



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

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Pristina, 5 July 2013  
Ref. No.:RK459/13

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI120/12**

Applicant

**Vahide Braha**

**Constitutional Review of the decision of the District Court in  
Prishtina, Ac. Nr. 1419/2011, of 17 July 2012 and notification of  
Public Prosecutor, KMLC. No. 81/12, of 9 August 2012**

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

composed of

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

## **Applicant**

1. The Applicant is Ms. Vahide Braha, residing in Prishtina (hereinafter: the “Applicant”).

## **Challenged Decision**

2. The Applicant challenges the decision of the District Court in Prishtina, Ac. Nr. 1419/2011, of 17 July 2012 and the notification of the Public Prosecutor, KMLC. No. 81/12, of 9 August 2012, which were served upon the Applicant as a legal representative of her client, the plaintiff J.H., on unspecified dates.

## **Subject Matter**

3. The Applicant claims that the challenged decision and the notification of the Public Prosecutor violate her right to a fair and impartial trial (Article 31 of the Constitution) and her right to legal remedies (Article 32 of the Constitution).

## **Legal basis**

4. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the “Constitution”), Article 20 of the Law No. 03/L-121 on the Constitutional Court of Republic of Kosovo, of 15 January 2009 (hereinafter: the “Law”), and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

## **Proceedings before the Court**

5. On 11 November 2012, the Applicant submitted the referral to the Constitutional Court.
6. On 4 December 2012, the President of the Court, with Decision No. GJR. KI 120/12, appointed Judge Snezhana Botusharova as Judge Rapporteur. On the same date, the President of the Court, with Decision No. KSH. KO. 97/12, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Altay Suroy and Ivan Čukalović.
7. On 31 January 2013, the Court informed the Applicant and notified the Basic Court in Prishtina that the referral had been received and registered with the number KI120/12.
8. On 5 July 2013 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

9. On 8 May 2009 the Applicant was authorized by a written power of attorney to represent J.H. from Prishtina in a case regarding the revocation of a contract, before Municipality Court in Prishtina.
10. On 11 June 2009, the Municipal Court in Prishtina adopted judgment C. Nr. 1266/07, by which was rejected as ill-founded the request of the plaintiff J.H. from Prishtina, who was represented by the Applicant. This judgment was delivered to the Applicant as the plaintiff's legal representative on 6 July 2009.
11. On 22 July 2009, the Applicant submitted an appeal with the District Court in Prishtina, on behalf of her client against the judgment of the Municipal Court [C. Nr. 1266/07] of 11 June 2009, pursuant to Article 181.1 of Law on Contested Procedure (hereinafter: LCP).
12. On 29 December 2010, the District Court in Prishtina adopted Decision Ac. Nr. 1167/2009, by which was rejected the appeal submitted by the Applicant on behalf of J.H. against the judgment of the Municipality Court in Prishtina [C. Nr. 1266/07], of 11 November 2009. The District Court in the reasoning part of its decision stated: *"From the case files it appears that the appealed judgment of the court of first instance was handed to the lawyer of the plaintiff Vahide Braha on 06.07.2009, which can be seen from the delivery note under number 30, whilst the legal representative of the plaintiff filed the appeal with the first instance court on 22.07.2009, which means that the appeal was filed after the deadline provided by the law"*.
13. On 25 January 2011, the Applicant as legal representative of her client submitted to the Municipality Court the proposal to return the case to the previous state, claiming that she *"did not receive the judgment of the first instance court in compliance with the legal provisions deriving from Article 107, 110 and 111 of the LCP"*.
14. On 26 April 2011, Municipality Court of Prishtina forwarded the proposal to the District Court in Prishtina.
15. On 31 May 2011, the District Court in Prishtina sent a Request for proper investigations / report to Municipality Court of Prishtina *"to act in order to remove all procedural dilemmas, resulting from the proposal of the representative of the plaintiff..."*.
16. On 5 October 2011, upon the request from the District Court in Prishtina, the Municipality Court held a public hearing, in which the issue of handing over the Judgment of the Municipality Court in Prishtina [C. Nr. 1266/07] was clarified.
17. On the same date, the Municipality Court in Prishtina adopted Decision C. Nr. 1266/07, which rejected the request of the Applicant to return the case to the previous state, since it had been submitted after the deadline. In its decision the Municipality Court in Prishtina stated that as a court of first instance acting upon an order of the second instance court, it had undertaken all the procedural measures and confirmed that *"the attorney did not have any remark with*

*regard to the manner of receiving the judgment, and did not inform the court about the manner of receiving the judgment, but she filed an appeal against the judgment of the first instance court, which was submitted to the court on 22.07.2009, without mentioning the issue of receiving the judgment, and stated that she has filed the appeal within the deadline provided by law”.*

18. On an unspecified date, the Applicant as an attorney for her client submitted an appeal against the Decision of the Municipal Court [C. Nr. 1266/07] of 5 October 2011.
19. On 17 July 2012, the District Court in Prishtina adopted Decision Ac. Nr. 1419/2011, which rejected the appeal of the Applicant. In its decision the District Court stated that “ *the District Court panel reviewed the appeal in compliance with provisions of Article 208 in conjunction with Article 194 of the Law on Contested Procedure, and based on the allegations found that the appeal is not allowed...Since the panel considers that the appeal is filed against a decision which is not appealable, pursuant to Article 196 of the Law on Contested Procedure, the panel concludes that the appeal is not allowed.*”
20. On an unspecified date, the Applicant acting as an attorney for her client submitted a proposal to the Office of the Chief State Prosecutor to request protection of legality.
21. On 9 August 2012, the State Prosecutor adopted Notification KMLC nr. 81/12 by which the proposal of the Applicant for requesting protection of legality against the final decision of the Municipal Court in Prishtina [C. Nr. 1266/07] of 5 October 2011 and the decision of the second instance, District Court in Prishtina [Ac. Nr. 1419/2011], of 17 July 2012, was rejected stating that “*the State Prosecutor did not find any legal basis to request protection of legality*”

### **Applicant’s allegations**

22. The Applicant claims that “*the court of first instance and the court of second instance by rendering their decisions have caused violations of fundamental human rights guaranteed by Article 31 and 32 of the Constitution, Article 13 (1) of the European Convention on Human Rights (ECHR) - right to appeal. The Judge who dealt with this case was not impartial, as it is required by Article 6.1 of the Convention, or was biased*”.
23. Furthermore, the Applicant claims that “ *the District Court in rendering its decision as a court of second instance, when it stated that the party did not have the right to appeal, was under influence of the first instance court, and also did not review the case file and the reasons of the appeal.*”
24. The Applicant addresses to the Constitutional Court the following request:

*“I request from the Constitutional Court to review and to give a legal, lawful and exact interpretation whether there is a violation of the Constitution, Law on Contested Procedure and European Convention on Human Rights, with regard to the rules on handing over the decisions, as foreseen by this law, to*

*the parties in procedure and the possibility to return the case in previous state."*

### **Admissibility of the Referral**

25. 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.

26. In this respect, the Court refers to Article 113 (1), which establishes that "*the Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties*".

and Article 113.7 of the Constitution of the Law which provides:

*"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".*

27. The Court also refers to Article 48 of the Law on Court, which provides that "*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*".

28. In this respect, the Court notes that individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution. The act or omission in issue must directly affect the applicant (see *Amuur v. France*, No. 19776/92, ECtHR, Judgment of 25 June 1996)

29. In the present case, the Court notes that the Applicant is not a party in the proceedings but a legal representative of one of the parties, i.e. acting on behalf of another person, who is affected by the decisions of public authorities. This is the plaintiff J.H., the client of the Applicant. The Applicant is submitting the Referral on her own behalf, alleging violations of her individual constitutional rights, not submitting the referral on behalf of her client for alleged violations of her client. The Applicant as said above does not appear to be party of her own in the regular courts' proceeding in the sense of the law provisions. She is the professional whose is supposed to defend the procedural rights of her client by following the law requirements and meeting the deadlines for appeal as she is authorised for that by her client.

30. Therefore, the Court concludes that the Applicant cannot be considered an authorized party according to Art. 113 paragraph 7 of the Constitution as an individual her individual rights and freedoms guaranteed by the Constitution are not violated by public authorities.

31. However, even if the Applicant had a power of attorney to represent her client in front of the Constitutional Court and act on behalf of her as her legal representative, which was not the case, she had not substantiated the claims in the referral. Assuming that the Applicant would argue that the decisions of the regular courts resulted in violations of her client's rights as guaranteed by the Constitution and the European Convention she had not presented any evidence

or relevant facts to support that “Administrative or judicial authorities have violated her/his rights as guaranteed by the Constitution” (see *Vanek v.Slovak Republic*, No. 53363, ECtHR, Decision on Admissibility of 31 May 2005).

32. The Constitutional Court reiterates that it is not its task under the Constitution to act as a court of appeal, or court of fourth instance, in respect of the decisions taken by regular courts. It is their role to interpret and apply the pertinent rules of both procedural and substantive law (see, *mutatis mutandis*, *Garcia Ruiz v. Spain*, No. 30544/96, ECtHR, Judgment of 21 January 1999, para. 28)
33. 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 Case *Edwards v. United Kingdom*, No 13071/87, Report of the European Commission on Human Rights adopted on 10 July 1991).
34. However, having reviewed the documents submitted by the Applicant, the Constitutional Court does not find that the relevant proceedings were in any way unfair or tainted by arbitrariness (see *mutatis mutandis*, *Vanek v.Slovak Republic*, No. 53363, ECtHR, Decision on Admissibility of 31 May 2005).

### FOR THESE REASONS

The Constitutional Court, pursuant to Articles 113.1 and 113.7 of the Constitution, Articles 20 and 48 of the Law and Rule 36. (2) b) of the Rules of Procedure, on 5 July 2013

### DECIDES

- I. TO DECLARE the Referral inadmissible, unanimously;
- II. TO HOLD that the Applicant is not authorized party, by majority;
- III. TO HOLD that the Referral is manifestly ill-founded, by majority;
- IV. TO NOTIFY this decision to the Parties;
- V. TO PUBLISH the decision in the Official Gazette, in accordance with Article 20 (4) of the Law; and
- VI. This Decision is effective immediately.

**Judge Rapporteur**

Snezhana Botusharova



**President of the Constitutional Court**

Prof. Dr. Enver Hasani