



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

---

Prishtina, on 4 December 2017  
Ref. no.: RK 1165/17

## **RESOLUTION ON INADMISSIBILITY**

in

**Case No. KI43/17**

Applicant

**AGEH Civil Peace Service**

**Constitutional review of Decision No. 269/2015 of the Tax  
Administration of Kosovo of 30 July 2015**

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

composed of

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

### **Applicant**

1. The Referral was submitted by “AGEH Civil Peace Service” with seat in Prizren (hereinafter: the Applicant), represented by Ymer Kubati from Prizren.

## **Challenged decision**

2. The Applicant challenges constitutionality of Decision No. 269/2015 of the Tax Administration of Kosovo (hereinafter: TAK), of 30 July 2015.

## **Subject matter**

3. The subject matter of the Referral is the assessment of the TAK Decision regarding the calculation of the fines paid for tax by the Applicant.

## **Legal basis**

4. The Referral is based on Articles 21.4 and 113.7 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), Article 47 and 49 of the Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rule 29 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

5. On 13 April 2017, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
6. On 18 April 2017, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur and the Review Panel composed of Judges: Almiro Rodrigues (Presiding), Snezhana Botusharova and Arta Rama-Hajrizi.
7. On 28 April 2017, the Applicant was notified about the registration of the Referral and he was asked to complete and clarify his Referral in accordance with Rule 29 of the Rules of Procedure.
8. On 23 May 2017, the Applicant submitted the completed referral form.
9. On 24 October 2017, the Review Panel considered the report of the Judge Rapporteur, and unanimously made a recommendation to the Court on the inadmissibility of Referral.

## **Summary of facts**

10. In 2004, the Applicant requested from TAK "refund of money-reimbursement" due to incorrect calculation of fines. The Applicant alleged that from 2004 until today he had paid an excessive amount in the name of fines in the amount of 1.213,50 €.
11. From the documents submitted, it results that the case was also dealt with by the Supreme Court (Judgments A. No. 6/2005 and A. No. 2174/2007 of 17 May 2006 and 13 March 2009) which approved the Applicant's statement of claim and remanded the case for retrial to competent institutions.



12. In this context, the Court notes that the abovementioned decisions of the Supreme Court were not submitted by the Applicant.
13. Meanwhile, the Applicant had the correspondence with TAK, where in some cases he was 'notified' that his complaint had been 'carefully' reviewed and that there was no overpayment of fines.
14. On 30 July 2015, TAK (Decision No. 269/2015) rejected the Applicant's appeal as ungrounded. TAK during the analysis of the complaints found that the Applicant failed to declare the payments in time and, consequently, the penalties and interest were calculated from the information technology system. TAK explained that taxpayers who do not submit a tax declaration within a certain time limit are fined by five (5) percent for each month of unpaid tax. TAK also advised the Applicant that in accordance with the Law on Tax Administration and Procedures, he has the right within thirty (30) days to file a complaint with the Basic Court in Prishtina.

### **Applicant's allegations**

15. The Applicant alleges that: *"Received notifications on reassessment that also determine the same fines I have paid on 26.08.2004 in the total amount of 1,477.12 €, and which are in contravention with Article 5.2 and Article 5.3 of UNMIK Regulation No. 2000/20 on Tax Administration and Procedures ... Kosovo Tax Administration - The Appeals Department in Prishtina is rejecting the Referral and instructs me to address the Court."*
16. The Applicant alleges that: *"TAK did not respect Judgment A. No. 6/2005 of the Supreme Court of Kosovo... TAK did not respect its notices, which also have the same errors (with small differences in the calculation), accepted it as "ACCURATE"...Tax Administration is not interested in the implementation of legal norms, although under the Regulation 2000/20 was obliged ... TAK did not respect the Judgment A. No. 6/2005 of the Supreme Court of Kosovo... TAK did not respect the legal norms of Article 5.2 and Article 5.3 of Regulation 2000/20 and Article 7.1 of the present Regulation, did not calculate the fines foreseen by these legal norms..."*
17. Finally, the Applicant requests the Court: *"that the legal norms of Articles 5.2 and 5.3 of UNMIK Regulation 2000/20 ON TAX ADMINISTRATION AND PROCEDURES are implemented...With the implementation of these norms laws comes the conclusion that Kosovo TAK has erred in calculating penalties and interest ... in the presented statement is clearly seen according to months of fines ... Therefore, the Tax Administration of Kosovo in Prishtina should APPROVE the 'reimbursement' claim in the total amount of € 1,213.50, also calculating the penalty interest rate according to the law."*

### **Admissibility of Referral**

18. The Court first examines whether the Applicant has fulfilled the admissibility requirements established in the Constitution, foreseen in the Law and as further specified in the Rules of Procedure.

19. The Court refers to Article 113.7 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

*“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.”*

20. In this respect, the Court refers to Article 21.4 [General Principles] of the Constitution, which provides that:

*„Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable”.*

21. The Court also refers to Article 49 [Deadlines] of the Law, which provides:

*“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. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced...”*

22. The Court takes into account Rule 36 (1) (c) [Admissibility Criteria] of the Rules of Procedure, which specifies:

*“The Court may consider a referral if:*

*(...)*

*(c) the referral is filed within four months from the date on which the decision on the last effective remedy was served on the Applicant.”*

23. In the present case, the Court notes that the challenged TAK decision (Decision No. 269/2015) was pronounced and served on the Applicant on 30 July 2015; while the constitutional referral was filed on 13 April 2017.
24. In this regard, the Court notes that the constitutional referral was submitted out of the four (4) month legal deadline provided by Article 49 of the Law and further specified in Rule 36 (1) (c) of the Rules of Procedure.
25. The Court recalls that the purpose of the 4 (four) month legal time limit under Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure is to promote legal certainty, to ensure that cases raising constitutional issues are dealt with within a reasonable time and that previously rendered decisions are not endlessly open to challenge (See case of *O' Loughlin and Others v. the United Kingdom* no. 23274/04, ECtHR Decision of 25 August 2005 and *mutatis mutandis*, see case no. KI140/13, Applicant *Ramadan Cakiqi*, Resolution on Inadmissibility, of 3 March 2014).
26. The Court notes that it is the duty of the applicants or of their representatives to act with ‘*due diligence*’ to ensure that their claims for protection of rights and fundamental freedoms are filed within the legal deadline of four (4) months under Article 49 of the Law and Rule 36 (1) (c) of the Rules of



Procedure (See Constitutional Court Case KIO7/15, Applicant *Shefki Zogiani*, Resolution on Inadmissibility, §§ 46-52, with further references mentioned in that decision).

27. Based on the foregoing, the Referral was not submitted in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.
28. The Court finds that the Applicant's Referral is out of time and is to be declared inadmissible because it was not submitted in accordance with Article 49 of the Law and Rule 36 (1) (c) of the Rules of Procedure.

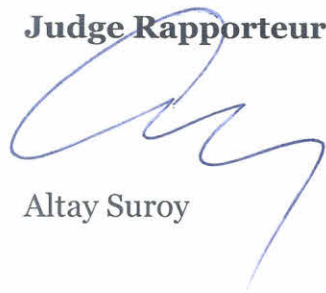
### **FOR THESE REASONS**

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 49 of the Law, and Rule 36 (1) (c) of the Rules of Procedure, on 24 October 2017, unanimously

### **DECIDES**

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law; and
- IV. TO DECLARE this Decision effective immediately;

**Judge Rapporteur**



Altay Suroy



**President of the Constitutional Court**



Arta Rama-Hajrizi