

THE NECESSARY PASSAGE

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Abstract

Through this paper, the necessary transition and its legal importance will be elaborated. To carry out this study, literature has been collected and studied in order to present the analysis of the achievements so far and the creation of a theoretical basis for further research with reliable and valid data. Descriptive, analytical, and comparative methods were used. Necessary passage is introduced as a result of a necessity, which arises to pass through the land of another at a certain degree of socio-economic development, of private property relations in a certain society. A necessary passage is created for the benefit of an owner or current possessor of a dominant item through the service item of another current owner or possessor, and at the request of the former when there is no exit to the public road, or when this exit (connection) is difficult, inappropriate or insufficient. In judicial practice, it has been said that, in principle, the necessary passage cannot be created through domestic yards, except in the case when there is no other way out or when it cannot be done without very large expenses. The right to request the creation of a necessary passage is not prescribed. Necessary passage provides a special legal institution, which comes into expression when there is a need for passage while there is no servitude of passage, and in this case, the court allows the necessary passage under the conditions provided by law.

Keywords: Necessary passage, customary law, easement of passage, etc.

Introduction

Whether the necessary passage was recognized in Roman law seems to be a controversial issue. According to the author (Glucku), similar to the passage through the cemetery, the necessary passage was also known in other cases. According to some other authors (Derenburg, Winscheid, etc.), Roman law did not recognize the necessary transition for other cases. But the necessary passage must be introduced as a result of a necessity, which arises to pass through the land of another at a certain level of socio-economic development, of private property relations in a certain society.¹ German and French law bases the necessary transition on the principle of neighboring rights. One land had to communicate with another; an isolated or enclosed land had to be opened to communicate with the public road. The neighbor had to allow passage through his land whenever there was a need to "open" the other's land for its economic use, connecting it to the public road. The right of necessary passage according to the French Civil Code belongs to the owner, whose land is closed and does not have any access to the public road, to request the passage through the neighbor's land to use his land, taking the obligation to remove the damage it may cause. The French theory has interpreted this extensively, so that the necessary passage is created only for the needs of the land, but also for houses, factories, for the extraction of stones, and similar needs.² Also, according to the provisions of articles 917-918 of the German Civil Code, to allow the necessary right of way, it is required that for the regular use of a land, there is no connection with the public road, so that the lack of the road is not the result of any action arbitrary of the owner of this land and to remove the bull caused by allowing the necessary passage through the foreign land. The Italian Civil Code, and to a large extent the Albanian Civil Code, allowed the necessary passage, when

¹ Ejup Statovci, *E drejta e servituteve*, Prishtinë, Enti i teksteve dhe i mjeteve mësimore i Krahinës Socialiste Autonome të Kosovës, 1985, page.105

² Ejup Statovci, *E drejta e servituteve*, Prishtinë, Enti i teksteve dhe i mjeteve mësimore i Krahinës Socialiste Autonome të Kosovës, 1985, page.106

the owner of a land did not have access to a public road or when such a passage could not be found without difficulty or great expense, for the purpose of working or using one's land properly³. Two conditions for allowing necessary passage can be derived here; the lack of connection with the public road and the passage should serve the cultivation of the land and its better use. In addition to what was said, according to the Albanian Civil Code, the crossing must be made through the shortest possible route to connect with the public road, causing as little damage to the land through which the crossing is made. What is the truth, the Albanian Civil Code, as well as the former Italian Civil Code, distinguishes the necessary passage in the narrow sense of the word, due to the lack of a road, etc. (Article 994) or as it is called in the literature, reinforced passage and necessary passage or as it is called in the literature, forced entry into the land of another for the construction of a work.⁴

Research methods and methodology

To carry out this study, literature has been collected and studied in order to present the analysis of the achievements so far and the creation of a theoretical basis for further research with reliable and valid data. The methodology of the paper is oriented to epistemology, using the positivist attitude. The model of the work is "cross-sectional study" or "representative studies", which will be accompanied by quantitative data, while the strategy of the work is evaluation. The source of data, primary data, was used in this paper. Descriptive, analytical, and comparative methods were used.

Objectives of the work

The general objectives of this paper are based on the research of the necessary passage, in comparison with the positive law in Kosovo and Albania. The specific objectives of the research will be presented through the following research questions:

1. How does the positive right in Kosovo and Albania regulate the necessary passage?
2. Does customary law recognize the necessary passage?

The hypothesis of the work

Necessary passage is a special legal institution, which comes into expression when there is a need for passage while there is no servitude of passage, and in this case, the court allows the necessary passage under the conditions provided by law.

Necessary passage – overview

Due to good neighborliness, the neighbor has never hesitated to allow him to pass through his land for the neighbor to use and exploit his property. The neighbor has not closed the door to the neighbor and has never left him "without a door". This is even less likely to happen when such a thing was necessary. In fact, not only was the passage allowed "without a word", but it was done for free ("if I came to your door tomorrow, they did the same"), and no compensation was paid for creating the necessary passage.⁵ This was "rewarded" with mutual help in the field of servitudes or any other field of neighborhood or life relations. This understanding among the

³ Ejup Statovci, E drejta e servituteve, Prishtinë, Enti i teksteve dhe i mjeteve mësimore i Krahinës Socialiste Autonome të Kosovës, 1985, page.106

⁴ Ejup Statovci, E drejta e servituteve, Prishtinë, Enti i teksteve dhe i mjeteve mësimore i Krahinës Socialiste Autonome të Kosovës, 1985, page.106

⁵ Ejup Statovci, E drejta e servituteve, Prishtinë, Enti i teksteve dhe i mjeteve mësimore i Krahinës Socialiste Autonome të Kosovës, 1985, page.107

people about the necessary transition is connected with the common life in the kinship relations in the historical past, with the relations of common ownership (collective); with the subjugation or fusion of the individual's ego or individuality in a social ego in the framework and through which the expression of human individuality related to the process of debauchery of the collective ownership of the tribe, brotherhood, village, joint (large) family, etc.⁶ Therefore, the customary rights of peoples, even when there are no express rules for the necessary transition, imply, accept, allow, and respect it unwaveringly, although this may change and differ in some nuances from one country to another, carrying with it the peculiarities of a locality, of a local customary law. Once upon a time, it was passed on to another's land even when the field was sown, without even asking the owner of the field, of the servient land⁷. Elsewhere, permission must be obtained, or the owner of the servient land must be notified ("so to be informed"). It can be concluded that the necessary transition was respected, and even is respected based on the conscience inherited from the relations of shared ownership in decline, in their final debauchery in order to regulate neighborly relations. This form can be removed through the rules that were preserved, according to which "the village wants the road, the village is not cut off from the road".⁸ The main commandment is that no one can be left without a way. During life and during different legal systems, the application of customary law, for or against positive law, on the necessary passage, has never been an issue. The people have implemented the right that was best for them. The rules of customary law on the necessary transition can be applied even today when there are no positive provisions, because they do not "escape" much from these positive ones, of course, if they are not in conflict with the latter⁹. From what was said, it follows that the necessary passage is created for the benefit of an owner or current possessor, of a dominant object through the servient object of another current owner or possessor, and at the request of the former when there is no access to the public road, or when there is this output (connection) is difficult, it is inappropriate or it is insufficient. The request for the necessary passage is conditioned by the necessity of normal communication, the normal connection with the public road.¹⁰ This happens when the dominant thing is closed, when it is isolated, and is economically exploited by requesting to allow the necessary passage through the land of another. The lack of connection with the public road can be absolute - such that the dominant item as such does not have any connection with the public road, or relative - such that the dominant item does not have sufficient connection with the public road, for which reason the owner or the current possessor of the dominant item may exploit or use the item regularly. The absolute lack of connection to the public road and total isolation must be the result of a voluntary act by the owner of the dominant property. Such closure is not the result of the will of the owner. The closure must be objective, accidental, or the result of the actions of other entities, or natural actions, or of any force majeure¹¹. Among other things, the closure may be caused by the natural configuration of the land, as a result of the division of the property, by floods, by the change of the river bed or the construction of canals, by the change of direction of the existing road for the construction of certain objects of social interest, etc. The creation of the connecting road with the public road not only made possible its regular use, but also increased the overall economic value of the property. So, the creation of the necessary passage is conditioned by the

⁶ Ejup Statovci, E drejta e servituteve, Prishtinë, Enti i teksteve dhe i mjeteve mësimore i Krahinës Socialiste Autonome të Kosovës, 1985, page.108

⁷ Ejup Statovci, E drejta e servituteve, Prishtinë, Enti i teksteve dhe i mjeteve mësimore i Krahinës Socialiste Autonome të Kosovës, 1985, page.110

⁸ Ejup Statovci, E drejta e servituteve, Prishtinë, Enti i teksteve dhe i mjeteve mësimore i Krahinës Socialiste Autonome të Kosovës, 1985, page.111

⁹ Permbledhje nga praktika e Gjykatës Supreme në kontestet pronesore, Shtypshkronja „Bledi“, Prishtinë, 2019, https://supreme.gjyqesori-rks.org/wp-content/uploads/reports/82290_PERMBLEDHJE%20NGA%20PRAKTIKA%20E%20GJYKATES%20SUPREME%20NE%20

¹⁰ Permbledhje nga praktika e Gjykatës Supreme në kontestet pronesore, Shtypshkronja „Bledi“, Prishtinë, 2019, https://supreme.gjyqesori-rks.org/wp-content/uploads/reports/82290_PERMBLEDHJE%20NGA%20PRAKTIKA%20E%20GJYKATES%20SUPREME%20NE%20

¹¹ Permbledhje nga praktika e Gjykatës Supreme në kontestet pronesore, Shtypshkronja „Bledi“, Prishtinë, 2019, https://supreme.gjyqesori-rks.org/wp-content/uploads/reports/82290_PERMBLEDHJE%20NGA%20PRAKTIKA%20E%20GJYKATES%20SUPREME%20NE%20

necessity of exploitation and use of the thing, not convenience. For all damages caused to the service item in the case of necessary passage, the civil codes provide for the payment of damages. The holder of the dominant item waives the compensation.¹² According to the civil codes, compensation for damages is done proportionally with the damages caused by allowing the necessary passage or equivalent to the damage caused, or the payment of full compensation, or direct compensation, or compensation for any damages caused, or the compensation of the damage is done by the payment of annuity, or the damage is compensated in that way, by paying once and for all the fixed price. The necessary crossing can be created for crossing on foot, with a cart, with motor vehicles, it can be the crossing of cattle, etc. (iter, actus, via). In the conditions mentioned above, if the owner of the dominant land has no other way to "grab" his land, or to reach his land, or to reach the public road. Otherwise, if the "closure" of the dominant thing occurs as a result of the will of the owner, the neighbors will not allow the creation of the necessary passage, although the creation of the necessary passage is not always justified. The servitude of the necessary passage through the existing buildings, through the fenced yards, through the gardens, vineyards, etc., cannot be created. In judicial practice, it has been said that, in principle, the necessary passage cannot be created through domestic yards, except in the case when there is no other way out or when it cannot be done without very large expenses. An easement of passage is not allowed through the backyard except when it is necessary. In the case of allowing the servitude of the passage with a carriage next to the house, other circumstances are also taken into account, such as unobstructed residence, tranquility, other personal rights of the owner of the servient object or his family members, etc. The necessary transition must also be ensured in the case of dividing the co-ownership. The co-owners provide the necessary passage to any part of the land when this is necessary, since in this case it is not permissible to create the necessary passage to the neighbor's land, even though it might be more convenient to pass through the neighbor's land. On the other hand, in case of need, the necessary existing crossing can be expanded, or its location can be requested, or even its elimination altogether. Expansion is on the agenda; in the meantime, circumstances have changed, which makes the existing transition even more difficult.

Necessary passage according to the Law on property and other real rights in Kosovo

The law on property and other real rights in Kosovo does not regulate the necessary passage to servitudes, but this is regulated by neighboring law, which expressly provides that¹³;

□ A necessary passage through an immovable property must be allowed, if the neighboring immovable property has no other access or if it is connected by a longer road and if the benefit to the immovable property, in favor of which the passage is allowed, is greater how much bull for immovable property, through which it must be passed.¹⁴

□ The direction of the necessary passage must be determined in a way that provides the most suitable passage for the neighbor who requests the passage and least hinders the neighbor who allows the passage. The neighbor on whose immovable property the necessary passage is made must be compensated with periodic remuneration for the use of the property as well as any damage caused during the passage. The required pass is terminated when the need for the pass ends.¹⁵

The LPDTS of North Macedonia, the necessary passage is provided in the framework of real servitudes and for this it is expressly provided that the necessary passage can be requested by the owner of the privileged property which has no access to the public road or until it can it is achieved only with the excessive crossing and the necessary crossing can be presented as field

¹² Ejup Statovci, E drejta e servituteve, Prishtinë, Enti i teksteve dhe i mjeteve mësimore i Krahinës Socialiste Autonome të Kosovës, 1985, page.112

¹³ Abdulla Aliu, e drejta sendore, Prishtinë, Këshilli botues i Universitetit të Prishtinës 'Hasan Prishtina', 2014, page.254

¹⁴ Law on property and the other real rights in Kosova, article 86 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2643>

¹⁵ Law on property and the other real rights in Kosova, article 86 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2643>

or domestic servitude and that the necessary crossing is created by the decision of the court or the state body according to the request of the owner of the privileged thing.¹⁶ Although this law does not provide for compensation for the damage caused by the owner of the privileged item, it does not mean that the damage compensation should not be paid because in any case when it is done at the request of a subject, it is natural to pay the damage compensation.¹⁷ The Civil Code of Albania also provides for the servitude of the necessary right-of-way, where it is provided that the owner who does not have access to the public road and cannot secure it except with great expense and difficulty, has the right to this right-of-way from neighboring land, for the appropriate use of one's own property.¹⁸ The passage should be the shortest way to the public road and with less damage to the service property. The Civil Code of Albania, when the servitude of passage is allowed, provides that the person who will pass on the land of another must pay the value of the land that is occupied, without deducting the taxes and other burdens related to the land, as well as the reward for the bull that it is caused by including the damage that comes from the interruption of the land, from its non-use, from the depositing of excavated materials and the disposal of waste. The owner of the servient land has the right to remove the latter and use the surface of the land, but always without damaging the normal exercise of the servitude. In case there is a need for passage, while the easement of passage is missing, then the court did this and in this case this institution is called a necessary passage. Necessary passage is created for the benefit of an owner or current possessor of a dominant object through the service object of another current owner or possessor and at the request of the former, when there is no exit to a public road, or when this exit is difficult. In this case, three conditions must be met; 1. There should be no access to the public road 2. The profit should be greater than the damage that will be caused to the servient property 3. Compensation must always be paid for the damage caused.

Servitude of passage Article 277

The owner who does not have access to the public road and cannot provide it except with great expense and difficulty, has the right to have a passageway from the neighboring land, for the appropriate use of his property.

The crossing should constitute the shortest route to the public road, and with the least damage to the servient property. This provision is also applied when the owner, who has been recognized with the right of passage to the other's property, requires the reasonable expansion of the passageway for vehicles, including the passage of mechanical vehicles.

Article 278

The owner must allow the neighbor to enter and pass over his land whenever he needs to build or repair a wall or other work. He must allow the person to search and take the living thing or any other thing of that is there by accident or as a result of wind, water, avalanche and other force majeure, is located on his land or is joined with things of his.

The owner may refuse entry when he undertakes to deliver himself the thing situated on his land. When it is the case, the owner of the land is compensated for the damage caused.

¹⁶ Abdulla Aliu, e drejta sendore, Prishtinë, Këshilli botues i Universitetit të Prishtinës `Hasan Prishtina`, 2014, page.254

¹⁷ Abdulla Aliu, e drejta sendore, Prishtinë, Këshilli botues i Universitetit të Prishtinës `Hasan Prishtina`, 2014, page.254

¹⁸ Abdulla Aliu, e drejta sendore, Prishtinë, Këshilli botues i Universitetit të Prishtinës `Hasan Prishtina`, 2014, page.254

III.3.

CASES FROM PRACTICE (Ease of passage)

Analytical overview of judicial practice in Kosovo and Albania;
C no. 1218/15 BASIC COURT IN PEJA, General Department.

Case description:

The plaintiff D.S., through his authorized representative, filed a lawsuit dated 29.12.2015, against the defendant Q.B from Peja for the certification of the right of way. With the lawsuit filed, he presented the case as follows: the plaintiff is the owner of the cadastral plot no. 113/2 with an area of 770.70 ZK gold. The plaintiff, with his family, has used plot no. 113/4 as a service plot, which is registered in the name of the defendant Q. B. and which was previously registered in the name of M. M., from whom he bought it. In the service plot, there was a road with a width of 3 m and a length of 50-60 m, which is recorded in the name of the respondent. This road existed even earlier. The defendant, taking advantage of the plaintiff's absence, has surrounded the property and does not allow the plaintiff and the family of plaintiff to pass to his property, which previously had no obstacles.

JUDGMENT OF THE BASIC COURT – PEJA

The Basic Court, acting according to the plaintiff's claim, after evaluating and administering the evidence, concluded that;

APPROVED in its entirety AS BASED on the claim of the plaintiff D. S. from village. K. of Peja. IT IS PROVIDED that there is a right of real servitude of passage by vehicle and on foot on the village road, up to the plot of the plaintiff. 113/2 in the place ... ZK Peja, in a width of 3.5 m and length of 27.04 m and on a total area of 95 m², according to the geodetic expertise, through the defendant's plot no. 113/4 in the place ... ZK Peja

The defendant is FORCED to accept this right to the plaintiff and to allow him free passage and this right to be registered in the cadastral books in Peja, under threat of execution.

The court in the evidence procedure of the main review administered the relevant evidence, and that: Property certificate no. 017230-15 dated 22.12.2015, the copy of the plan from FP. No. 129 ZK ..., Judicial expertise re survey expert F.H. dated 15.03.2019, together with the measurement sketch. Orthophotos and certificate, in the documents of the case C.nr.1218/15, as well as the hearing of the party D.S. and the witness U.N. Also, the evidence provided by going to the field and the hearing of the witness proved that the cadastral parcel no.113/2 in the country ... ZK Peja, there is no road in the field, and there is no passage. The witness, U.N., was heard, where it was confirmed that the road existed and that the plaintiff had no other way of crossing. From the same witnesses, the U.N. court confirmed that the plaintiff's cadastral plot no. 113/2 in the place ... ZK Peja, acquired it as an inheritance (mirraz) from M. M., who is his uncle, and D. has always passed it to M's land. Now land of Q. B., and that these lands were previously one whole. Based on the administered evidence, the hearing of the plaintiff, the witness and the geodetic expert, it was reliable for the court that the plaintiff crossed the road from his property to access the main paved road through the property of the M. family, who he had an uncle, now the property of Q.B, who, in the case of the purchase of the real estate object of this dispute, surrounded the real estate, leaving the plaintiff without a way. From the expertise of the expert geodesist F. H, to whom the court forgave his trust, it was proven that the contested plot 113/4, in which the plaintiff claims the existence of the road from the eastern side, has a length of 27.14 m and a width of 3.5 m, on the surface of 95 m², which was passed on foot and by vehicle, and based on each expertise, the court decided as in the provision of this judgment.

Therefore, relying on the statements of the plaintiff, the witness U.N., who was objective and whom the court trusted, the expertise of the expert geodesist F.H., it was proven that the defendant has closed the road through which the plaintiff and his family spent over 20 years his, which road passed through the plot of the M. family, now the property of the defendant and since the plaintiff has no other way to reach his plot, the court, by Article 86.1 of the Law on Property and Other Property Rights and Article 49 of the Law on MTHPJ decided as in the enacting clause of this judgment.

Practical case according to Albanian legislation (easement of passage)
No. 11114-00517-00-2008 of Reg. charter
No. 00-2012 - 2613 of the Decision (516)

HIGH COURT, CIVIL COLLEGE, Albania
PLAINTIFF: P.H, DEFENDANT: S.C

OBJECT: The plaintiff requested the obligation of the defendant to create (permit) the easement of passage for access to the public road as well as the insurance of the claim by removing the fence occupying the road for access to the public road.

LEGAL BASIS: Articles 265 and 277 of the Civil Code and 202 of the Civil Code.

The Court of the Judicial District of Vlora, with decision no. 1402, dated 18.07.2006, has decided to accept the claim of the plaintiff P.H, forcing the defendant S.C to allow the creation of an easement of passage on his property, in the place called Dukat Fushe with length 37.5 ml, width 2.5 ml. which occupies an area of 94 m2. The right of way will cross the border between the property of the defendant S.C. and the Dhima family. The obligation of the plaintiff to pay the defendant an amount of 94,000 (ninety-four thousand) ALL for the surface of the land which will serve as an easement of passage for the plaintiff. However, the plaintiff party P.H and the party S.C filed a lawsuit in the Court of Appeal against this decision.

The Vlora Court of Appeal, with decision no. 305, dated 15.05.2007, after an appeal was filed by the plaintiff P.H and the defendant S.C, decided:

"Enforcement of decision no. 1402, dated 18.07.2006, of the Vlora Judicial District Court."

Against the decision no. 305, dated 15.05.2007, of the Vlora Court of Appeal, the plaintiff P.H filed an appeal, claiming that:

i. The district court (and the appellate court that upheld that decision) erred procedurally by not accepting the exclusion of the judge in the case, who is a fellow citizen of both litigants.

ii. The development of the trial in absentia was not accepted, as the respondent was aware of the date of the hearing.

iii. The road for which I claim the easement does not fall on the respondent's land. His property is 1500m2 and not 1850m2. This fact is accepted by the court itself. Why should I pay 94,000 ALL for the easement when the respondent does not lose a single meter of land?"

The CIVIL COLLEGE OF THE SUPREME COURT, after analyzing and discussing the case as a whole:

SOMETIMES;

From the examination of the acts of the court file, it appears that the plaintiff P.H is one of the co-owners of an apartment located in the place called "Buza e Lumit" in the village of Dukat-Fushë in the Vlora district. This apartment has been owned by the respondent S.C. for a long time, for more than 40 years, but with the decision No. 413, dated 27.09.1996, at the K.K.K. properties, this apartment was returned to the plaintiff as its former owner, who, in turn, has it registered in the real estate registers of Z.R.P.P Vlora. The apartment occupies an area of 250 m2 of land, of which 120 m2 is the apartment. The plaintiff, after returning the apartment to his ownership, sued the defendant to vacate the apartment, as the latter initially did not agree to vacate the apartment voluntarily and lives in this apartment himself, but intermittently, as he is in a working relationship in the city of Vlora. During the time that this apartment was used by the respondent, the road to get to the apartment object of judgment passed through an existing footpath, which went from the main public road Vlora - Llogora to the apartment. This footpath, which connects the car road and the plaintiff's residence, passes through the property of the defendant, who owns an area of 1850 m2 of arable land in Dukat Fushë, this ownership acquired by law 7501, which he then has registered in Z.R.P.P. Vlora on 19.07.2002. The plaintiff initially asked the defendant to voluntarily open the road in order for him to pass to his apartment, but the defendant did not accept. For this reason, the plaintiff has addressed the court with a lawsuit, so that the defendant is forced to create the easement of passage to go out on the public road, since according to him there is no other option.

The court, among other things, reasoned that:

In article 277/1 of the Civil Code, it is stated that "The owner who does not have access to a public road and cannot provide it except with great expense and difficulty, has the right to have a passageway from the neighboring land, for the use of suitable for their own property".

While variant No. 2 is the one that crosses the border between the property of the defendant and the Dhima family, this variant does not cause any inconvenience to the defendant as it is far from his home, but not only that the path to the plaintiff's home is shorter, but there are also fewer expenses. As we said above, it occupies an area of 92.5 m2 and costs 94,000 lek according to the calculations made by the expert. In the second point of Article 277 of the Civil Code it is stated that: "The crossing must be the shortest way to the public road and less damage to the service property".

On the appeal filed by the plaintiff P.H and the defendant S.C, the Vlora Court of Appeal, with decision no. 305, dated 15.05.2007, decided:

"Enforcement of the decision no. 1402, dated 18.07.2006, of the Vlora Judicial District Court." Against the decision no. 305, dated 15.05.2007, of the Vlora Court of Appeal, the plaintiff P. H. filed an appeal claiming the reasons reflected in the introductory part of this decision and has requested the change of two decisions and the acceptance of the lawsuit. The Civil College of the Supreme Court assesses that the decision of the court of appeal was taken in accordance with the law and as such should be left in force. Claims presented in the plaintiff's recourse are not such as to lead to the infringement of the decisions, since the reasons presented for the change of the decisions are not from the reasons provided for in Article 472 of the Civil Code.

Article 472 Decisions that can be appealed

The decisions announced by the court of appeal and those of the court of first instance, in the cases determined by this Code, can be appealed with recourse to the Supreme Court only when:

- a) the law was not respected or poorly implemented;
- b) there are serious violations of procedural norms (Article 467 of this Code);
- c) abolished. The opposition of the decision to the Supreme Court is done within 30 days from the date of the decision. When the parties are in default, this period starts from the date of notification.

Regarding the claim for the dismissal of the judge, this College considers that it is not based on the law. Being a "fellow citizen" of the litigants or even just one of them does not constitute a reason for the exclusion of the trial panel and is not provided as a reason for exclusion by Article 72 of the Civil Code.

Cases for the dismissal of the judge

The judge is obliged to waive the judgment of a specific case when:

1. has an interest in the case or in another dispute related to the one in the trial;
2. he himself or his wife is close up to the fourth degree or a cousin up to the degree of the second is either bound by adoption obligations or lives permanently with one of the parties or guardians;
3. he himself or his wife is in a judicial conflict or enmity or in a relationship credit or loan with one of the parties, or one of the representatives;
4. gave advice or expressed an opinion on the case in the trial or participated in the trial of the case at another stage of the process, was questioned as a witness, as an expert or as a representative of one or the other party;
5. is a guardian, employer of one of the parties, administrator or has another duty in one entity, association, society or other institution that has interests in the case under trial;
6. in any other case when, according to concrete circumstances, serious reasons for bias are proven.

The request for waiver is presented to the president of the relevant court, who decides. The president of the court of appeal decides on the declaration of resignation of the president of the court of first instance, and the president of the Supreme Court decides on the request of the latter.

Also in relation to the second claim in the appeal for the postponement of the court hearings dated 23.03.2006 and 07.04.2006 by the court of first instance, the Civil College of the Supreme Court, after verifying the record of the court hearings, reaches the conclusion that this claim is not based on law. With regard to the third claim in the appeal, it is estimated that the courts have rightly concluded that the plaintiff's lawsuit should be accepted, because the defendant has registered the surface of the land on which the plaintiff requests the easement of passage. The respondent has proven through the certificate of ownership, issued by Z.R.P.P. Vlora on 19.07.2002, that he owns 1850 m² registered in the registers of Z.R.P.P. In the conditions when with the act of expertise it has been proven that the road that will serve as a passageway for the plaintiff, for exit to the main road, passes through the surface of the land registered as ownership in the name of the defendant, rightly the court even though it has found that the defendant has been provided with land agricultural land with an area of 1500 m², based on Law No. 7501, dated 19.07.1991, "For the land." From the plaintiff's side, a right-of-way has been requested, asking the court to grant a right-of-way through the defendant's land. In case the plaintiff had an objection regarding the ownership or the way of acquiring the ownership of the surface on the one obtained by the "Land" law by the defendant, he could object to the ownership of the

defendant. In the conditions where the defendant turned out to be the owner of the land for which the easement was requested, then the courts accepted the claim, creating the opportunity for the plaintiff to use his property without problems, which the plaintiff requested with the lawsuit presented to the court.

As mentioned above, the Civil College of the Supreme Court found the decision of the Vloara Court of Appeal to be right and based on the law, by which decision no. 1402, dated 07.18.2006, of the Vloara Judicial District Court was upheld.

FOR THESE REASONS

The Civil College of the Supreme Court based on Article 485/a of the Civil Code, Enforcing decision No. 305, dated 15.05.2007, of the Vloara Court of Appeal Article 485 (Amended by law no. 8812, dated 17.5.2001, article 126) After examining the case, the civil panel or the united panels of the Supreme Court decide: a) to leave the decision in force;

Conclusions

Based on the general analysis of the necessary transition, as a conclusion we have:

- It is not reasonable to have a necessary passage through the service land if the dominant land has another exit to the public road
- The necessary passage is defined in a certain place the owner of the dominant thing cannot ask for a change of place.
- Under the presumption of the reward of the direct bull, the current owner of the service item can request the cancellation of the necessary passage when it has become really heavy for the service item.
- The person who passes on the land of another must pay the value of the land that is being sold, without deducting the taxes and other burdens related to the land, as well as the compensation for the damage caused, including the damage that comes from the interruption of the land, from non-use it.

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