



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVO - REPUBLIC OF KOSOVO  
**GJKATA KUSHTETUESE**  
**USTAVNI SUD**  
**CONSTITUTIONAL COURT**

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Prishtina, on xx xx 2023  
Ref. no.:

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## **DECISION ON INTERIM MEASURES**

in

**Case No. KO177/23**

Applicant

**Municipality of Prizren**

**Constitutional Review of Article 5 of Law No. 08/L-224 on Amending and  
Supplementing Law No. 06/L-005 on Immovable Property Tax**

**CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO**

composed of:

Gresa Caka-Nimani, President  
Bajram Ljatifi, Deputy President  
Selvete Gërxhaliu-Krasniqi, Judge  
Safet Hoxha, Judge  
Radomir Laban, Judge  
Remzije Istrefi-Peci, Judge  
Nexhmi Rexhepi, Judge, and  
Enver Peci, Judge

### **Applicant**

1. The Referral was submitted by the Municipality of Prizren (hereinafter: the Applicant), which is represented before the Court by the lawyer Faton Fetahu, as per the Power of Attorney given by the Mayor of the Municipality of Prizren, Shaqir Totaj.

## **Challenged act**

2. The Applicant challenges the constitutionality of Article 5 of Law No. 08/L-224 on Amending and Supplementing Law No./L-005 on Immovable Property Tax (hereinafter: the contested Law).

## **Subject matter**

3. The subject matter of this Referral is the constitutional review of Article 5 of the contested Law, in relation to which the Applicant, based on the authorizations defined under paragraph 4 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, alleges that it infringes upon municipal responsibilities or diminishes the municipal revenues in contradiction to the constitutional guarantees established under paragraph 2 of Article 12 [Local Government], paragraphs 1 and 3 of Article 123 [General Principles] and paragraphs 2, 3, and 5 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).
4. Furthermore, the Applicant requests the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) to impose an interim measure, by suspending in entirety the implementation of *“Article 5 of Law No. 08/L-224 on Amending and Supplementing Law No. 06/L-005 on Immovable Property Tax until a decision is issued on the submitted request based on merits”*.
5. The Applicant also request to have a hearing held to clarify the issues related to Article 5 of the contested Law.

## **Legal basis**

6. The Referral was submitted based on paragraph 4 of Article 113 [Jurisdiction and Authorized Parties] and paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution, Articles 22 (Processing Referrals), 27 (Interim Measures), 40 (Accuracy of the Referral) and 41 (Deadlines) of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law) and Rules 25 (Filing of Referrals and Replies), 39 (Hearing), 44 (Request for Interim Measures) and 71 (Referral pursuant to paragraph 4 of Article 113 of the Constitution and Articles 40 and 41 of the Law) of the Rules of Procedure No. 01/2023 of the Court (hereinafter: the Rules of Procedure).

## **Proceedings before the Constitutional Court**

7. On 25 August 2023, the Applicant submitted the Referral to the Court.
8. On 31 August 2023, through Decision NO. GJRK-KO177/23, the President of the Court appointed Judge Bajram Ljatifi as Judge Rapporteur and the Review Panel composed of Judges: Selvete Gërxhaliu-Krasniqi (Presiding), Nexhmi Rexhepi and Enver Peci (members).
9. On 31 August 2023, the Applicant was notified of the registration of the Referral. On the same day, the Court notified of the registration of the Referral: (i) The President of the Republic of Kosovo (hereinafter: the President); (ii) The Prime Minister of the Republic of Kosovo (hereinafter: the Prime Minister); (iii) The Speaker of the Assembly of the Republic of Kosovo (hereinafter: the Speaker of the Assembly), who was asked to deliver a copy of the Referral to all the deputies of the Assembly; (iv) Ministry of Finance, Labour and Transfers; (v) Ministry of Local Government Administration,

which was asked to serve a copy of the Referral on all the mayors of the municipalities of the Republic of Kosovo; and (vi) the Ombudsperson. The Court notified the interested parties mentioned above that their comments regarding the Referral, if any, should be submitted to the Court by 26 September 2023.

10. On the same day, the Court notified the Acting Secretary General of the Assembly of the registration of the Referral and asked him to submit to the Court all the relevant documents related to the contested Law by 26 September 2023 at the latest.
11. On 1 September 2023, the Review Panel reviewed the proposal of the Judge Rapporteur regarding the decision on the interim measure. On the same day, the Court decided unanimously to (i) grant the request for a temporary measure for the period until 30 November 2023; and (ii) suspend the implementation of Article 5 of Law No. 08/L-224 on Amending and Supplementing Law No. 06/L-005 on Immovable Property Tax and the execution of decisions based on this Article until the above-mentioned deadline.

### **Summary of facts**

12. On 27 July 2023, the Assembly, with sixty-one (61) votes “for” and one (1) “abstention”, adopted the contested Law.
13. On 16 August 2023, the contested Law was published in the Official Gazette of the Republic of Kosovo and came into force on the same day, based on Article 10 (Entry into Force), which stipulates that this law “shall enter into force on the day of its publication in the Official Gazette of the Republic of Kosovo”.
14. Article 5 of the contested Law stipulates as follows:

*“Article 5*

*After Chapter II of the Basic Law, Chapter II/A shall be added with the following text:*

*CHAPTER II/A*

*PROPERTY TAX AMNESTY FOR TAX YEAR 2023*

*Article 11/A  
Eligibility*

*Every taxpayer who is obliged to pay immovable property tax for the tax year 2023 qualifies for the tax amnesty provided by the provisions of this Chapter.*

*Article 11/B*

*The amount of property tax amnesty for immovable property*

1. *The amount of property tax amnesty for all taxpayers is allowed up to the amount of the property tax invoice for the year 2023, but not more than one hundred (100) Euros pursuant to the provisions of this chapter.*
2. *The decision for the property tax amnesty is issued by the municipal assembly of each municipality no later than thirty (30) days after the entry into force of this Law, according to the restriction defined in paragraph 1 of this Article.*

3. *In case the taxpayer has paid the property tax invoice for the year 2023, the amnesty amount is calculated as an advance payment for the following years.*

*Article 11/C  
Restriction*

*The tax amnesty provided by this chapter applies only to the tax year 2023 and will not apply to any other tax year.*

*Article 11/Ç  
Management*

1. *The implementation of this chapter remains the responsibility of each municipality, responsible for management of the property tax process for immovable properties located within the territory of the municipality.*
2. *The Ministry responsible for finance issues decisions that may be necessary for the implementation of this chapter.”*

**Applicant’s allegations**

15. The Applicant, based on the authorizations defined under paragraph 4 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which allows for contesting the constitutionality of laws passed by the Assembly or acts of the Government which, according to allegations, infringe upon municipal responsibilities or diminish municipal revenues, contests the constitutionality of Article 5 of the contested Law, alleging that it (i) infringes upon municipal responsibilities and (ii) diminishes municipal revenues, among other things, arguing that property tax-related matters fall under the exclusive and full competency of the municipality and as such, they enjoy constitutional protection as defined in Articles 12, 123 and 124 of the Constitution, respectively. In this context, the Applicant presents before the Court the relevant arguments regarding (i) the inconsistency of Article 5 of the contested Law with Articles 12, 123 and 124 of the Constitution; (ii) the request for interim measures; and (iii) holding of a hearing which will be summarized below.

*(i) Regarding the inconsistency of the contested Law with the Constitution*

16. The Applicant of this Referral alleges before the Court that Article 5 of the contested Law infringes upon municipal responsibilities or diminishes municipal revenues in contradiction to the guarantees established concerning local self-government under paragraph 2 of Article 12, paragraphs 1 and 3 of Article 123 and paragraphs 2, 3 and 5 of Article 124 of the Constitution.
17. Therefore, the Applicant challenges the constitutionality of the contested Law only with respect to its content, specifically Article 5 of the same, which establishes the conditions and procedure for the immovable property tax amnesty for 2023, up to a maximum of one hundred (100) Euro. According to the Applicant, Article 5 of the contested Law imposes an obligation on municipalities, specifically Municipal Assemblies, to issue a decision regarding the immovable property tax amnesty for 2023, even though the matter of immovable property tax is an exclusive competency of the municipality, and the property tax revenues are municipal own-source revenues. This, according to the Applicant, undermines municipal competencies and diminishes municipal revenues, contrary to constitutional guarantees and applicable legislation. Furthermore, the Applicant emphasizes that Article 5 of the contested Law has “*complicated, blocked and*

*rendered impossible the implementation of the budget planned and previously approved by the applicable Law on Budget Appropriations for 2023 [...] as the financial losses resulting from the legal effect of the contested Article are extremely high*". In this context, the Applicant refers to the letter of 24 August 2023, from the Association of Kosovo Municipalities, according to which, the financial impact at the local level as a result of the implementation of Article 5 of the contested Law could amount to €27,377,896 million, while for the Applicant, it could result in the amount of €3,000.00 million.

18. The Applicant emphasizes before the Court that based on (i) Articles 12, 123 and 124 of the Constitution; (ii) the European Charter of Local Self-Government; (iii) Law No. 03/L-040 on Local Self-Government and other applicable laws, municipalities are guaranteed autonomy and independence, among other things, in the context of financial management, with regard to (i) municipal own-source revenues; (ii) government grants; and (iii) other revenues and immovable property tax category is an exclusive competency of municipalities, and the immovable property tax revenues are used by the municipality. The Applicant further contends, among other things, that since the property tax constitutes the primary municipal own-source revenue, this revenue is invoiced, collected, administered and spent solely for the municipality's planned and self-determined purposes, and not by implementing a law of the Kosovo Assembly, as in the specific case, which fundamentally not only infringes upon municipal responsibilities and the expenditures of these revenues but also diminishes them, and consequently, it violates the financial autonomy of the municipality.
19. In support of its allegations, the Applicant, in addition to the relevant articles of the Constitution governing the issue of local self-government such as Articles 12, 123 and 124 of the Constitution, also refers to Article 2 (Constitutional and legal foundation for local self-government) and Article 9 (Financial resources of local authorities) of the European Charter of Local Self-Government, as well as relevant provisions of applicable laws, including: (i) Articles 15 (Principle of Subsidiarity), 16 (Municipal Competencies) and 17 (Own Competencies) of Law No. 03/L-40 on Local Self-Government; (ii) Articles 2 (Municipal Financial Autonomy), 3 (Limitations on Municipal Financial Autonomy), 4 (Own Competencies), 7 (Municipal Financial Resources), 8 (Categories of Own-Source Revenues) and 9 (Immovable Property Tax) of Law No. 03/L-49 on Local Government Finance; and (iii) Articles 1 (Purpose), 3 (Definitions) and 4 (Revenues from immovable property tax) of Law No. 06/L-005 on Immovable Property Tax.
20. As a result, the Applicant requests the Court to (i) hold that Article 5 of the contested Law is in violation of Articles 12, 123 and 124 of the Constitution, and consequently (ii) declare the same null and void
  - (ii) *Regarding the request for an interim measure*
21. Regarding the request for imposing an interim measure, the Applicant motions the Court to suspend in entirety the implementation of *"Article 5 of Law No. 08/L-224 on Amending and Supplementing Law No. 06/L-005 on Immovable Property Tax until a decision is issued on the submitted request based on merits"*.
22. The Applicant justifies the request for imposing an interim measure with the fact that (i) the contested Law entered into force on the day of its publication in the Official Gazette on 16 August 2023; (ii) Article 5 of the contested Law, adding Chapter II/A to the Law on Property Tax, establishes the obligation for each municipality to issue a decision on property tax amnesty within a maximum of thirty (30) days from the entry into force of the contested Law; therefore, according to the Applicant (iii) the implementation of the same imposes significant financial consequences on the

Applicant and other municipalities, namely on the local government level in the Republic of Kosovo.

23. In this regard, according to the Applicant, Article 5 of the contested Law, *“with a view to the legal consequences it has caused and will cause in the future, represents the most comprehensive case when a decision on an interim measure is in the public interest and prevents irreparable harm or damages in terms of the violation of constitutional guarantees of the principles of democratic governance at the local level and exclusive competencies in managing property tax revenues”*. The Applicant also specifies that the implementation of Article 5 of the contested Law at the municipal level (i) results in concrete consequences for the effective and constitutional exercise of local power throughout the Republic of Kosovo; (ii) seriously infringes upon the constitutional order and the values on which the Republic of Kosovo stands in terms of the independence, organization and functioning of local government in relation to the central level.
24. Furthermore, the Applicant emphasizes that *“we are in an extremely difficult legal situation. On one hand, we are forced to implement Article 5 of this Law (under the pressure of the 30-day deadline, which started on 16 August 2023), and in this way, we place municipal assembly members in a situation where they cannot act and decide freely as elected officials – to vote at their own free will, but vote ‘for’ due to the politicization of this legal regulation and the financial and political implications it entails; or on the other hand, to choose the ‘violation’ of this Law and face the legal consequences therein, for not approving such a decision in the municipal assembly and bear all the legal, financial and political consequences for ‘non-compliance with the law’ in a fundamental matter of municipal own competency for which we have neither been consulted, nor have we projected budget or have been subsidized by the central government that has ‘delegated’ this obligation, but we have been harmed in the management of our own-source revenues, as they have been diminished by over €3 million”*.
25. Therefore, the Applicant requests that the Court, without prejudice to the admissibility or merits of the Referral, grant the request for an interim measure in relation to Article 5 of the contested Law until the Court’s final decision.

### **Assessment regarding the interim measure**

26. In order to assess the Applicant’s request for an interim measure, the Court first recalls the constitutional basis upon which the respective request has been submitted to the Court.
27. In this respect, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which stipulates *“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties”*.
28. Furthermore, the Court also refers to paragraph 4 of Article 113 of the Constitution, which stipulates:

*“A municipality may contest the constitutionality of laws or acts of the Government infringing upon their responsibilities or diminishing their revenues when municipalities are affected by such law or act.*
29. The Court also refers to paragraph 2 of Article 116 [Legal Effect of Decisions] of the Constitution, which stipulates:

[...]

*2. While a proceeding is pending before the Constitutional Court, the Court may temporarily suspend the contested action or law until the Court renders a decision if the Court find that application of the contested action or law would result in unrecoverable damages.*

[...].”

30. Furthermore, the Court also refers to Article 27 (Interim Measures) of the Law, which provides:

*“1. The Constitutional Court ex-officio or upon the referral of a party may temporarily decide upon interim measures in a case that is a subject of a proceeding, if such measures are necessary to avoid any risk or irreparable damages, or if such an interim measure is in the public interest.”*

31. The Court also recalls Rule 44 (Request for Interim Measures), paragraph (1) of the Rules of Procedure, which stipulates:

*“(1) At any time, as long as the Court has not rendered a decision on a referral, any party may request the imposition of interim measures regarding the issue that is a subject of the procedure before it, as stipulated by Article 27 (Interim Measures) of the Law.*

[...]

*(3) The request for interim measures must be submitted in writing, it must describe the facts related to the request, the arguments in support of the request, the measures requested and the reasonably foreseeable consequences if the request is not granted. The party requesting interim measures may attach to the request other documents and evidence that are relevant and support the request.*

[...].”

32. Finally, the Court recalls Rule 45 (Decision-making Regarding the Request for Interim Measure) of the Rules of Procedure, which specifies:

*(1) If the Judge Rapporteur appointed for the referral deems necessary to address the request for interim measure separately from the basic referral, he/she shall prepare a special report regarding the admissibility of the request for interim measure, within a reasonable period.*

*(2) [...]*

*(3) [...]*

*(4) The Review Panel shall recommend the approval in whole or in part of the request for interim measure, if it finds that:*

*(a) irreparable harm or damages will be avoided if the interim measure is granted; or*

*(b) the interim measure is in the public interest.*

*(5) [...].”*

33. In the context of the above-mentioned provisions, the Court recalls that the Applicant challenges Article 5 of the contested Law, alleging that (i) it infringes upon its responsibilities and diminishes its revenues in violation of paragraph 2 of Article 12, paragraphs 1 and 3 of Article 123, and paragraphs 2, 3 and 5 of Article 124 of the Constitution, which, among other things, stipulate that the activity of local self-government authorities is based on this Constitution and the laws of the Republic of Kosovo and complies with the European Charter of Local Self-Government; (ii) the

establishment of municipalities, their borders, competencies and the manner of their organization and operation are regulated by law; (iii) municipalities have own, expanded and delegated competencies in accordance with the law, and the state authority that delegates competencies bears the expenses for the exercise of delegation; and (iv) municipalities have the right to decide, allocate, collect and spend their revenues and receive funds from the central government in accordance with the law. The Court also recalls that the Referral was submitted by the Municipality of Prizren, based on paragraph 4 of Article 113 of the Constitution, within one (1) year after the entry into force of the legal provision, as provided for in Article 41 of the Law.

34. Regarding the request for imposing an interim measures, the Court observes that the Applicant's request for the suspension of the implementation of Article 5 of the contested Law is based, among other things, on the fact that (i) the same entered into force on the day of its publication in the Official Gazette on 16 August 2023, and it establishes an obligation for every municipality to decide on the immovable property tax amnesty within thirty (30) days from the entry into force of the contested Law, thereby affecting the responsibilities of the municipality in the context of its own competencies and diminishing its revenues; (ii) the implementation of the same causes significant financial consequences for the Applicant and other municipalities, contrary to constitutional and legal guarantees for the independent management of their own revenues; while also (iii) places municipal assembly members, as representatives elected by the citizens of the Republic of Kosovo, in the duty to vote on the immovable property tax amnesty; as well as (iv) may create legal consequences for the municipality in case of failure to take the actions specified in Article 5 of the contested Law within the specified thirty (30) day deadline, specifically issuing a decision on the immovable property tax amnesty.
35. Regarding this, based on the above-mentioned provisions of the Constitution, Law and Rules of Procedure, interim measures may be requested by the parties (i) "*regarding the issue that is the subject of the procedure before it [the Court]*", provided that the party requesting the interim measure demonstrates that (ii) the interim measure is necessary "*to prevent irreparable harm or damages*" or that the interim measure is in the "*public interest*".
36. In this regard, and in consideration of meeting the above-mentioned criteria, the Court recalls that the Applicant's Referral concerns the examination of Article 5 of the contested Law, according to which, (i) any taxpayer obliged to pay the immovable property tax for the 2023 tax year qualifies for tax amnesty; (ii) the amount of property tax amnesty for all taxpayers is allowed up to the amount of the property tax invoice for 2023 but not exceeding one hundred (100) Euro; (iii) the decision on property tax amnesty is issued by the municipal assembly of each municipality no later than 30 days from the entry into force of this law; (iv) in cases the taxpayer has paid the property tax invoice for 2023, the amnesty amount is calculated as an advance payment for the following years; (v) the implementation of this provision remains the responsibility of each municipality responsible for administering the property tax process for immovable properties located within the municipality's territory, and the responsible Ministry of Finance issues decisions that may be necessary for the implementation of this provision.
37. In this regard, the Court assesses that the allegations and facts presented by the applicant raise constitutional-level issues that, among other things, are related to the exercise and management of municipalities' own competencies, as well as their right to decide, collect and spend their revenues in accordance with the provisions of the Constitution and applicable laws in the Republic of Kosovo. Furthermore, the implementation of Article 5 of the contested Law within the specified deadlines therein, namely thirty (30) days from the entry into force of the law, (i) on the one hand, may



affect the exercise of municipal competencies regarding the immovable property tax revenues for 2023, while (ii) on the other hand, it may also affect the rights and obligations of all citizens of the Republic of Kosovo in relation to immovable property tax for 2023.

38. In the above-mentioned context, the Court assesses that, in the circumstances of the present case, the suspension of the effects of Article 5 of the contested Law may “*prevent irreparable harm or damages*” related to constitutional guarantees regarding the local self-government organization and operation as a consequence of taking actions by the local authorities in accordance with the provisions and deadlines specified in Article 5 of the contested Law. Furthermore, the constitutional review of Article 5 of the contested Law, before its implementation, is in the “*public interest*” because it serves the legal certainty concerning the legal consequences of the contested Law regarding (i) the exercise of municipal responsibilities and the management of municipal immovable property tax revenues; and (ii) the rights and obligations related to property tax for the 2023 tax year for taxpayers, namely the citizens of the Republic of Kosovo.
39. Furthermore, imposing an interim measure on Article 5 of the contested Law, namely the suspension of its effects pending the Court’s final decision, allows for avoiding the municipal responsibilities and diminishing the corresponding municipal revenues if the Court, through its final decision, finds that the above-mentioned Article is not in compliance with the Constitution. On the contrary, if the Court, following its review and final decision, finds that the above-mentioned decision is in compliance with the Constitution, municipalities will be able to implement Article 5 of the contested Law, and citizens could still benefit from the immovable property tax amnesty according to the relevant considerations and decisions of municipal assemblies, and the amnesty amount for the 2023 tax year would be calculated as an advance payment for the following years as per the provisions of the above-mentioned Article.
40. Therefore, the Court, in light of the explanations provided above, assesses that the Applicants’ request for an interim measure against the effects of Article 5 of the contested Law should be granted because it serves the opportunity to “*prevent irreparable harm or damages*” and it is therefore in the “*public interest*”. In this regard, the Court also clarifies that the suspensive effect also applies to the decisions issued by the respective municipal assemblies in the implementation of Article 5 of the contested Law. This, among other things, is because the decisions issued based on the Article which has been suspended by the Court, cannot create legal consequences if the legal provision on which they are based is suspended.
41. The Court, in conclusion, reiterates that granting the interim measure until 30 November 2023, is without prejudice in any way to the admissibility and/or merits of the Referral.

## **FOR THESE REASONS**

The Constitutional Court of the Republic of Kosovo, pursuant to Article 116 of the Constitution, Article 27 of the Law, and Rule 45 of the Rules of Procedure, on 1 September 2023, unanimously:

### **DECIDES**

- I. TO GRANT the request for interim measure for the period until 30 November 2023;
- II. TO SUSPEND IMMEDIATELY the implementation of Article 5 of Law No. 08/L-224 on Amending and Supplementing Law No. 06/L-005 on Immovable Property and the execution of decisions issued based on this Article, for the duration specified in point I;
- III. TO NOTIFY this Decision to the parties;
- IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;
- V. TO HOLD that this Decision is effective immediately.

**Judge Rapporteur**

**President of the Constitutional Court**

Bajram Ljatifi

Gresa Caka-Nimani

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