



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE  
УСТАВНИ СУД  
CONSTITUTIONAL COURT**

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Pristina, 19 April 2011  
Ref. No.: RK112/11

**RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI 29/10**

Applicant

**R.D.**

**Constitutional Review of the Judgment of the Supreme Court of Kosovo Rev.  
No. 295/2007**

**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 Mr. R. D. residing in Vitia. In the proceedings before the Constitutional Court, he is represented by Mr. Mustafë Musa, a lawyer from Gjilan.

### **Challenged decision**

2. The applicant challenges the Judgement of the Supreme Court of Kosovo Rev. No. 295/2007, of 29 March 2010.

### **Subject matter**

3. The Applicant, requests an assessment of the constitutionality of Judgment of the Supreme Court of Kosovo Rev. No. 295/2007 dated 29 March 2010 related to his property rights regarding parcel no. 2072 in Rajac, Municipality of Vitia.

### **Legal basis**

4. Article 113.7 of the Constitution of the Republic of Kosovo; 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 36 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

### **Proceedings before the Court**

5. On 29 April 2010, the Applicant filed a Referral with the Secretariat of the Constitutional Court.
6. On 23 August 2010, the Constitutional Court notified the Supreme Court that the Applicant challenges the Judgment that the Supreme Court adopted.
7. The Constitutional Court has not received a reply from the Supreme Court.
8. On 21 January 2011 after having considered the Report of the Judge Rapporteur Robert Carolan, the Review Panel, composed of judges, Altay Suroy (Presiding), Snezhana Botusharova and Enver Hasani, made a recommendation to the full Court on the inadmissibility of the Referral.

### **Summary of the facts**

9. On 16 October 2006 the Municipal Court of Viti through it's Judgement C.nr. 60/2006 recognized the Applicant's ownership on cadastral parcel no. 2072, in Rajac, Municipality of Vitia.
10. On 2 May 2007, Shaip Rexhepi has requested to reopen procedure for case C. No. 60/05,
11. On 4 June 2007, the Municipal Court of Viti, , approved the Mr. Shaip Rexhepi's request for reopening procedure, and annulled a part of the Judgment C. No. 60/05 thus recognizing Mr. Shaip Rexhepi's ownership right regarding parcel no. 2073/3.
12. On 27 August 2007, the District Court of Gjilan, Judgement Ac. No. 274/07 dismissed the Applicant's appeal as ungrounded stating that the first instance court has not committed any essential violation of the provisions on the Law on Contested Procedure. The District Court has also stated that the material law has been applied fully and fairly.
13. On 29 March 2010, the Applicant requested revision from the Supreme Court of Kosovo against the Judgment of the District Court of Gjilan seeking the annulment of the Judgements of the lower instances.

14. On 20 March 2010, the Supreme Court of Kosovo through its Judgement Rev.nr. 295/2007, rejected the Applicant's request for revision as ungrounded.. The Supreme Court stated that material law was fairly applied in rejecting the applicants claim as ungrounded as the court of the first instance found that the Applicant has not purchased the disputable part of the land. Therefore the Supreme Court found that the legal findings and the reasoning of the lower instance courts are fair according to which the claim of the Applicant requesting the recognition of the ownership right is ungrounded.

### **Applicant's allegations**

15. The Applicant alleges that there have been essential violations of the Law on Contested Procedure, namely Article 354, paragraph 1 and 2, item 14, in relation to Article 40, paragraph 3, Article 133 and 148, and furthermore Article 421, paragraph 1, Article 423, paragraph 1, sub-paragraph 1, and Article 427, paragraph 5, of the Law on Civil Procedure.

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

16. In order to be able to adjudicate the Applicants' Referral, it is necessary to first examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
17. In this respect the Court recalls that according to Rule 36(1)(c) "the Court may only deal with Referrals if the Referral is not manifestly ill-founded.
18. Rule 36 of the Rules of Procedure further prescribes that;

*The Court shall reject a Referral as being manifestly ill-founded when it is satisfied that:*

- a) the Referral is not prima facie justified, or*
- b) when the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or*
- c) when the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or*
- d) when the Applicant does not sufficiently substantiate his claim;*

19. The Applicant has not submitted any prima facie evidence indicating a violation of his rights under the Constitution (see Vanek v. Slovak Republic, ECHR Decision as to the Admissibility of Application no. 53363/99 of 31 May 2005).
20. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or a court of fourth instance, in respect of 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, García Ruiz v. Spain, no. 30544/96, § 28, European Court on Human Rights [ECHR] 1999-I).
21. The Constitutional Court can only consider whether the evidence has been presented in such a manner and the proceedings in general, viewed in their entirety, have been conducted in such a way that the Applicant had a fair trial (see among others authorities, Report of the Eur. Commission on Human Rights in the case Edwards v. United Kingdom, App. No 13071/87 adopted on 10 July 1991).
22. However, having examined the documents submitted by the Applicants, the Constitutional Court does not find any indication that the proceedings before Supreme

Court were in any way unfair or arbitrary (see mutatis mutandis Application No. 53363/99, Vanek v. Slovak Republic, ECHR Decision of 31 May 2005).

23. Accordingly, the Referral must be rejected as manifestly-ill-founded.

### **FOR THESE REASONS**

The Constitutional Court, pursuant to Article 113(7) of the Constitution, Article 20 of the Law on the Constitutional Court, and Rule 36 of the Rules of Procedure,

### **DECIDES**

I. TO REJECT this Referral as Inadmissible.

The 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.

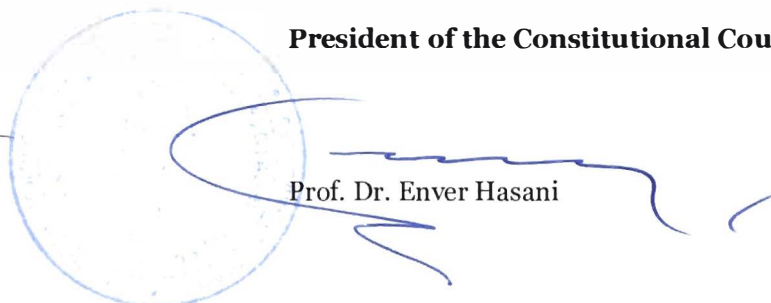
This Decision is effective immediately.

**Judge Rapporteur**



Robert Carolan

**President of the Constitutional Court**



Prof. Dr. Enver Hasani