



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

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Pristina, 5 August 2013  
Ref.No.: RK456/13

## **DECISION ON STRIKING OUT THE REFERRAL**

in

**Case no. KI16/13**

Applicant

**Armand Morina, Director of “Morina films” from Prishtina**

**Constitutional review of the Judgment of the District Commercial Court  
in Prishtina**

**II C. no. 13/2011, dated of 28 February 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 Armand Morina from Prishtina, Director of “Morina Films” from Prishtina.

## **Subject matter**

2. On 28 September 2012, the Applicant challenges the constitutionality of the Judgment of the District Commercial Court in Prishtina, II C. 13/2011, of 28 February 2012. However, the Applicant did not specify which articles of the Constitution were allegedly breached by this judgment.

## **Legal basis**

3. The Referral is based on Articles 113.7 and 21.4 of the Constitution, Articles 20, 22.7 and 22.8 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009 (hereinafter: the Law), and Rules 32 and 56.2 of the Rules of Procedure.

## **Proceedings before the Court**

4. On 20 September 2012, the Applicant filed a Referral with the Constitutional Court of the Republic of Kosovo (hereinafter, the Court).
5. On 25 March 2013, the Constitutional Court requested the Applicant to present the status of his case before the regular Courts, and to specify which concrete articles of the Constitution were violated in his case.
6. On 16 April 2013, the Applicant requested the Court that “*the case KI 16-13 of 20 September 2012 to be temporarily withdrawn until a final decision of the Appellate Court.*”
7. On 14 June 2013, following the review of the report of Judge Rapporteur Altay Suroy, the Review Panel, composed of judges Robert Carolan (Presiding), Ivan Ćukalović and Enver Hasani, recommended to the Court the inadmissibility of the Referral.

## **Summary of facts**

8. The Applicant, as the author of the film project entitled “*Mysafir në sofër*”, was in discussion with the Ministry of Culture, Youth and Sports (hereinafter, MCYS) about possible funding this project by the Ministry.
9. In the sessions held on 27 September and 04 October 2006, the MCYS endorsed the Applicant’s film project in principle.
10. On 09 October 2006, the MCYS informed the Applicant that it shall support the film project “*Mysafir në sofër*”.



11. On 30 January 2007, the MCYS entered into a contract with the Applicant, thereby determining the obligations of both parties in the implementation of the project, and defining the amount of subsidy of the MCYS.
12. On 19 September 2008, the MCYS signed an annex to the contract with the Applicant, by which it confirmed the Ministry's readiness to fulfill the responsibilities as agreed between the MCYS and the Applicant for the implementation of the first stage of the Film Project "*Mysafir në sofër*".
13. On 20 October 2008, the MCYS transferred the funds allocated for the implementation of the first stage of the Film Project "*Mysafir në sofër*".
14. On 15 April 2010, the Permanent Secretary of the MCYS established a four-member commission to monitor the works in implementing the project "*Mysafir në sofër*".
15. On 30 June 2010, the Division of Internal Audit in the MCYS audited the documentation relative to the film project "*Mysafir në sofër*".
16. On 27 August 2010, the MCYS informed the Applicant that, based on the findings of the MCYS Audit, and the report of the MCYS Commission, a decision had been rendered to discontinue the Ministry's support to the project "*Mysafir në sofër*", thereby ordering the Applicant to return the funds allocated for the first stage of the project.
17. Meanwhile, the MCYS filed a lawsuit with the District Commercial Court, thereby demanding that the Applicant (Morina Films) "*return the subsidized amount for the realization of the film project*".
18. On 28 February 2012, the District Commercial Court in Prishtina (II.C.no.13/2011) approved as grounded the lawsuit of the MCYS, and ordered the Applicant to return to MCYS the subsidy, including the legal interests and contested procedure costs.
19. On 21 May 2012, the Applicant lodged an appeal against the District Commercial Court judgment.
20. On 22 August 2012, the District Commercial Court in Prishtina rejected the Applicant's appeal as out of time.
21. The Applicant filed an appeal with the Supreme Court of Kosovo against that decision of the District Commercial Court in Prishtina, claiming that he had lodged the appeal within the legal deadline and requesting the Supreme Court of Kosovo to quash the challenged decision.
22. The Applicant informed that the proceedings before the Supreme Court are still pending.

## Admissibility of the Referral

23. The admissibility requirements are established by the Constitution and further specified in the Law and the Rules of Procedure.

24. In this respect, the Court refers to Article 113.7 of the Constitution, which provides 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”.*

25. As stated above, the proceedings before the Supreme Court are still ongoing. Thus the Applicant has not exhausted yet all available legal remedies and the Referral is premature. Therefore, the Applicant is still entitled to submit a new Referral with the Constitutional Court, for constitutional review of the final decision of the Supreme Court, within the deadlines provided by the Law.

26. Furthermore, in order to be able to decide upon the request of the Applicant to withdraw the Referral, the Court must initially examine whether the Applicant has fulfilled the requirements as provided by Rule 32 of the Rules of Procedure.

27. Rule 32 of the Rules of Procedure of the Constitutional Court, in the part related to such examination, provides that:

*(1) A party may withdraw a filed referral or a reply at any time before the beginning of a hearing on the referral or at any time before the Court decision is made without a hearing.*

*(2) Notwithstanding a withdrawal of a referral, the Court may determine to decide the referral. [...]*

28. The Court, taking into account the above-mentioned set of circumstances, does not find any reason to decide on the Referral. Therefore, the Referral shall be struck out of the list.

## FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Article 23 of the Law and Rule 32 of the Rules of Procedure, on 14 June 2013, unanimously:

### DECIDES

- I. TO STRIKE OUT of the list the filed Referral;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 paragraph of the Law on Constitutional Court;
- IV. TO DECLARE this Decision effective immediately.

**Judge Rapporteur**

Altay Suroy



**President of the Constitutional Court**

Prof. Dr. Enver Hasani