



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

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Pristina, 23 November 2012  
Ref. No.:RK324/12

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 96/12**

Applicant

**Ramiz Asllani**

**Constitutional Review of the Resolution of Supreme Court Rev.311/2009 dated 15 July 2009, Judgment of the District Court in Prizren Ac. no. 393/08, dated 18 February 2009 and the Judgment of Municipal Court C.no.749/07 dated 4 July 2008**

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

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy President  
Robert Carolan, judge  
Altay Suroy, judge  
Almira Rodrigues, judge  
Snezhana Botusharova, judge  
Kadri Kryeziu, judge and  
Arta Rama-Hajrizi, judge

#### **Applicant**

1. The request was submitted by Remzi Asllani (Applicant) with residence in the village Rečan, municipality of Prizren.

## **Challenged decision**

2. The Applicant challenges: Resolution e Supreme Court Rev.311/2009 dated 15 July 2009, Resolution of District Court in Prizren Ac. no. 393/08, dated 18 February 2009 and Judgment of Municipal Court P.no.749/07 dated 4 July 2008.

## **Subject matter**

3. The subject matter of the Referral is the right to property as well as the Referral for the return of the challenged property, which the Applicant alleges that it was taken from him in illegal way by his co-villager.
4. The Applicant requested among the other that his identity is not disclosed.

## **Legal basis**

5. Article 113.7 of the Constitution, Article 22 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo of 15 January 2009, (hereinafter: the "Law"), and Rule 28 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the "Rules of Procedure").

## **Procedure in the court**

6. On 8 October 2012, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: „the Court“).
7. On 8 October 2012, the Court, requested from the Applicant to fill the request with necessary documentation.
8. On 18 October 2012, the Applicant submitted completed Referral together with necessary documentation.
9. On 30 October 2012, the Court notified the Applicant and the parties involved in the procedure, for registration of the Referral KI 96/12.
10. On 1 November 2012, the President by the Decision GJR. 96/12, appointed Judge Altay Suroy as Judge Rapporteur. On the same day, by the decision no.KSH. 96/12, Kryetari, the President appointed the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Ivan Cukalovic (member) and Arta Rama-Hajrizi (member).
11. On 13 November 2012, the Court requested from the Municipal Court in Prizren proof regarding the date when the Applicant received the Resolution of Supreme Court Rev. no. 311/2009 of 15 July 2012.
12. On 13 November 2012, the Municipal Court in Prizren submitted the requested proof where it can be noted that the Applicant had received the Resolution Re. no. 311/2009 of 15 July 2009 on 23 October 2010.
13. On 23 November 2012, the Review Panel after having considered the report of the Judge Rapporteur, made a recommendation to the Court on the inadmissibility of the Referral.

## **Summary of facts**

14. On 4 July 2008, the Municipal Court in Prizren, according to the claim filed by Mr. Arun Limani, the claimant) from the village Reçan, municipality of Prizren, made a decision (Judgment, C.no.749/07, on 04.07.2008) regarding the determination of the right to property. Municipal Court of Prizren recognized the right to property to the Mr. Limani.
15. The Applicant against the Judgment C.no.749/07, dated 4 July 2008 of the Municipal Court in Prizren, through his authorized representative (lawyer) filed the appeal, by objecting the abovementioned decision due to substantial violations of procedure, erroneous and incomplete determination of factual situation and due to erroneous application of the substantive law, proposing that the latter is annulled and the case is returned to the court of first instance for retrial.
16. On 18 February 2009, District Court in Prizren, by Judgment Ac.no.392/2008 dated 18 February 2009, rejected the appeal of the Applicant as ungrounded because the challenged Judgment P.no.749/07 dated 4 July 2008 was not rendered in essential violations of the contested procedure as the lawyer of the Applicant alleges and neither the reasons of the appeal present ground for annulment or the amendment of the challenged judgment.
17. On 15 July 2009, the Applicant unsatisfied with the decision of the District Court, filed revision in the Supreme Court (Resolution Rev.no.311/2009 dated 15 July 2009), which rejected as inadmissible the revision filed by the Applicant, with a justification that the value of the subject matter in the final judgment does not exceed the amount stipulated by the provision of the Article 382 par. 3 of the LCP. According to this provision in this legal matter, the revision is not admissible and as such should be rejected.
18. On 19 June 2010, the Applicant filed a claim in the European Court for Human Rights in Strasburg (ECHR).
19. On 24 June 2010, ECHR confirmed the receipt of submission filed by the Applicant. The ECHR answering that, "Kosovo is not a signatory of the Convention on Human Rights, therefore you cannot file submission against the latter."

## **Applicant's allegations**

20. The Applicant alleges that by the court decisions of regular courts was violated the right guaranteed by Article 46 [Protection of Property] of the Constitution.
21. The Applicant stated that his and of family members' purpose is the return of the challenged immovable property that their mother left to them, the property which he alleges that it was taken from them in illegal way by his co-villager.

## **Preliminary assessment of admissibility of the Referral**

22. In order to be able to adjudicate the Applicant's Referral, the Court has to assess beforehand whether the Applicant has met the requirements of admissibility, which are foreseen by the Constitution and further specified by the Law and Rules of Procedure.
23. In this respect, the Court refers to Article 49 of the Law, which provides: "*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. In all*

*other cases, the deadline shall be counted from the day when the decision or act is publicly announced [...]"*

24. In the present case, the Court notes that the final court decision for the Applicant is the Resolution of the Supreme Court of the Republic of Kosovo Rev.no.311/2009 dated 15 July 2009, which was served on him on 23 October 2010. The Applicant, filed the Referral in the Court on 8 October 2012, which means that the Referral was submitted after the deadline of four (4) month period, provided by Article 49 of the Law and the Rule 36.1 (b) of the Rules of Procedure.
25. Furthermore, the Referral of the Applicant on non-disclosure of his identity should be rejected as ungrounded, due to the fact that the latter did not offer evidence on why and how the disclosure of his identity may influence negatively on this legal matter.
26. Consequently, pursuant to Article 113.7 of the Constitution, Article 20 of the Law, and Rule 56.2 of the Rules of Procedure, the Referral is inadmissible.

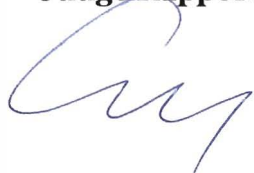
### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 49 of the Law on the Constitutional Court, Rule 36.1 (b) of the Rules of Procedure, on 23 November 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 on the Constitutional Court; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Altay Suroy



**President of the Constitutional Court**



Prof. Dr. Enver Hasani