



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

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Prishtina, date 8 October 2012  
Nr. ref.: RK310/12

## **RESOLUTION ON INADMISSIBILITY**

**In**

**Case No. KI 43/12**

**JSC "JATEX"**

**Request on constitutional review of the Resolution of the Supreme Court  
P.P.A.No.3/ 2008, dated 3 May 2011**

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

composed of:

Enver Hasani, President  
Ivan Čukalović, Deputy-President  
Robert Carolan, Judge  
Altay Suroy, Judge  
Almiro Rodrigues, Judge  
Snezhana Botusharova, Judge  
Kadri Kryeziu, Judge and  
Arta Rama-Hajrizi, Judge

#### **Applicant**

1. Applicant is the Joint Stock Company "Jatex" with their Head Office in Gjakova, 'Nëna Terezë" str. 8.

## **Challenged decision**

2. The challenged decision is the Resolution of the Supreme Court P.P.A.No.3/ 2008, dated 3 May 2011. The Applicant has not specified the date of its receipt.

## **Subject matter**

3. Subject matter of the Referral filed, on 26 April 2011, with the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) is for constitutional review of the Resolution of the Supreme Court of Kosovo which rejected the request of the Applicant to repeat the closed proceedings by the Supreme Court's Resolution A.No.1771/2005, dated 31 October 2007.

## **Alleged violations of the rights guaranteed by the Constitution**

4. The Applicant alleges that the above-mentioned Resolution violated his rights guaranteed by the Constitution of Kosovo: Article 24 [Equality before Law], Article 31 [Right to fair and impartial trial] and Article 54 [Judicial protection of rights].

## **Legal basis**

5. Article 113.7 in conjunction with Article 21.4 of the Constitution, Article 22 of the law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo, of 15 January 2009, and Rules 54, 55 and 56 (2) Rules of Procedure of the Constitutional Court of the Republic of Kosovo.

## **Proceedings before the Constitutional Court**

6. On 26 April 2012, the Applicant submitted the Referral to the Court, which was registered at the Court as case file No. KI 43/12.
7. On 22 May 2012, by decision GJ.R.KI 43/12, the President of the Court appointed Judge Robert Carolan as Judge Rapporteur, and by decision KSH 43/12, appointed the Review Panel composed of judges Altay Suroy (presiding), Gjyljeta Mushkolaj and Iliriana Islami in capacity of panel members.
8. On 2 July 2012, the President of the Court made a decision to replace Judges Gjyljeta Mushkolaj and Iliriana Islami because their mandate had expired pursuant to Article 8, item 1.1 of the Law on Constitutional Court and replaced them with Judges Prof . Dr. Enver Hasani and Almiro Rodrigues, as Panel members in case KI 43/12.

9. On 29 May 2012, the Constitutional Court notified the Applicant regarding the registration of the Referral, at the same time requested his eventual comments concerning the referral.
10. On 29 May 2012, the Constitutional Court notified the Supreme Court about the submitted Referral and requested a written response.
11. The Constitutional Court did not receive any written reply from either of the parties within the legal deadline.
12. On 19 September 2012, in the deliberation session on this Referral, the Review Panel unanimously proposed to the full Court that the Referral was inadmissible.

### **Summary of facts**

13. On 28 February 2005, the Tax Administration of Kosovo, NJ/T.M – Prishtina through its authorized tax inspectors, drafted a Control Report” on the business entity, H.C ”Jatex,” with its office in Gjakova.
14. The control concerned the time period from 1 September 2001 until 31 December 2003. After its completion, as per the above-mentioned report, “JATEX” Company was obliged and ordered to pay tax liabilities, as a form of fine and interest, in amount 73480.85 €.
15. On 5 May 2005, JSC “Jatex” filed an appeal with the Department of Appeals within Tax Administration, alleging that the report and order was erroneous because it was based on:
  - 1) An incomplete verification of facts,
  - 2) Erroneous application of the material law, andIt requested from this department an annulment the report findings and the right to be released from the financial obligation to the TAK.
16. On 24 June 2005, the Department of Appeals within Tax Administration of Kosovo, issued a decision rejecting the appeal of the JSC ”Jatex” in Gjakova, with reasoning that Inspectors had correctly and completely established the factual situation, and that fines and the interest imposed on JSC “Jatex” derived from Article 5 of the procedures determined within UNMIK Regulation No. 2000/20 on Tax Administration and Procedures.
17. Against this decision, on 30 August 2005, the JSC “Jatex” filed an appeal with the Independent Review Board requesting the review of the Tax Administration decisions alleging that there was an incomplete and erroneous determination of the factual situation and an erroneous application of the material law.

18. On 1 December 2005, the Independent Review Board issued Resolution A.No 389/2005, rejecting the appeal of JSC "Jatex" in Gjakova and left in force the Tax Administration decision No. 213/205, dated 6 July 2005.
19. Against this Resolution, on 23 December 2005, JSC "Jatex" filed a lawsuit with the Supreme Court, requesting its annulment.
20. On 31 October 2007, the Supreme Court of Kosovo, in Administrative Dispute proceedings issued the Resolution A.No.1771/2005 and rejected the lawsuit of JSC "Jatex" with reasoning that Administrative entities have correctly and completely established the factual situation, and that the taxes, fines and interests were set in compliance with the legislation in force.
21. Against this Resolution JSC "Jatex" filed a lawsuit to repeat the proceedings, within the legal time limit.
22. On 3 May 2011, the Supreme Court of Kosovo issued the Resolution P.P.A No. 3/2008, by which it rejected the lawsuit to repeat the proceedings, with reasoning that, apart from its repeated allegations on unprofessionalism of the tax inspectors of the Tax Administration of Kosovo, the plaintiff did not provide any compelling evidence that would justify repetition of the procedure.

### **Applicant's allegations on Constitutional violations**

23. Applicant alleges that the Resolution of Supreme Court of Kosovo, not allowing the lawsuit to repeat the proceedings, as business entity, violated its constitutionally guaranteed rights, equality before the law, and judicial protection of rights (Art. 24 and 54 of Constitution).
24. Furthermore, the Applicant alleges that these rights were violated as a result of unjust and incomplete determination of the factual situation by tax inspectors of the Tax Administration and their unprofessionalism, because they have charged their Company with financial obligations on behalf of taxes, interest and fines for sales that, according to the Applicant, should have been exempt from tax since the buyer got these assets as contributions and donation. According to the Applicant the same errors were made by the administrative authorities and Supreme Court for not examining the facts presented by JSC "Jatex".

### **Assessment of the admissibility of the Referral**

25. In order to be able to adjudicate the Applicant's Referral, the Court needs to examine whether the Applicant has fulfilled the admissibility requirements laid down in the Constitution, the Law and the Rules of Procedure of the Court.

26. In reference to this, the Court refers to Article 113.7 of the Constitution, which stipulates:

*"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law".*

The Court also refers to:

Article 49 of the Law on Constitutional Court, which specifically provides:

*" The referral should be submitted within a period of four (4) months. The deadline shall be counted from the day upon which the claimant has been served with a court decision. In all other cases, the deadline shall be counted from the day when the decision or act is publicly announced. If the claim is made against a law, then the deadline shall be counted from the day when the law entered into force."*

27. To verify the fact whether the Applicant has submitted his Referral within the four month time limit, the Court refers to the receipt of that decision served on the Applicant and the date of Referral's submission to Constitutional Court.
28. From the standard application form filed by the Applicant with the Constitutional Court, can be established that the Applicant did not specify the date when the later Supreme Court Resolution was served to him. Instead of answering that question on the form the date Applicant put a question mark (?), indicating that he did not know the date of service.
29. In this case, the Court reiterates that, pursuant to Article 49 of the Law on Constitutional Court, it is up to the Applicant to specify the request and this also implies the presentation of evidence that his/her request is filed within the four months limit prescribed by the law.
30. In fact, even though the Applicant did not specify the date when the Supreme Court Resolution was served on him, from the copy of the Supreme Court Resolution P.P.A.No.3/ 2008 (attached to the Referral submitted to the Constitutional Court), it is evident that the on the left side of the front page of the Resolution the Applicant(Jatex Company) put the official protocol stamp with the name of the receiving entity, protocol No.191 dated 15 June 2011.
31. The fact that, the Supreme Court Resolution P.P.A.No.3/ 2008 was issued on 3 May 2011 and served on it on **15 June 2011**, while the Referral was submitted to the Constitutional Court on 26 April 2012 creates an apparent legal a basis for the Court to conclude, that pursuant to Rule 36.1 item (b) of the Rules of Procedure, that the Referral was submitted to the Constitutional Court beyond the deadline provided by Article 49 of the Law on Constitutional Court. A similar reasoning was adopted by this Court in a previous resolution on the Referral made by the Gjakova Municipality on a constitutional review of the Resolution of the Commercial District

Court in Prishtina No. c. No. 183/2009, dated 17 June 2009 (Resolution on inadmissibility of the Constitutional Court dated 21 May 2012).

32. In this regard, the Court reiterates that the legal requirement of the compatibility with the four month time period for submission of a Referral is to assure the parties that the cases that are under the jurisdiction of the Constitutional Court are examined within a reasonable time limit and to protect the authorities and other parties concerned from being in situations of “uncertainty” for a long period of time (see *P.M. v. the United Kingdom* Appl. No. 6638/03, 19. July 2005).
33. Under these circumstances, the Applicant did not meet the admissibility criteria, therefore:

### **FOR THESE REASONS**

The Constitutional Court, in , pursuant to Article 20 of the Law on the Constitutional Court , Rule 36. in its session held in 19 September 2012 unanimously

### **DECIDES**

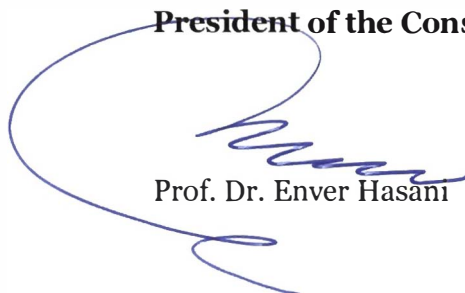
- I. TO REJECT the Referral as inadmissible;
- II. This Decision shall be notified to the Parties and shall be published in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and
- III. This Decision is effective immediately.

**Judge Rapporteur**



Robert Carolan

**President of the Constitutional Court**



Prof. Dr. Enver Hasani