



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

Prishtina, on 22 November 2023  
Ref. no.: RK 2296/23

## **JUDGMENT**

**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 adopted in the Assembly on 27 July 2023 (hereinafter: the challenged Law).

## **Subject matter**

3. The subject matter of this Referral is the constitutional review of Article 5 of the challenged 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 with 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. In addition, 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 referral based on merits.”*
5. The Applicant also request to have a hearing held to clarify the issues related to Article 5 of the challenged 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 (Hearings), 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 Court**

7. On 25 August 2023, the Applicant submitted the Referral to the Court.
8. On 31 August 2023, by 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 about the registration of the Referral. On the same day, the Court notified about 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 Deputy Secretary General of the Assembly about the registration of the Referral and asked him to submit to the Court all the relevant documents related to the challenged law by 26 September 2023 at the latest.
11. On 1 September 2023, the Review Panel considered 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 an interim 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.
12. On 25 September 2023, the Deputy Secretary of the Assembly submitted the requested documents to the Court.
13. On 26 September 2023, the Court regarding the referral received comments from Prime Minister Albin Kurti, on behalf of the Government.
14. On 2 October 2023, the Court, regarding the aforementioned documents and comments, notified: (i) the Applicant; (ii) the President; (iii) the Prime Minister; (iv) the Speaker of the Assembly, who was asked to deliver a copy of the comments to all the deputies of the Assembly; (v) Ministry of Finance, Labor and Transfers; (vi) the Ministry of Local Government Administration, which was asked to distribute the copy of the received comments and documents to all the mayors of the municipalities of the Republic of Kosovo; (vii) the Ombudsperson and (viii) the Deputy Secretary of the Assembly. The Court notified the interested parties mentioned above that their comments regarding the received comments, if any, should be submitted to the Court by 9 October 2023. The Court, within the specified period, did not receive comments from the interested parties.
15. On 1 November 2023, the Review Panel considered the report of the Judge Rapporteur and decided to postpone the review of the referral to the next session, after the additional supplementations.
16. On 15 November 2023, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the admissibility of the Referral.
17. On the same date, the Court decided unanimously that the Referral is admissible; and that: (i) Article 5 of the challenged Law is not contrary to paragraph 2 of Article 12, paragraph 1 of Article 123 and paragraphs 2 and 5 of Article 124 of the Constitution; (ii) the remaining fifteen (15) day deadline from the thirty (30) day deadline established in paragraph 2 of Article 11/B (The amount of property tax amnesty for immovable property) of Article 5 of the challenged Law, begins to run from the day this Judgment enters into force; (iii) reject the request for a hearing; (iv) annul the Decision on Interim Measure of 1 September 2023; and that (v) this Judgment enters into force on the date of its publication in the Official Gazette of the Republic of Kosovo.

## **Summary of facts**

18. On 27 July 2023, the Assembly, with sixty-one (61) votes “for” and one (1) “abstention”, adopted the challenged Law.
19. On 16 August 2023, the challenged Law was published in the Official Gazette of the Republic of Kosovo and entered 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”.
20. Article 5 of the challenged 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 year.*

### **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**

21. The Applicant, based on the authorizations defined under paragraph 4 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, according to which it may challenge before the Court 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, challenges the constitutionality of Article 5 of the challenged 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. In this context, the Applicant presents before the Court the relevant arguments regarding (i) the incompatibility of Article 5 of the challenged 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 challenged Law with the Constitution*

22. The Applicant of this Referral alleges before the Court that Article 5 of the challenged Law infringes upon municipal responsibilities or diminishes municipal revenues in contradiction with 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.
23. The Applicant challenges the constitutionality of the challenged 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 challenged 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, among others, that Article 5 of the challenged 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 challenged Law could amount to 27,377,896 euro, while for the Applicant, it could result in the amount of 3,000,000 euro.
24. The Applicant also 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 alleges, 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.

25. 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-040 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-049 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.
26. As a result, the Applicant requests the Court to (i) hold that Article 5 of the challenged Law is in violation of Articles 12, 123 and 124 of the Constitution, and (ii) declare the same invalid and repeal it.
  - (ii) *Regarding the request for an interim measure*
27. Regarding the request for imposing an interim measure, the Applicant requests 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”.
28. The Applicant justifies the request for imposing an interim measure with the fact that (i) the challenged Law entered into force on the day of its publication in the Official Gazette on 16 August 2023; (ii) Article 5 of the challenged 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 challenged Law; therefore, according to the Applicant (iii) the implementation of the same imposes significant financial consequences on the Applicant municipality and other municipalities, namely at the local government level in the Republic of Kosovo.
29. In this regard, according to the Applicant, Article 5 of the challenged 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 own competencies in managing property tax revenues.” The Applicant also specifies that the implementation of Article 5 of the challenged 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.

30. Furthermore, the Applicant emphasizes, among other, 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”*.
31. 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 challenged Law until the Court’s final decision.
  - (iii) *regarding the request to hold the hearing*
32. Based on Rule 39 of the Rules of Procedure, the Applicant requests *“to approve the holding of the hearing regarding the need to provide a more accurate and complete overview of the relevant evidence related to the subject of the referral [...]”*
33. According to the Applicant, the hearing will help the Court to clarify all the allegations and the basis for filing them, adding that *“such a case within the meaning of Article 113.4, has not been brought before this Court so far”*, and also adding that *“the challenged decision infringes upon the legal and financial interest of all the municipalities of the Republic of Kosovo.”*

### **Comments submitted by the Government of Kosovo**

34. The Prime Minister, on behalf of the Government regarding the challenged Law and the Applicant’s allegations, submitted comments regarding (i) the purpose of the challenged Law; and (ii) the legal effects of Article 5 of the challenged Law regarding exemption from property tax including the possible financial impact of the challenged Law on the Applicant’s revenues. This is because, according to the Government, the latter does not infringe upon the competencies of the Applicant and does not diminish municipal revenues, among other things, because the property tax amnesty for the year 2023 up to one hundred (100) euro, is not binding but full discretion of the municipal assembly of each municipality.
  - (i) *Regarding the purpose of the challenged Law*
35. The Government emphasizes that the creation of the legal basis for the immovable property tax amnesty came as a result of the increase in the property tax rate after the revaluation of the immovable property value carried out in 2022 in accordance with Law no. 06/L-005 on Immovable Property Tax. In this regard, according to the Government, the facilitation of the tax burden on immovable property is not a new legislative practice. For this, the Government also refers to the legal provisions of Law

no. 05/L-043 on Public Debt Forgiveness, which enables the municipalities to repay the public debt under certain conditions.

36. The Government also emphasizes that the challenged Law was adopted based on the recommendations of some municipalities to ease the financial burden on taxpayers in relation to immovable property tax in response to the higher tax invoice that some taxpayers had to pay after property revaluation carried out during 2022. In this regard, they refer to (i) Recommendation [no. 001-011-19932] of 6 February 2023 of the Municipal Assembly of Prizren; and (ii) Recommendations [no. 060/01-2378-4/23] of 8 February 2023, of the Municipal Assembly of Dragash, through which it was recommended to the Ministry of Finance, Labor and Transfers that, among other things, initiate the amendment of Law no. 06/L-005 on immovable property tax, to allow municipalities to amnesty immovable property tax up to one hundred (100) euros for each taxpayer for the year 2023. Therefore, the comments clarify that Law no. 08/L-224 on amending and supplementing Law no. 06/L-005 on the Immovable Property Tax has been adopted to create, among other things, a legal basis to enable the forgiveness of the tax in order to ease the tax burden for the year 2023 for taxpayers.

*(ii) Regarding legal character of the challenged article on the immovable property tax amnesty*

37. The Government takes the position that the challenged Law simply creates the right, but not the obligation, for municipalities to amnesty the immovable property tax for an amount not higher than one hundred (100) euro, and therefore does not violate the financial autonomy of municipalities as claimed by the Applicant. This is because, according to the submitted comments, the challenged article uses permissive language, as opposed to mandatory language, to emphasize the discretionary, non-mandatory nature of the Applicant's decision, namely the municipal assemblies, to authorize the immovable property tax amnesty.
38. The Government's comments, among other, also emphasize that municipalities, as units of local self-government, are allowed, but not obliged by law, to authorize such tax amnesty, stressing that Article 11/B "*does not mandate obligations, but uses permissive and discretionary language*". According to the Government, the non-mandatory nature of the challenged article is also confirmed by the fact that the decision to authorize or not the tax amnesty, according to the challenged Law, is taken by the municipal assembly of each municipality. In this regard, according to them, the decision to amnesty or not belongs to the highest body of elected representatives, namely the municipal assembly, and is in accordance with paragraph 2 of Article 123 of the Constitution and Article 3 (Definitions) of Law no. 03/L-040 on Local Self-government and does not derive from the obligation defined by the Ministry.
39. Further and to highlight the non-binding nature of the decision on the immovable property tax amnesty, the Government also refers to the letter/e-mail of 21 August 2023, entitled "*Information about Property Tax Amnesty*" sent by the Ministry of Finance, Labor and Transfers, to the municipalities of Kosovo, after the entry into force of the challenged Law, according to which "*the Municipal Assembly of each municipality can issue a Decision about the amnesty of up to one hundred 100 euro until 15.09.2023 [...] After the lapse of this legal deadline, the amnesty of 100 euro will not be allowed*".
40. Regarding the allegation of financial impact of the challenged Law on the revenues of the municipality of Prizren, the Government qualifies the latter as argument "*the decrease in revenues of 3 million euros remains unsupported and speculative. Throughout fiscal year 2022, property tax revenues for the Applicant were 2.57*



million euros. Whereas, for the fiscal year 2023, for the period January-August, the revenues collected from the property tax are 2.87 million euros. This means that the level of the entire year 2022 has already been exceeded by 300 thousand euros in terms of the collection of revenues from property tax. Therefore, the eventual decision to forgive a part of the tax burden would not have negative impacts for the current fiscal year.”

41. In conclusion, the Government requests the Court to hold that the Applicant’s allegations are manifestly ill-founded and that the challenged Law is in accordance with the Constitution , declaring the referral inadmissible.

## **Relevant constitutional and legal provisions**

### **THE CONSTITUTION OF THE REPUBLIC OF KOSOVO**

#### **Article 12 [Local Government]**

1. *Municipalities are the basic territorial unit of local self-governance in the Republic of Kosovo.*
2. *The organization and powers of units of local self-government are provided by law.*

#### **Article 123 [General Principles]**

- The right to local self-government is guaranteed and is regulated by law.*
2. *Local self-government is exercised by representative bodies elected through general, equal, free, direct, and secret ballot elections.*
  3. *The activity of local self-government bodies is based on this Constitution and the laws of the Republic of Kosovo and respects the European Charter of Local Self-Government. The Republic of Kosovo shall observe and implement the European Charter on Local Self Government to the same extent as that required of a signatory state.*
  4. *Local self-government is based upon the principles of good governance, transparency, efficiency and effectiveness in providing public services having due regard for the specific needs and interests of the Communities not in the majority and their members.*

#### **Article 124 [Local Self-Government Organization and Operation]**

1. *The basic unit of local government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-governance and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodies.*
2. *Establishment of municipalities, municipal boundaries, competencies and method of organization and operation shall be regulated by law.*
3. *Municipalities have their own, extended and delegated competencies in accordance with the law. The state authority which delegates competencies shall cover the expenditures incurred for the exercise of delegation.*
4. *Municipalities have the right of inter-municipal cooperation and cross-border cooperation in accordance with the law.*

5. *Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate funding from the central government in accordance with the law.*

6. *Municipalities are bound to respect the Constitution and laws and to apply court decisions.*

7. *The administrative review of acts of municipalities by the central authorities in the area of their own competencies shall be limited to ensuring compatibility with the Constitution of the Republic of Kosovo and the law.*

## **EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT**

[adopted by the Council of Europe on 15 October 1985]

### **Article 2**

#### **[Constitutional and legal foundation for local self-government]**

*The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.*

### **Article 3**

#### **[Concept of local self-government]**

1. *Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population [...]*

### **Article 4**

#### **[Scope of local self-government]**

1. *The basic powers and responsibilities of local authorities shall be prescribed by the Constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.*
2. *Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.*
3. *Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.*
4. *Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.*
5. *Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.*

6. *Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.*

### **Article 9** **[Financial resources of local authorities]**

1. *Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.*

2. *Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.*

3 *Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.*

4 *The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.*

5 *The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.*

6 *Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.*

7 *As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.*

8 *For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.*

## **Law No. 03/L-040 on Local Self Government**

### **Article 3** **Definitions**

[...]

*“Own competencies”- shall mean competencies vested upon the municipalities by the Constitution or laws for which they are fully responsible in insofar as they concern the local interest and in accordance with the law.*

### **Article 15** **Principle of Subsidiary**

*The municipalities shall exercise its competences in accordance with the principle of subsidiary.*

## **Article 16 Municipal Competencies**

*Municipalities shall exercise own, delegated and enhanced competencies in accordance with the law.*

## **Article 17 Own Competencies**

*Municipalities shall have full and exclusive powers, insofar as they concern the local interest, while respecting the standards set forth in the applicable legislation in the following areas:*

- a) local economic development;*
- b) urban and rural planning;*
- c) and use and development;*  
*[...]*
- s) any matter which is not explicitly excluded from their competence nor assigned to any other authority;*

## **Law no. 03/L-049 on Local Government Finance**

### **Article 2 Municipal Financial Autonomy**

- 1.1 Kosovo municipalities shall be entitled, within national economic policy and having due regard for the municipalities and the central government fiscal sustainability, to adequate financial resources of their own that they may dispose of freely in the discharge of their municipal competencies in accordance with the applicable laws of Kosovo.*
- 1.2 Municipal financial resources shall be commensurate with municipal competencies provided for by the Constitution and the LLSG.*

### **Article 3 Limitations of Municipal Financial Autonomy**

*With exception of a tax on immovable property within its borders, a municipality shall have no authority to, and shall not assess, levy or collect any other duties or taxes. This prohibition applies to, but is not limited to, customs and other duties, taxes on the revenues of persons, value-added taxes, excise taxes, taxes on capital, and any charge having an equivalent effect as the aforementioned duties and taxes; provided, however, that this prohibition shall not apply where the municipality is fulfilling a function or responsibility that has been formally and lawfully delegated to it by the Government.*

### **Article 4 Own Competencies**

*The principle of municipal financial autonomy shall be applied with respect to the financing and implementation of a municipality's own competencies; provided, however, that such financing and implementation must be done in the interest of the municipality's population, and in accordance with the standards and requirements applicable to such competencies established by law.*

## **Article 8 Categories of Own Source Revenues**

*Any revenues collected or received by a municipality under the authority of a law from the following sources shall be such municipality's own source revenues:*

- a) municipal taxes, fees, user charges, other payments for public services provided by the municipality, and regulatory charges and fines authorized by the present law; [...]*
- i) any other category of revenue that is designated as municipal own source revenue in a law of the Republic of Kosovo.*

## **CHAPTER II Municipal Taxes and Fees**

### **Article 9 Immovable Property Tax**

*A municipality shall have the authority to collect a tax on immovable property located within its boundaries in accordance with and to the extent provided for in UNMIK Regulation 2003/29.*

### **Law no. 06/L-005 on Immovable Property Tax**

#### **Article 4 Revenues from immovable property tax**

*Revenues collected from immovable property tax are allocated for the account of the Municipality in the territory of which the immovable property is located and shall be used by the Municipality in accordance with legal provisions in force on local government finance.*

### **Admissibility of the Referral**

- 42. The Court first examines whether the Referral submitted to the Court has fulfilled the admissibility requirements established in the Constitution, and further specified in the Law and the Rules of Procedure.
- 43. The Court, in this respect, first refers to paragraphs 1 and 4 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which establishes:

*"1. The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties."  
[...]*

*“4. 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.”*

44. The Court also refers to Articles 40 [Accuracy of the Referral] and 41 (Deadlines) of the Law, which stipulate:

Article 40  
(Accuracy of the Referral)

*“In a referral made pursuant to Article 113, Paragraph 4 of the Constitution, a municipality shall submit, inter alia, relevant information in relation to the law or act of the government contested, which provision of the Constitution is allegedly infringed and which municipality responsibilities or revenues are affected by such law or act.”*

Article 41  
(Deadlines)

*“The referral should be submitted within one (1) year following the entry into force of the provision of the law or act of the government being contested by the municipality”.*

45. While, at the end, the Court also refers to Rule 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), which specifies that:

*“(1) A referral filed under this Rule must fulfil the criteria established in paragraph (4) of Article 113 of the Constitution and Articles 40 (Accuracy of the Referral) and 41 (Deadlines) of the Law.*

*(2) In a referral pursuant to this Rule, a municipality must, inter alia, submit the following information:*

*(a) Relevant information in relation to the law or act of the government contested;*

*(b) The provision of the Constitution which is allegedly infringed; and*

*(c) The municipal responsibilities infringed upon, or the revenues of the municipality diminished, municipalities are affected by such law or act.*

*(3) The referral under this Rule must be filed within one (1) year following the entry into force of the provision of the law or act of the Government being contested.”*

46. Based on the aforementioned provisions of the Constitution, the Court emphasizes that referrals submitted to the Court based on paragraph 4 of Article 113 of the Constitution must meet the following constitutional criteria: (i) the municipality must be an authorized party; (ii) the municipality must challenge the constitutionality of a law of the Assembly or of an act of the Government; and (iii) the municipality must specify (argue) that the law or the challenged act violates municipal responsibilities or diminishes its revenues; and (iv) the municipality must submit the referral within the time limit set by law. These conditions must be fulfilled cumulatively (see, *inter alia*, the Court case KO173/21 with the Applicant, *Municipality of Kamenica*, Judgment of 7 December 2022, paragraph 93).

47. Regarding the above, the Court notes that (i) based on paragraph 4 of Article 113 of the Constitution, the Municipality of Prizren is authorized to challenge before the Court the constitutionality of laws or acts of the Government, which violate municipal responsibilities or diminish revenues of the municipality, in case the respective municipality is affected by that law or act; (ii) the Applicant challenges Article 5 of Law no. 08/L-224 on Amending and Supplementing the Law no. 06/L-005 on Immovable Property Tax, adopted by the Assembly on 27 July 2023; (iii) the Applicant has specified which of its competencies have allegedly been violated or its revenues have been diminished by the challenged act; as well as (iv) submitted its Referral within one (1) year deadline stipulated by the Law and the Rules of Procedure.
48. Therefore, the Court declares the referral admissible and will further examine its merits.

## **Merits of the Referral**

### **I. Introduction**

49. The Court recalls that the Applicant's Referral is subject to consideration of Article 5 of the challenged Law, according to which, (i) any taxpayer who is obliged to pay immobile property tax for the tax year 2023, qualifies for the tax amnesty; (ii) 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) euro; (iii) the decision to forgive the property tax is taken by the municipal assembly of each municipality no later than 30 days after the entry into force of this law; (iv) in case the taxpayer has paid the property tax invoice for the year 2023, the amount forgiven is calculated as an advance for the following years; (v) the tax amnesty applies only to the tax year 2023; and (vi) the implementation of this provision remains the responsibility of each municipality responsible for the administration of the property tax process for immovable properties located within the territory of that municipality and the Ministry responsible for finance issues decisions that may be necessary for the implementation of this provision.
50. In this regard, the Court recalls that the Applicant claims that Article 5 of the challenged Law violates his 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, and which, among other things, establishes that (i) the activity of local self-government bodies is based on the Constitution and the laws of the Republic of Kosovo and respects the European Charter of Local Self-Government; (ii) the establishment of municipalities, their boundaries, competencies and the manner of their organization and operation are regulated by law; (iii) the municipalities have their own, expanded and delegated competencies in accordance with the law and the state authority that delegates the competencies bears the expenses for the exercise of the delegation; (iv) municipalities have the right to decide, assign, collect and spend their own revenues as well as receive funds from the central government, in accordance with the law; and (v) in accordance with the Law on Local Self-Government, the Law on Local Government Finance and the Law on Immovable Property, property tax revenues are revenues of the municipality and the latter have the right to spend the tax revenues on property according to their planning .
51. The Government, on the other hand, emphasizes that Article 5 of the challenged Law (i) aims to create the basis for immovable property tax amnesty for the year 2023 in order to reduce the tax burden for tax payers, as a result of the increase in of the property tax rate after the revaluation of the value of immovable property carried out in 2022, as well as according to the recommendations of some municipalities to ease the financial burden

on taxpayers in relation to the tax on immovable property in response to the higher tax invoice that some taxpayers had to pay after the revaluation of the property; (ii) respects the municipal competencies, given that the decision to forgive or not forgive the property tax up to the specified amount belongs to the highest body of elected representatives, the Municipal Assembly, in accordance with paragraph 2 of Article 123, of the Constitution and Article 3 of Law no. 03/L-040 on Local Self-government (iii) the latter does not diminish municipal revenues as it creates the right, but not the obligation, for municipalities to immovable property tax amnesty for an amount not greater than one hundred (100) euro; and that (iv) about the non-binding nature of the challenged article, the municipalities were notified by the letter (e-mail) sent by the Minister of Finance “*Information about Property Tax Amnesty*”, of 21 August 2023.

52. The Court, also, based on the documents submitted before it, notes that the challenged Law was preceded by, among other things, the recommendations of some municipalities to ease the financial burden for taxpayers in relation to the tax on immovable property in response to the highest recent tax invoice that some taxpayers had to pay after the revaluation of the property conducted during the year 2022, including the Recommendation [no. 001-011-19932] of 6 February 2023 of the Municipal Assembly of Prizren itself, where the initiation of the amendment of the Law on Immovable Property Tax was recommended.
53. Furthermore, the Court also notes that by the letter/e-mail of 21 August 2023, entitled “*Information about Property Tax Amnesty*” sent by the Ministry of Finance, Labor and Transfers, to the municipalities of Kosovo, after the entry into force of the challenged Law, the municipalities were informed that “*the Municipal Assembly of each municipality can issue a Decision about the amnesty of up to one hundred 100 euro until 15.09.2023 [...] After the lapse of this legal deadline, the amnesty of 100 euro will not be allowed*”.
54. The Court emphasizes that the constitutional issue that this referral involves is related to (i) the exercise of the municipalities’ competencies according to the guarantees established in articles 12, 123 and 124 of the Constitution, respectively; as well as (ii) their right to decide, collect and spend their own revenues according to the provisions of the Constitution and applicable laws in the Republic of Kosovo.
55. In addressing the aforementioned allegations, raised in this referral, the Court first recalls its jurisdiction stipulated by paragraph 4 of Article 113 of the Constitution, which provides :

*“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.”*
56. Following this, the Court placing the emphasis on “*infringement of municipal responsibilities*” and “*reduction of municipal revenues*” recalls that the Court's jurisdiction based on paragraph 4 of Article 113 of the Constitution extends to the assessment of laws or acts , namely the assessment of whether through these acts the municipal responsibilities have been violated or whether the revenues of the municipality have been reduced provided by Chapter X [Local Government and Territorial Organization] of the Constitution, namely its articles 123 and 124, which establish that these responsibilities or competencies are regulated by the legislation in force. More specifically, in implementing this assessment, the Court must determine that in the circumstances of the present case whether the challenged Article has violated the Applicant’s responsibilities and/or diminished its revenues, which are specified in



the relevant legislation in force, including the Law on Local Self-Government and on Property Tax Law.

57. Therefore and furthermore, the Court in addressing and assessing the constitutionality of the challenged article, in the circumstances of the present case will elaborate: (i) the general principles related to Local Self-Government according to (a) the Constitution of the Republic of Kosovo; (b) the European Charter of Local Self-Government; (c) the relevant legal framework regarding the competencies of municipalities in the field of property tax; to further proceed with (ii) the application of these principles in the constitutional review of the provisions of the challenged Law, namely if through these provisions the responsibilities or the revenues of the Applicant have been diminished.

## **II. General principles regarding Local Self-Government according to the Constitution, the European Charter of Local Self-Government, the Venice Commission and the laws in force in the Republic of Kosovo**

58. The Court first notes that the general principles related to local self-government according to: (i) the Constitution; (ii) European Charter for Local Self-Government; (iii) the Venice Commission: and (iv) the applicable legal framework, has elaborated through its judgments in the cases: (i) [KO145/21](#), Applicant *Municipality of Kamenica*, Judgment of 10 March 2022; (ii) [KO173/21](#), Applicant *Municipality of Kamenica*, Judgment of 7 December 2022; (iii) [KO159/21 and KO160/21](#), Applicant *Municipality of Prishtina*, Judgment of 23 May 2023; and (iv) [KO164/21](#), Applicant *Municipality of Prishtina*, Judgment of 22 May 2023. In the aforementioned Judgments, the Court has addressed the issue of municipal competences among other things, differently from the circumstances of the present case, has addressed the issue of municipal competencies in the context of the administrative review of municipal acts by the central authorities, the review which, based on the Constitution, is limited to ensuring compliance with the Constitution and the applicable law . However, insofar as they are relevant to the present case, the Court will summarize the same principles below and will further elaborate the principles related to the competencies and expenditure of municipal revenues in the context of immovable property tax.
59. In this context, the Court also clarifies that in the aforementioned cases, unlike the circumstances of the present case, the latter did not assess the constitutionality of the laws with the Constitution but assessed the constitutionality of sub-legal acts of the executive power in implementation of the applicable laws. In the present case, the Court, within the framework of paragraph 4 of Article 113 of the Constitution, for the first time assesses the merits whether a law of the Assembly infringes upon the competences and/or diminishes the revenues of the municipalities.

### ***a) General principles related to local self-government according to the Constitution and the European Charter for Local Self-Government***

60. The Court initially recalls that the Constitution, in its Chapter I [Basic Provisions] has also granted special regulation to the local government. More specifically, Article 12 [Local Government] of the Constitution in paragraph 1 establishes that “*Municipalities are the basic territorial unit of local self-governance in the Republic of Kosovo*” and in paragraph 2 that “*The organization and powers of units of local self-government are provided by law.*”
61. The Court further emphasizes that Chapter X [Local Government and Territorial Organization] of the Constitution, namely paragraph 1 of Article 123 [General Principles] stipulates that: “*The right to local self-government is guaranteed and is regulated by law*” whereas paragraph 2 stipulates “*Local self-government is exercised*

*by representative bodies elected through general, equal, free, direct, and secret ballot elections.”*

62. Furthermore, paragraph 4 of Article 123 of the Constitution sets out the principles on the basis of which local self-government is exercised, namely on the basis of: (i) good governance; (ii) transparency; (iii) efficiency; and (iv) effectiveness in providing public services, having due regard for the specific needs and interests of the Communities not in the majority and their members. In relation to the latter, the Court stresses that the aim of the principles of efficiency and effectiveness of local government is closely related to the principle of subsidiarity, which principle implies that local self-government in some public policy sectors is much more efficient and effective than if the competence for them were entrusted to central bodies (see, *inter alia*, cases of the Court KO145/21, cited above, paragraph 136; KO173/21, cited above, paragraphs 130 and 131; KO159/21 and KO160/21, cited above, paragraphs 73 and 74).
63. Moreover, the Court also refers to paragraphs 3 and 5 of Article 124 [Local Self-Government Organization and Operation] of the Constitution, which stipulate :
- [...]
3. *Municipalities have their own, extended and delegated competencies in accordance with the law. The state authority which delegates competencies shall cover the expenditures incurred for the exercise of delegation.*
- [...]
5. *Municipalities have the right to decide, collect and spend municipal revenues and receive appropriate funding from the central government in accordance with the law.*
- [...].
64. In this regard, the Court emphasizes the fact that paragraph 3 of Article 124 of the Constitution establishes that the municipalities have (i) independent ; (ii) extended; and (iii) delegated competencies, which is further defined at the level of the law, while paragraph 5 of the same article defines an important principle regarding the revenues of the municipality and their management, clearly defining that the municipalities have the right, among others , (i) to decide (ii) to appoint; (iii) collect; and (iv) to spend their income, in accordance with the law. Therefore, the Court emphasizes that in relation to the own revenues which are established by law, the right to collect and spend their revenues also belongs to the municipalities within the conditions determined by law, whereas paragraph 2 of Article 123 of the Constitution clearly defines that local self-government is exercised “*by representative bodies elected through general elections*”, equal, free and direct and secret ballot, in this case, the municipal assembly, whose members are not subject to any binding mandate.
65. Regarding the European Charter of Local Self-Government, the Court first emphasizes that the Constitution in paragraph 3 of its Article 123 has established that: “*The activity of local self-government bodies [...] respects the European Charter of Local Self-Government.*” Furthermore, in paragraph 3 of Article 123 of the Constitution it is foreseen that: “*The Republic of Kosovo shall observe and implement the European Charter on Local Self Government to the same extent as that required of a signatory state*”. In this regard, the European Charter of Local Self-Government in its very introduction defines that: “[...] *considering that the local authorities are one of the main foundations of any democratic regime*” and “*the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared*” (see Court cases KO145/21, cited above, paragraph 141; KO173/21, cited above, paragraphs 132 and 135; KO159/21 and KO160/21, cited above, paragraph 78).

66. In addition, the European Charter of Local Self-Government defines the principle of subsidiarity, a principle that enables the decentralization of power to the level closest to the citizen. The European Charter of Local Self-Government in its preamble defines that: *“Considering that the local authorities are one of the main foundations of any democratic regime”* and *“the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared”*.
67. In this line, the Court recalls that Article 3 (Concept of local self-government) of the European Charter of Local Self-Government deals with the concept of local self-government, defining in paragraph 1 of this article that:
- “Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.”*
68. Furthermore, paragraph 2 of Article 4 of the European Charter of Local Self-Government establishes that: *“Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority”*.
69. In addition, paragraph 4 of Article 4 [Scope of local self-government] of the European Charter of Local Self-Government stipulates that:
- “Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.”*
70. More specifically and in relation to the revenues of local authorities, the Court recalls that Article 9 [Financial resources of local authorities] of the Charter determines, among other things, in paragraphs 1, 2, and 3 that local authorities have the right (i) *“to adequate financial resources of their own, of which they may dispose freely within the framework of their powers”*; (ii) *“Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law”*; and (iii) *“Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate”*.
71. Therefore, referring to articles 12, 123 and 124 of the Constitution and the aforementioned principles deriving from the European Charter of Local Self-Government, the Court notes that:
- (i) the basic unit of local self-government in the Republic of Kosovo is the municipality;
  - (ii) municipalities have: (a) independent; (b) extended; and (c) delegated competences, which are further defined by law; and
  - (iii) municipalities, in relation to their competencies, have the right to (a) decide; (b) appoint; (c) collect; and (d) spend and possess their revenues freely, having regard to the local interest.
72. Therefore, the Court notes that, as stated above, paragraph 2 of Article 12, paragraph 1 of Article 123, as well as paragraphs 2 and 5 of Article 124 of the Constitution, refer to the competences of the municipality but as defined *“by law”* issued by the Assembly of the Republic of Kosovo as a legislative body. Therefore, the Court in the following will be clarified the legislation in force that govern the issue of setting, collecting and spending the tax on immovable property, to further proceed with the assessment of whether the

challenged article infringes upon the competencies or diminishes the revenues of the Applicant, as the latter alleges.

***b) Legislation in force in the Republic of Kosovo regarding the competencies of municipalities in the field of property tax***

73. In light of the above, and based on the circumstances of the present case, the Court notes that the primary law that defines the competencies of municipalities is the Law on Local Self-Government. This law in Article 2 (Scope) determines that through it: *“...defines the legal status of municipalities, their competencies and general principles of municipal finances, organization and functioning of the municipal bodies, the intra-municipal arrangements and the inter-municipal cooperation including the cross border cooperation and the relationship between municipalities and central government”*.
74. In this respect, the Court notes that the Law on Local Self-Government in Article 16 (Municipal Competencies) has established that municipalities, among others, are bearers of their own competencies in some of the fields and as such, these competencies according to Article 17 (Own Competencies) of the aforementioned Law they exercise *“full and exclusive”* powers in terms of local interest. While in Article 15 (Principle of Subsidiarity) of the aforementioned Law it is stipulated that: *“The municipalities shall exercise its competences in accordance with the principle of subsidiary”*.
75. More specifically, it is Article 17 (Independent Competencies) of the Law on Local Self-Government which defines the own competencies of municipalities, and within these competencies, the paragraph includes:
- “a) local economic development;*
  - b) urban and rural planning;*
  - c) land use and development;*
  - [...]*
  - s) any matter which is not explicitly excluded from their competence nor assigned to any other authority;”*
76. In this regard, the Court refers to Article 3 (Definitions) of the Law on Local Self-Government, which defines *“Own competencies”- shall mean competencies vested upon the municipalities by the Constitution or laws for which they are fully responsible in insofar as they concern the local interest and in accordance with the law.”*
77. More specifically, the Court notes that the issue of property tax and the competencies of municipalities in relation to it are regulated by two (2) laws and that (i) Law no. 03/L-049 on Local Government Finance and (ii) Law no. 06/L-005 on Immovable Property Tax, as a basic law related to property tax, which is completed through the challenged Law.
78. In this context, the Court notes that Article 3 (Limitations of Municipal Financial autonomy) of the Law on Local Government Finance includes the assignment and collection of immovable property tax as part of the municipalities’ authorizations, since the latter, among other things, defines that *“With exception of a tax on immovable property within its borders, a municipality shall have no authority to, and shall not assess, levy or collect any other duties or taxes. [...]”* Furthermore, the Court refers to Article 9 (Immovable Property Tax) of the Law on Local Government Finance, which stipulates that *“A municipality shall have the authority to collect a tax on immovable property located within its boundaries [...]”*.

79. Furthermore, and in the context of the collection and use of property tax revenues, the Court also refers to Article 4 (Revenues from immovable property tax ) of Law no. 06/L-005 on Immovable Property Tax, which determines that *“Revenues collected from immovable property tax are allocated for the account of the Municipality in the territory of which the immovable property is located and shall be used by the Municipality in accordance with legal provisions in force on local government finance.”*
80. Therefore, the Court notes that based on the aforementioned constitutional and legal provisions, the property tax is (i) the competence of the municipality which the municipalities exercise *“full and exclusive”* in terms of local interest; (ii) the revenues from the tax on immovable property are revenues of the municipality; and also based on the clear language of paragraph 5 of Article 124 of the Constitution *“Municipalities have the right to decide, collect and spend municipal revenues [...] in accordance with the law”*, and therefore (iii) the revenues from property tax is collected and used by the municipality, for local interest and in accordance with the legislation on public finance and the conditions defined in the legislation in force.
81. Therefore, taking into account the aforementioned findings of the Court, and based on the circumstances of the present case, the latter will assess below whether Article 5 of the challenged Law results in the infringement or reduction of the Applicant’s revenues, in relation to the revenues from the immovable property.

### **III. If the challenged law infringes upon the competencies of the municipality or diminishes the revenues of the municipality**

82. The Court reiterates once again that Article 5 of the challenged Law adds Chapter II/A (A property tax amnesty for tax year 2023) to the Basic Law on Immovable Property Tax, which contains four (4) ) articles, namely articles 11/A, 11/B, 11/C, 11/Ç, which regulate, among others (i) the property tax amnesty; (ii) modalities for benefiting from amnesty; (iii) the amount of the amnesty; as well as (iv) the administration of the property tax amnesty process including the role of municipalities, namely municipal assemblies in this process.
83. More specifically, the Court recalls that Article 5 of the challenged Law, establishes that (i) every taxpayer who is obliged to pay immovable property tax for the tax year 2023 qualifies for the tax amnesty; (ii) 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) euro; (iii) 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; (iv) 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; (v) the tax amnesty provided by this chapter applies only to the tax year 2023; and (vi) 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 and the Ministry responsible for finance issues decisions that may be necessary for the implementation of this chapter.
84. In the context of the interpretation of Article 5 of the challenged Law and its compliance with the Constitution, the Court first refers to its case law in case KO72/20, where it stated that *“The norms provided by the Constitution should be read in relation to each other and not isolated from each other. Only in this way is the correct understanding of certain constitutional norms is derived and it is possible for the Court to interpret ambiguities regarding the application of constitutional*

*competencies in accordance with the purpose and spirit of the Constitution*” (see, among other, the case of the Court [KO72/20](#), Applicant, *Rexhep Selimi and 29 other deputies of the Republic of Kosovo*, Judgment of 28 May 2020, paragraph 475).

85. The Court emphasizes that the same principles should also be applied in relation to the laws and its provisions which should be read in connection with each other in order to derive the correct meaning of certain norms. Therefore, even in the present case, the Court will adhere to these principles, assessing the challenged article in its entirety, emphasizing that the definitions the latter contains must be read in relation to each other, but also in relation to the provisions of the Law on Local Government Finance, the Law on Immovable Property Tax, and especially, in relation to (i) paragraph 5 of Article 124 of the Constitution, which stipulates that “*municipalities have the right to decide, collect and spend municipal revenues [...] in accordance with the law*”. and (ii) paragraph 2 of Article 123 of the Constitution, according to which “*local self-government is exercised by representative bodies elected through general elections*” in this case, the municipal assembly, whose representatives are not subject to any mandate during decision-making in the exercise of their competencies established by law,
86. In this regard, the Court notes that Article 11/A of the challenged Law first establishes that any taxpayer who is obliged to pay immovable property tax for the tax year 2023 “*qualifies*” for the immovable property tax amnesty.
87. However, Article 11/B of this chapter establishes that the amount of property tax amnesty for all taxpayers is allowed up to the amount of the property tax invoice for 2023, but not more than the amount of the invoice for 2023 and no more than one hundred (100) euro. Therefore, the Court notes that Article 11/B of the challenged Law, in paragraph 1, uses two (2) important definitions regarding the property tax amnesty, namely, the latter (i) stipulates that the amount of the amnesty is “*allowed*”, and it up to the specified amount, therefore but not limiting the minimum amount of the property tax amnesty; while (ii) according to the provisions of paragraph 2 of Article 11/B, the amnesty is conditional, with the decision-making for the amnesty of the property tax being taken by the municipal assembly of each municipality within a maximum period of thirty (30) days from the entry into force of the challenged law. Moreover, Article 11/Ç thereof, determines that (iii) it remains the responsibility of each municipality to administer the property tax process for immovable properties located within the territory of the municipality.
88. In addition, based on the provisions of the Law on Local Government Finance and the Law on Immovable Property Tax, it results that the collection and expenditure of income from immovable property tax are the competence of the municipalities, which are “*full and exclusive*” and which according to the aforementioned laws and as it results from paragraph 5 of Article 124 of the Constitution “*Municipalities have the right to decide, collect and spend municipal revenues [...] in accordance with the law*”.
89. Therefore, in reading the aforementioned provisions, the Court notes that, although Article 11/A, establishes (i) that every taxpayer “*qualifies*” for property tax amnesty, this amnesty is conditional on the provisions of Article 11/B that establishes (ii) the possibility and not necessarily the obligation of the municipal assembly, to decide whether within thirty (30) days from its entry into force, it will decide not only whether or not to waive the property tax for the year 2023, but also to determine the specific amount of amnesty for each taxpayer within the respective municipality, provided that this amount does not exceed the amount of the invoice for the year 2023 nor the amount of one hundred (100) euros, as defined by paragraph 1 of Article 11/B of the challenged Law. While according to paragraph 3 of the same Article, in case the taxpayer has paid

the property tax invoice for the year 2023, this amount is calculated as an advance for the following years.

90. Therefore, the Court assessing Article 11/A and Article 11/B in connection with each other, and in connection with the provisions of the Law on Local Government Finance and the Law on Immovable Property Tax, specifies that the challenged article (i) creates the legal basis for the property tax amnesty; (ii) the decision to property tax amnesty belongs to the municipal assembly of each municipality; (iii) the amount for the property tax amnesty for the year 2023 is determined by the municipal assembly, but the latter cannot exceed the amount of the property tax invoice for the year 2023 nor the amount of one hundred (100) euro; (iv) municipalities have the right, but not the obligation, to property tax amnesty according to the aforementioned provisions, within thirty (30) days from the entry into force of the challenged Law; and (v) if the municipal assemblies do not take such action within this period, they cannot do so after the expiration of the legal period.
91. Based on the above-mentioned clarifications, the Court notes that , Article 5 of the challenged Law does not infringe upon the municipal responsibilities or diminish the revenues of the municipality defined by the Constitution, and other legislation in force regarding the competencies of the municipality to decide, collect and spend the tax on immovable property within their municipality, due to the fact that as long as the latter (i) creates the legal basis for the property tax amnesty and is a discretionary but also provisional provision considering that it applies (a) only for the tax year 2023; (ii) it belongs to the municipal assembly of each municipality as “*representative body elected in elections [...]*”, in this case also the Applicant, using their discretion and decision-making autonomy, in harmony with paragraph 2 of Article 123 of the Constitution, to decide within thirty (30) days from the entry into force of the challenged Law to exercise the discretion enabled by the challenged legal provision . .
92. This interpretation is in harmony with the autonomy of local government established in Articles 12, 123 and 124 of the Constitution, the principles deriving from the European Charter of Local Self-Government, and the legislation in force including the Law on Local Self-Government, the Law on Local Government Finance, and the Law on Immovable Property Tax, according to which and based on the established standards, property tax is (i) the sole responsibility of the municipality; (ii) revenues from property tax are revenues of the municipality; the latter (iii) is collected and must be used by the municipality, in accordance with the legislation on public finances; (iv) as well as the decisions for this should be taken by the municipal bodies defined by law, taking into account the interest of the citizens of the respective municipality.
93. Therefore, and based on the aforementioned clarifications, the Court notes that Article 5 of the challenged Law does not infringe: (i) the organization and competencies of the fundamental local self-government of the Applicant; (ii) the right and activity of local self-government of the Applicant guaranteed by the Constitution, law and in compliance with the European Charter of Local Self-Government; (iii) the degree of local self-government of the Applicant guaranteed by the Constitution and the law; and (iv) own competencies related to the assignment, use, and expenditure of property tax, because the content of the challenged article enables but does not oblige the Applicant to make the property tax amnesty for the tax year 2023.
94. From the above, the Court notes that Article 5 of the challenged Law does not infringe the competencies or diminish the revenues of the Applicant, as guaranteed by Articles 12 [Local Government] 123 [General Principles] and 124 [Local Self-Government Organization and Operation] of the Constitution.

#### **IV. Regarding interim measure**

95. The Court recalls that the Applicant requested the Court to impose an interim measure, suspending 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 referral based on merits.*”
96. On 1 September 2023, the Court decided to (i) approve the request for an interim measure, in duration until 30 November 2023; and (ii) the suspension of 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 implementation of the decisions issued on the basis of this article until the aforementioned deadline, namely until 30 November 2023.
97. In this regard, the Court recalls Article 46 (Duration of Interim Measure) of the Rules of Procedure which, among other things, establishes that:
- [...]  
(2) *The Court shall set the duration of the interim measure in the decision on the approval of the interim measure.*
- [...]  
(4) *In any case, the interim measure shall expire when the Court renders a final decision regarding the basic referral.*
98. The Court, by this Judgment, declared the referral admissible and decided on its merits. Therefore, since the Court has rendered a final decision regarding the basic referral, based on paragraph 4 of Article 46 of the Rules of Procedure, the Interim Measure imposed on 1 September 2023, is repealed.

#### **V. Request for a hearing**

99. The Court recalls that the Applicant also requested to hold a hearing to clarify the issues related to Article 5 of the challenged Law.
100. The Court recalls paragraph 2 of Rule 39 [Hearings] of the Rules of Procedure, which stipulates that “*The Court may order a hearing if it believes a hearing is necessary to clarify issues of facts or the law.*”
101. The Court notes that the abovementioned Rule of the Rules of Procedure is of a discretionary nature. As such, that rule only provides for the possibility for the Court to order a hearing in cases where it believes it is necessary to clarify issues of fact or law. Thus, the Court is not obliged to order a hearing if it considers that the existing evidence in the case file are sufficient, beyond any doubt, to reach a decision on merits in the case under consideration (see, among others, Court cases, KO127/21, Applicant *Abelard Tahiri and 10 other deputies of the Assembly of the Republic of Kosovo*, Judgment of 9 December 2021, paragraphs 123-127; and KO72/20, cited above, paragraphs 538-542).
102. In the present case, the Court does not consider that there is any uncertainty regarding the “*facts or law*” and therefore does not consider it necessary to hold a hearing. The documents that are part of the Referral are sufficient to decide the merits of this case.
103. Therefore, the Court, unanimously, rejects the Applicants’ request to hold a hearing.



**VI. Effects of the Judgment in relation to the thirty (30) day deadline established in Article 5 of the challenged Law**

104. The Court recalls that on 16 August 2023, the challenged Law was published in the Official Gazette of the Republic of Kosovo and entered into force on the same day, based on Article 10 (Entry into force) which determines that the latter “*enters into force on the day of its publication in the Official Gazette of the Republic of Kosovo*”.
105. The Court also notes that according to Article 11/B of Article 5 of the challenged Law, the decision on 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.
106. However, the Court on 1 September 2023, decided (i) to approve the request for an interim measure, in duration until 30 November 2023; (ii) to suspend the implementation of Article 5 of Law no. 08/L-224 on Amending and Supplementing the Law no. 06/L-005 on Immovable Property Tax and the implementation of the decisions issued on the basis of this article, in the duration defined above; and that (iii) the Decision entered into force immediately, on 1 September 2023.
107. Therefore, based on the clarification above, the thirty (30) day deadline could not run as long as Article 5 of the challenged Law was suspended.
108. Therefore, and based on the fact that (i) the challenged Law entered into force on 16 August 2023; (ii) the Decision on interim measure that suspended the implementation of Article 5 of the challenged Law was rendered on 1 September 2023; as well as (iii) the fact that with entrance in force of this Judgment, the Decision on Interim Measure in case KO177/23 is repealed, it results that from 16 August 2023 to 1 September 2023 when the application of Article 5 of the challenged Law was suspended, fifteen (15) days from the thirty (30) day deadline established in Article 11/B of Article 5 of the challenged Law were consumed. Therefore, the remainder of the fifteen (15) day deadline, from the thirty (30) day period established in paragraph 2 of Article 11/B of the challenged Law, begins to run from the day of entrance into force of this Judgment.
109. The Court recalls that in case of the exercise of the discretion stipulated by Article 5 of the challenged Law by the municipal assemblies regarding the immovable property tax amnesty for the tax year 2023, Article 5 of the challenged Law itself determines the solution for citizens who have paid the tax in immovable property for the year 2023, specifying in paragraph 6 of Article 11/B (The amount of property tax amnesty for immovable property) thereof “*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 year.*”

## **FOR THESE REASONS**

The Constitutional Court, in accordance with Articles 113.4 and 116.2 of the Constitution, Articles 20, 27, 40 and 41 of the Law, and pursuant to Rules 39, 46, 48 (1) (a) and 71 of the Rules of Procedure, on 15 November 2023, unanimously

### **DECIDES**

- I. TO DECLARE the Referral admissible;
- II. TO HOLD that Article 5 of Law no. 08/L-224 on Amending and Supplementing Law no. 06/L-005 on Immovable Property Tax is not contrary to paragraph 2 of Article 12 [Local Government], paragraph 1 of Article 123 [General Principles] and paragraphs 2 and 5 of Article 124 [Local Self-Government Organization and Operation] of the Constitution of the Republic of Kosovo;
- III. TO DECLARE that the remaining fifteen (15) day deadline from the thirty (30) day deadline established in paragraph 2 of Article 11/B (The amount of property tax amnesty for immovable property) of Article 5 of Law no. 08/L-224 on Amending and Supplementing Law no. 06/L-005 on Immovable Property Tax, begins to run from the date of entry into force of this Judgment.
- IV. TO REJECT the request for a hearing;
- V. TO REPEAL Decision on Interim Measure of 1 September 2023;
- VI. TO NOTIFY this Judgment to the parties;
- VII. TO PUBLISH this Judgment in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 4 of Article 20 (Decisions) of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo;
- VIII. TO DECLARE that this Judgment enters into force on the day of its publication in the Official Gazette of the Republic of Kosovo, in accordance with paragraph 5 of Article 20 (Decisions) of Law no. 03/L-121 on the Constitutional Court of the Republic of Kosovo.

**Judge Rapporteur**

**President of the Constitutional Court**

Bajram Ljatifi

Gresa Caka-Nimani