



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

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Prishtina, on 26 April 2016  
Ref. No.:RK931/16

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI119/15**

Applicant

**Borka Stevanović**

**Constitutional review of Judgment P. no. 47/015, of the Basic Court in  
Peja-Branch in Istog, of 21 July 2015**

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

composed of

Arta Rama-Hajrizi, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge, and  
Bekim Sejdiu, Judge  
Selvete Gërzhaliu-Krasniqi, Judge and  
Gresa Caka-Nimani, Judge

### **Applicant**

1. The Referral is submitted by Ms. Borka Stevanović residing in Belgrade (hereinafter: the Applicant).

### **Challenged decision**

2. The challenged decision is Judgment P. no. 47/015 of the Basic Court in Peja-Branch in Istog, of 21 July 2015.
3. This Judgment was served on the Applicant on 22 August 2015.

### **Subject matter**

4. The subject matter is the constitutional review of the challenged decision, which allegedly violated Articles 32 [Right to Legal Remedies] and 102.5 [General Principles of the Judicial System] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
5. At the same time, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: Court) to impose interim measure and suspend the execution of the challenged decision, and that her identity be not disclosed.

### **Legal basis**

6. The Referral is based on Article 113.7 of the Constitution, Article 27 and 47 of the Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law), and Rules 54 and 55 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

### **Proceedings before the Court**

7. On 14 December 2015, the Applicant submitted the Referral to the Court.
8. On 6 November 2015, the President of the Court appointed Judge Snezhana Botusharova as Judge Rapporteur and the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues and Arta Rama-Hajrizi.
9. On 19 November 2015, the Court informed the Applicant about the registration of the Referral and requested from her to fill and submit the official form of the Constitutional Court. On the same date, the Court informed the Basic Court in Peja-Branch in Istog about the registration of the Referral.
10. On 14 December 2015, the Applicant submitted the official form of the Constitutional Court.
11. On 9 March 2016, after having considered the report of the Judge Rapporteur, the Review Panel recommended to the full Court the inadmissibility of the Referral.

### **Summary of facts**

12. After the death of the Applicant's father, the legal heirs initiated before the Basic Court in Peja, Branch in Istog-the procedure for confirmation of

ownership over two cadastral parcels no. 00730/1 and no. 00730/2, which is an inheritance from their deceased father.

13. On 21 July 2015, the Basic Court in Peja-Branch in Istog after the conducted procedure rendered Judgment [P. no. 47/015] which determined that all the legal heirs of the first rank of inheritance are entitled to 1/6 of the cadastral parcels no. 00730/1 and no. 00730/2.

### **Applicant's allegations**

14. The Applicant claims that due to lack of guide on the right to file a complaint in Judgment P. no. 47/015 of the Basic Court in Peja-Branch in Istog, were violated her rights guaranteed by Articles 32 [Right to Legal Remedies] and 102.5 [General Principles of the Judicial System] of the Constitution of Kosovo.
15. The Applicant requests the Court to impose interim measure and suspend the execution of Judgment P. no. 47/015 of the Basic Court in Peja-Branch in Istog, and that her identity be not disclosed.
16. The Applicant also requests from the Court that her identity be not disclosed.

### **Relevant legal provisions**

#### **Law on Contested Procedure**

2009/03-L-006

#### ISSUANCE, DRAFTING AND SENDING THE CHARGESHEET

[...]

#### Article 160

160.1 A verdict compiled in written should have: [...] guide on the right to file a complaint against the verdict.

[...]

#### *Reasons on which the verdict could be strike*

#### Article 182

[...]

*n) if the decision has leaks due to which it' can't be examined, especially if the disposition of the decision is not understandable or contradictory in itself with the reasoning of the verdict, or when the verdict has no reason or which gives no justification for the final facts, or which reasoning are unclear, contradictory, or if in the final facts there are contradictions between what is said in the verdict, the main document or the procedural records and of the document or the minutes of proceeding;*

[...].

*Procedure according to the complaint*

*Article 185*

*The complaint will be presented to the court that issued the decision of the first degree in a satisfactory number for the court and opposing party.*

**Admissibility of Referral**

17. The Court first examines whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution and further specified in the Law and Rules of Procedure.

18. In this respect, the Court refers to Article 113.7 of the Constitution, 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.”*

19. The Court also refers to Article 47. 2 of the Law, which foresees:

*“The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law”.*

20. Furthermore, the Court takes into account 36 (1) (b) of the Rules of Procedure, which provides that:

*“The Court may consider a referral if all effective remedies that are available under the law against the judgment or decision challenged have been exhausted”.*

21. In that regard, the Court recalls that the Applicant alleges that due to the lack of guide on the right to file a complaint in the challenged judgment of the Basic Court in Peja-Branch in Istog, she was denied the right to appeal, and consequently, the rights guaranteed by the Constitution.

22. The Court notes that the Applicant has not submitted appeal or requests correction of the decision to the court that issued the challenged decision as stipulated in the Law on Contested Procedure.

23. In this regard, the Court notes that the Applicant did not exhaust adequate legal remedies that were available and, therefore, failed to comply with the forms prescribed by the applicable law in Kosovo. In addition, the Court also notes that the Applicant did not do everything that could reasonably be expected of her to exhaust legal remedies (*D.H. and Others v. the Czech Republic*, No. 57325/00, ECHR judgment of November 2007, paragraph 116).

24. The Court considers that in order for the Applicant to be exempted from the requirement to exhaust all legal remedies it is incumbent on her to show that the legal remedy was in fact used, that the legal remedy was inadequate and

ineffective in relation to her case, and there existed special circumstances exempting the Applicant from the requirement to exhaust all legal remedies. From the documents contained in the Referral there is nothing that suggests that the Applicant meets the criteria to be exempt from exhaustion of all legal remedies to her avail.

25. The Court further recalls that the principle of subsidiarity requires that the Applicant exhausts all legal remedies provided by law.
26. The rationale for the exhaustion rule is to afford the authorities concerned, including the courts, the opportunity to prevent or put right the alleged violation of the Constitution. The rule is based on the assumption that the legal order of Kosovo shall provide an effective remedy for the violation of constitutional rights. This is an important aspect of the subsidiary character of the Constitution (see Resolution on Inadmissibility Kl41/09, *AAB-RIINVEST University L.L.C., Prishtina vs. Government of the Republic of Kosovo*, of 21 January 2010, and see *mutatis mutandis*, ECHR, *Selmouni vs. France*, No. 25803/94, Decision of 28 July 1999).
27. Accordingly, the Court holds that the Applicant's Referral is premature, due to non-exhaustion of all available legal remedies, in accordance with Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure.
28. Therefore, it follows that the Referral is inadmissible.

### **Request for Interim Measure**

29. The Court notes that the Applicant requested the Court to impose interim measure, and suspend the execution of Judgment P. no. 47/015 of the Basic Court in Peja–Branch in Istog, until a decision on the merits is rendered.
30. In order to approve the request for interim measure, in accordance with Rule 55 (4 and 5) of the Rules of Procedure, the Court must determine that:
  - “(a) the party requesting interim measures has shown a prima facie case on the merits of the referral and, if admissibility has not yet been determined, a prima facie case on the admissibility of the referral;*
  - (b) the party requesting interim measures has shown that it would suffer unrecoverable damages if the interim relief is not granted; and*
  - (c) the interim measures are in the public interest.*

*If the party requesting interim measures has not made this necessary showing, the Review Panel shall recommend denying the application“.*
31. As previously concluded, the Referral is inadmissible and, therefore, the request for interim measure should be rejected.

### **Request to not disclose identity**

32. Regarding the request for not disclosing her identity, the Applicant requested the approval of such a request without stating explanations and exceptional reasons for such a request.
33. However, the Court rejects the request as ungrounded because the Applicant did not explain nor substantiated by supporting documents the merits of her request.

### **FOR THESE REASONS**

The Constitutional Court of Kosovo, pursuant to Article 113.7 of the Constitution, Article 47.2 of the Law and Rule 36 (1) (b) of the Rules of Procedure, in the session held on 9 March 2016, unanimously

### **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO REJECT as ungrounded the request for interim measure;
- III. TO REJECT as ungrounded the request for not disclosing identity;
- IV. TO NOTIFY this Decision to the Parties;
- V. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- VI. TO DECLARE this Decision effective immediately;

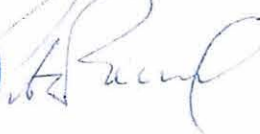
**Judge Rapporteur**



Snezhana Botusharova



**President of the Constitutional Court**



Arta Rama-Hajrizi