



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

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Pristina, 19 October 2011  
Ref. No.: RK 142/11

## RESOLUTION ON INADMISSIBILITY

in

**Case No. KI 19/11**

Applicant

**L. H.**

**Constitutional Review of the Decision of the Municipal Court of Peja/Pec C. no.  
271/10 dated 07.10.2010.**

**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 L. H.  
Applicant requested that Court should take into consideration protection of her identity.

## **Challenged Decision**

2. The Challenged decision of the public authority is the Municipal Court`s Decision CI. no. 271/10 in Peja/Peć, dated 07.10.2010 whereby alleged violations of constitutional guarantees occurred.

## **Subject matter**

3. Basic matter of the Referral with the Constitutional Court of Kosovo, date 18 February 2011, is the assessment of Constitutionality of the Decision of Municipal Court in Peja CL.no.271/10, dated 07.10.2010, whereby the version in Serbian was issued on 07.10.2010, but the Applicant did not specify when she received it and then the version in Albanian language that she admitted receiving on 30 May 2011.

## **Alleged violations of rights guaranteed by constitution**

4. The Applicant on this request alleges that by the Decision of the Municipal Court of Peja/Peć, issued in the Serbian language, whereby it declared to be incompetent to decide on her claim, her rights guaranteed by the Constitution of the Republic of Kosovo have been violated, respectively article 24.1 (equity before the law)

## **Legal Basis**

5. Article 113.7 The Constitution of the Republic of Kosovo (hereinafter referred to as the Constitution), article 47 of the Law NO. 03/L-121 for the Constitutional Court of the Republic of Kosovo, dt. 16 December 2009, entered into force on 15 January 2010 (below referred to as the Law) and article 29 of the Rules of Procedures of the Constitutional Court of the Republic of Kosovo (below referred to as the Rules of Procedures).

## **The Referral of the Applicant**

6. The Applicant claims that the Municipal Court in Peja/Peć, by declaring to be incompetent to decide on her claim to amend the Decision of the District Court of Peja/Peć. no 367/09 regarding the right to parent custody rights over her daughter, which has, based on the conditions set in the Decision, and by wrongly advising her for the Competent organ to decide on this legal issue, put her in unequal position with her former husband, who is allegedly abusing her rights as set by the above mentioned Decision, therefore committed violation of guaranteed right by the Constitution, respectively Article 24 of the Constitution.

## **Procedure in the Constitutional Court**

7. On 18 February 2011 the Constitutional Court has received the claim of the applicant and registered it with no. KI 19/11
8. On March 02, 2011 with the Decision GJ.R 19/11 the President of the Court assigned the Judge Robert Carolan as the reporting judge.
9. On the same day, the President of the Court, with the Decision KSH 19/11, assigned the Review Panel composed of Judge Ivan Cukalovic (presiding judge) and Judges Kadri Kryeziu and Gjylieta Mushkolaj, as member of the Panel.

10. The Constitutional Court informed the Municipal Court and the District Court in Peja/Peć as well as the Applicant for the registration of the case on 04 May 2011.
11. The Constitutional Court, on 20 June 2011 received additional documents from the Applicant.
12. The Constitutional Court, on 19 August 2011, received a page long response from the Municipal Court in Peja/Peć regarding the date of delivering the Decision C. no 271/10 of this Court to the Applicant.

### **Summary of the facts**

13. The District Court in Peja/Peć, on 24 November 2009 issued the Decision Cno.367/09 whereby it has RESOLVED (divorced) the marriage (with CONSENT) between K. M. from village Llabjan, Municipality of Peja/Peć and L. M. from Drenas/Gllogovac.
14. According to this Decision, the child E. M., is trusted to the father Mr. K. M. for custody, education and care.
15. As pursuant to this Decision, the Court DECIDED on the contacts of Mrs. L. H. (the mother) and her daughter E., on every second and fourth Friday of the month to stay with her till Sunday at 17.00 hrs. Mrs. L. H., as set in this Decision, was obliged to return the minor – daughter E. – to her father in the same place where she took her. The Court reached this Decision after the parties had previously agreed on 24.09.2009, agreement that was signed by Mr. Rexhep Kacaniku, the legal attorney of K. M. and L. H.
16. According to the above mentioned Decision, the Applicant, L. H., also has the right during winter holidays to be with the daughter E. for 8 days and during summer holidays for 15 (fifteen) days.
17. On 11 December 2009, taking note of the fact that Mr. K. M., her former husband, is not complying with the Decision of the District Court of Peja/Peć C no.367/09, with regard to the contacts between the mother and the child, Mrs. L. H. submitted a proposal to the Municipal Court in Peja/Peć for the Enforcement of the Permit to contact and care about her daughter according to the conditions set by the Decision of the District Court in Peja, which resolved her marriage to her former husband, Mr. K. M.
18. The Municipal Court in Peja/Peć, on 12. March 2010 held the session on the enforcement of the Decision E.no 593/09 (which lacks in case files) whereby the Debtor Mr. K. M. declared that he will voluntarily execute the Decision and that the debtor, Mrs. L. H., could immediately go to the social work center in Peja, where they daughter E. was staying, and that he had done the same two weeks before. In this case the municipal court has fully ENFORCED the execution of the Decision based on the executive title.
19. Mrs. L. H., Peja/Peć, on 7 May 2010 filed a CLAIM to CHANGE the Decision C.no.367/07 which resolved her marriage with her former husband and decided on “Custody, Care and education of their daughter and the forms of contacts between the mother and her daughter” because she was unhappy with the existing situation, considering herself as the damaged party and unequal because she had always to go to Social Work Center in Peja to pick her daughter up, and not having her ex-husband to

have to bring the daughter to Drenas/Gllogovac, emphasizing the fact that this is both costly and time consuming to her as an employee.

20. The Municipal Court in Peja/Peć, with the DECISION P.br 271/10 drafted and sent to the Applicant in Serbian DECLARED itself incompetent to decide on this legal case, thus advised the party to address the matter to the Social Center Institution in Peja/Peć, who according to the Court, is competent to deliberate in this contest.
21. In its legal advice, it wrote that the unsatisfied party may appeal the decision in 15 days from the day of reception at the District Court in Peja/Peć. Mrs. L. H. did not file any complaint from this decision in the Serbian language within the 15 days allowed. In the Constitutional Court's Form she declared that she had not done so, because she did not understand Serbian language.
22. The Social Work Center in Peja/Peć, on 5 November 2010, by the way of the Report of the Social Worker no. 1085.07.2009 responded to the Municipal Court in Peja/Peć, that based on the applicable law (Kosovo Law on Family no. 2004/32) articles 139-145, and in compliance to the Circular of the Department for Social Welfare no. 1020, date 25 May 2010, social work centers are not competent to issue decisions regarding 'child custody, child contacts with one of the parents or alimentation matters', because these are legally clearly defined matters.
23. The Constitutional Court, on 20 June 2011, received all the additional documents from Mrs. L. H., which was a handwritten paper where she explained about her claim filed with the Court on 18 February 2011. In that statement she admitted that she received the Decision P.br 271/10 dated 07 October 2010 by the Municipal Court in Peja/Pec and that it was also in the Albanian Language. She did not state when she received that decision in the Albanian language.
24. On 19 August 2011, the Constitutional Court received an additional document as a response from the Municipal Court in Peja/Peć, which confirmed that on 30 May 2011 Mrs. L. H. received the Decision C.271/10 of the Municipal Court in Peja/Peć translated into Albanian Language. She did not file a complaint against this decision in its Albanian version within 15 days of receipt on 30 May 2011.

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

25. To be able to judge on the Referral of the Applicant, the Court should preliminary assess if the Applicant meet the admissibility conditions defined by the Constitution, Law on Constitutional Court and its Rules of Procedures.
26. Article 113.7 of the Constitution, which states that:

"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 takes account of:

Rule 36 of the Rules of Procedures in the Constitutional Court which states:

“(1) The Court may only deal with Referrals if:

  - a) all effective remedies that are available under the law against the Judgment or decision challenged have been exhausted,

28. It is not absolutely clear when the Applicant received in the decision of the Municipal Court of Peja in the Albanian language. Whether the Applicant received the decision, no. P.br.271/10, of the Municipal Court in Peja, in Albanian on 07. October 2010, or on 30 May 2011, as she admits, it is clear that she did not submit a complaint within 15 days allowed by law even after she received the decision on 30 May 2011, as she admits.
29. Therefore, the Court considers that the criteria of `exhausting all legal remedies as foresees is absolutely necessary as fundamental requirement to submit a claim in the Constitutional Court of Kosovo, and apart from being a legal condition foreseen by the Constitution and the Law on Constitutional Court, it is also set as fundamental condition with the rule 36 par. Point (a) of the Rules of Procedures of Constitutional Court.
30. The Court reiterates that the reason for exhausting of all legal remedies lies in providing the authorities, including here the Courts too, with the possibility to prevent, and correct the alleged violation of Constitution. This rule is based on the assumption that the Kosovo law order shall ensure efficient legal remedies for the violation of constitutional rights (see, mutatis mutandis, GJEDNJ, Selmouni v. France no. 25803/94, Decision of 28 July 1999
31. The Court applied similar reasoning during previous deliberations such as in the cases : KI 55/10 Hamide Osaj`s request for the Assessment of Constitutionality of the Decision of Kosovo Supreme Court, Pkl. no. 43/2010, date 4 June 2010 ; Case no. KI 20/10 Muhamet Bucaliu against the Judgment of The State Prosecutor KMLC.no. 09/10 of 24 February 2010(decision of the Constitutional Court date 15 October 2010)
32. Regarding the allegations of the party that with the Decision C.no.367/09, date 24.11.2009 of the District Court in Peja, the Article 24 of Constitution (equity before the law) is violated, and that Mrs. L. H. is treated unequal, the Court is aware that this decision was reached upon full and mutual agreement of the parties and that the parents custody, care and education of their child was decided on their previous agreement reached voluntarily, and also signed by both parties in the agreement. The Municipal Court in Peja/Peć merely approved the agreement of the parties involved, and, thereby, made it the legitimate judgment of the Municipal Court.
33. The Court also acknowledges that the Applicant can renew her request to change the terms and conditions of the custody arrangement she has with her daughter`s father at any time while her daughter is still a minor and upon a showing of a change in circumstances with respect to the child and/or the parents. Nothing prevents her or the child`s father from renewing her Claim for the change of this Decision as pursuant to Article 145, point 1 and 2 of the Law on Family (law.no.2004/32).
34. Because disclosure of the identity of the Applicant in this case would also result in the disclosure of the identity of the Applicant`s minor child, who because of her young and tender years, needs to have her identity protected while she is growing and developing her own identity and because she is truly an innocent party in these proceedings, it is in the public interest not to disclose the identity of the Applicant as requested by the Applicant.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 13.7 of the Constitution of the Republic of Kosovo and Section 36.1 (a) of the Rules of Procedure on 5 October 2011, unanimously,

### DECIDES

- I. TO REJECT the referral as inadmissible;
- II. To grant the request of the Applicant to preserve the confidential nature of her identity in this Referral;
- II. 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; and,
- III. The Decision is effective immediately.

**Judge Rapporteur**

  
Robert Carolan



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani