



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

Pristine, 26 June 2012  
Ref. No. :RK259/12

## RESOLUTION ON INADMISSIBILITY

In  
Case No. KI 152/11

Applicant

**Bekim Murati**

**Constitutional Review of the Decision of the Kosovo Government  
(11/279), dated 07.11.2007**

**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 Cukalovic, Judge  
Gjyljeta Mushkolaj, Judge and  
Iliriana Islami, Judge

### **Applicant**

1. The Applicant is Bekim Murati, from Prishtina, represented by Bajram Morina, a practicing lawyer from Gjakova.

### **Subject Matter**

2. The Applicant challenges the Decision of the Kosovo Government 11/279, dated of 06/11/2007 (hereafter, the Decision).

### **Legal Basis**

3. The Referral is based on Article 113.7 of the Constitution of the Republic of Kosovo (hereinafter, Constitution); Article 22 of the Law on the Constitutional Court of the Republic of Kosovo (hereinafter, the Law); and Rule 30 and 75 of the Rules of

Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter, Rules of Procedure).

### **Proceedings before the Court**

4. On 24 November 2011, the Applicant submitted the Referral to the Court.
5. On 17 January 2012, the President appointed Judge Almiro Rodrigues as Judge Rapporteur and a Review Panel composed of Judges Robert Carolan (Presiding), Enver Hasani and Kadri Kryeziu.
6. On 24 January 2012, the Court communicated the Referral to the Office of the Prime Minister (hereafter, OPM).
7. On 27 February 2012, the Court sent a letter to the OPM requesting additional information, namely whether the Decision is still in force.
8. On 27 February 2012, the Court sent a letter to the Applicant requesting additional information, namely whether the Applicant undertook any further step with the responsible institutions to challenge the Decision.
9. On 9 March 2012, the OPM replied that “the decision in question was made having in mind the circumstances and the conditions in that time and the same decision is still in power”. In addition, the OPM also informed that “by far did not receive any complaints related to that decision or a request to revoke the above mentioned Decision by the interested parties and from the Commission of Competition as a competent authority for the implementation of the Law No. 03/L-229 on the protection of Competition (Official Gazette No. 88, 25 November 2010)”.
10. On 19 March 2012, the Applicant’s lawyer submitted the requested additional information, explaining that the Applicant had contacted the public authorities in order to raise his concerns with regards to the Decision, but he only received verbal advices to address this issue to the Constitutional Court.
11. On 20 June 2012, 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 the facts**

12. The Applicant is the owner of the Tourist Agency “Royal Travel”, which operates in Pristina and, on 14 January 2011, the Department of Tourism within the Ministry of Trade and Industry awarded the Touristic Agency “Royal Travel” with “the license for the exercising of the Touristic activity for a 3 year period as: **Touristic Agency-Organizer**”.
13. However, on 7 November 2007, the Government of Kosovo had taken the Decision, establishing that “the Islamic Community of Kosovo is the only legitimate institution to organize the Hajj pilgrimage for the citizens of Kosovo”.
14. The Applicant alleges that the Kosovo Government decision violates Article 119.3 of the Constitution of Republic of Kosovo (hereinafter, the “Constitution”), which establishes that “actions limiting free competition through the establishment or abuse of a dominant position or practices restricting competition are prohibited, unless explicitly allowed by law”. The Applicant further claims that his “fundamental

right to work, guaranteed by Article 49.1 of the Constitution of Republic of Kosovo, was violated”.

15. In sum, the Applicant complains that the Decision violates Article 10 [Economy] and Article 119.3 [General Principles] of Chapter IX [Economic Relations] of the Constitution, since it created a dominant position for the Islamic Community as the only legitimate institution to organize Hajj pilgrimage for citizens of Kosovo.
16. The Applicant concludes requesting from the Constitutional Court of Kosovo (hereinafter, the “Court”) “to annul the Decision of Kosovo Government no. 11/279, dated 7 November 2007”.

### **Preliminary assessment of the admissibility of the Referral**

17. First of all, the Court examines whether the Applicant have fulfilled the admissibility requirements laid down by the Constitution, the Law and the Rules of Procedure. The Court considers that the Applicant justified the referral with the relevant facts and a clear reference to the alleged violations; expressly challenges the Decision as being the concrete act of public authority subject to the review; clearly points out the relief sought; and attaches the different decisions and other supporting information and documents.
18. However, in examining the deadline requirement, the Court notes that Article 56 (Earlier Cases) of the Law provides:  
*“The deadlines defined in this Law for the initiation of procedures on matters that fall under the jurisdiction of the Constitutional Court and which have arisen before the entry into force of this Law shall begin to be counted on the day upon which this Law enters into force”.*
19. On the other side, Article 49 (Deadlines) of the Law states:  
*“The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision”.*
20. Taking into account these two legal provisions, it must be concluded that the temporal jurisdiction of the Constitutional Court for earlier cases starts on the date of the Constitution entered into force, which was on 15 June 2008, and ends on 15 May 2009, meaning four months (see Article 49 of the Law) after the entering into force of the Law, which happened on 15 January 2009.
21. The Court notes that, in the case, the Decision was taken on 7 November 2007, that is to say, before the entry into force of the Constitution on 15 June 2008. The Applicant submitted his Referral on 24 November 2011.
22. Moreover, the Court observes that the the Touristic Agency “Royal Travel” was awarded with “the license for the exercising of the Touristic activity (...) as: Touristic Agency-Organizer” on 14 January 2011. The Decision was in force as of on 7 November 2007.
23. Consequently, the Decision has been taken before 15 June 2008, the date of entering into force of the Constitution. The Court cannot deal with a Referral relating to events that occurred before the entry into force of the Constitution (see, the Court’s Resolution on Inadmissibility in Case No 18/10, Denic et al of 17 August 2011).

24. The Court also reminds that the OPM informed that “by far did not receive any complaints related to that decision or a request to revoke the above mentioned Decision by the interested parties”.
25. Furthermore, Rule 36 (3) h) of the Rules foresees that “a Referral may also be deemed inadmissible” if “the Referral is incompatible *ratione temporis* with the Constitution”. Therefore, the Court considers that the Referral is out of time “*ratione temporis*”.
26. Therefore, the Court concludes that the Referral is incompatible “*ratione temporis*” with the provisions of the Constitution.

### FOR THESE REASONS

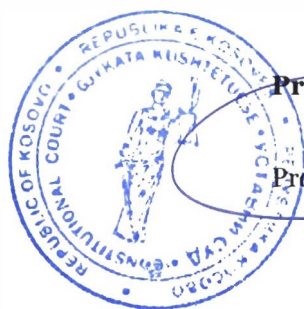
The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 49 of the Law, and Rule 56 (2) of the Rules of Procedure, on 20 June 2012, unanimously

### DECIDES

- I. TO REJECT the Referral as Inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20 (4) of the Law;
- III. This Decision is effective immediately

**Judge Rapporteur**

  
Almiro Rodrigues



**President of the Constitutional Court**

  
Prof. Dr. Enver Hasani