASONS**

The Court, following deliberations on 18 June 2012, pursuant to Articles 113.7 of the Constitution, Articles 20 of the Law and Rule 56.2 of the Rules, unanimously

#### **DECIDES**

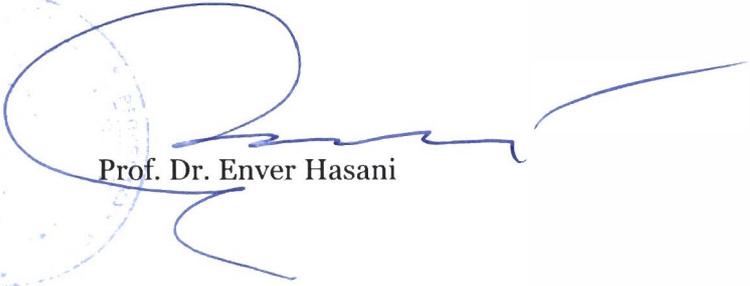
- I. TO REJECT the Referral as inadmissible;
- II. This Decision is to be notified to the Applicant; and
- III. This Decision shall be published in accordance with Article 20(4) of the Law and is effective immediately.

**Presiding Judge**



Snezhana Botusharova

**President of the Constitutional Court**



Prof. Dr. Enver Hasani