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

Prishtina, on 26 August 2019
Ref. No.:RK 1419/19

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RESOLUTION ON INADMISSIBILITY

in

Case No. KI77/17

Applicant

Mr. Šerif Aga

Deputy Mayor for Communities of the Municipal Assembly of Dragash

Constitutional Review of Decision of the Municipal Assembly of Dragash, 01. nr. 06-368/1, of 21 March 2012, and Decision of the Municipal Assembly of Dragash, 01. nr. 06-1281/1, of 8 August 2012

CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Bajram Ljatifi, Deputy President
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge
Safet Hoxha, Judge
Radomir Laban, Judge
Remzije Istrefi-Peci, Judge, and
Nexhmi Rexhepi, Judge.

Applicant

1. The Referral was submitted by Šerif Aga, Deputy Mayor for Communities of the Municipal Assembly of Dragash (hereinafter: the Applicant).

2. The Applicant also attached to the Referral a petition signed by 311 (three hundred and eleven) citizens of Gora requesting *"from all competent state institutions, at all levels of government, to prohibit the construction of a hydropower plant in the area of Vranishte village"*.

Challenged decision

3. The Applicant challenges the Decision [01. nr. 06-368/1] of 21 March 2012 and Decision [01.nr.06-1281/1] of 8 August 2012 of the Municipal Assembly of the Municipality of Dragash (hereinafter: the Municipal Assembly), through which it declared general public interest and the expropriation of a number of cadastral parcels for the purpose of building water pipes, access roads and electricity transmission lines for the respective hydropower plants.

Subject Matter

4. The subject matter is the constitutional review of two contested Decisions of the Municipal Assembly, which allegedly violated the rights and fundamental freedoms of non-majority communities guaranteed by Articles 24 [Equality Before the Law], 31 [Right on Fair and Impartial Trial], 46 [Protection of Property], 52 [Responsibility for the Environment] and 58 [Responsibilities of the State] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution).

Legal basis

5. The Referral is based on paragraph 4 of Article 62 [Representation in the Institutions of Local Government] of the Constitution and Rule 79 [Referral pursuant to Article 62.4 of the Constitution] of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the Rules of Procedure).

6. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court), adopted in its administrative session the amendment to the Rules of Procedure, which was published in the Official Gazette of the Republic of Kosovo on 21 June 2018 and entered into force 15 (fifteen) days after its publication. Consequently, when considering the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Court

7. On 3 July 2017, the Applicant submitted the Referral to the Court.

8. On 6 July 2017, the President of the Court appointed Judge Gresa Caka-Nimani as Judge Rapporteur and a Review Panel composed of Judges: Ivan Čukalović (Presiding), Bekim Sejdiu and Selvete Gërxhaliu-Krasniqi.

9. On 28 July 2017, the Court notified the Applicant of the registration of the Referral and requested him to submit to the Court additional documents proving that he, as Deputy Mayor for Communities of the Municipal Assembly, pursuant to Article 62 of the Constitution, requested "*reconsideration*" of the challenged Decisions of the Municipal Assembly.

10. On 28 July 2017, the Court sent a copy of the Referral to the Presiding of the Municipal Assembly and invited him to submit their comments on the allegations which the Applicant had submitted in the Referral.

11. On 3 August 2017, the Applicant submitted to the Court the following additional documents: (i) the request for convening an extraordinary session of the Municipal Assembly of 21 June 2017, with an agenda item requiring that "*due to the new situation of construction of hydropower plant in village Vraniq*", to annul both contested decisions; (ii) the invitation to convene the 7th Extraordinary Session of the Municipal Assembly of 21 June 2017; and (iii) the record of the 7th extraordinary session of the Municipal Assembly of 23 June 2017, according to which the majority of votes rejected the request for annulment of the challenged Decisions. In addition, the Applicant also submitted to the Court the supplementation of the original Referral with additional arguments.

12. On 14 August 2017, the Court requested from the Applicant for the second time to submit to the Court the following documents: (i) the minutes from the session when the challenged Decision [01. nr. 06-368/1] of 21 March 2012 was adopted by the Municipal Assembly; the written request of the Deputy Mayor for Communities of the Municipal Assembly from 2012, requesting a "*reconsideration*" of the decision or act (if the request for reconsideration was submitted); (iii) Decision of the Municipal Assembly on request for "*reconsideration*" of the challenged Decision (if there was a request for reconsideration); (iv) the minutes from the session when the challenged Decision [01. nr. 06-1281/1] of 8 August 2012 was adopted by the Municipal Assembly; (v) the written request of the Deputy Mayor for Communities of the Municipal Assembly from 2012 requesting a "*reconsideration*" of the decision or act (if a request for reconsideration was submitted); and (vi) Decision of the Municipal Assembly upon request for "*reconsideration*" of the challenged Decision (if there was a request for reconsideration).

13. On 28 August 2017, the Applicant submitted to the Court the following documents: (i) Minutes of the session when the Decision [01. nr. 06-368/1] of the Municipal Assembly of 21 March 2012 was adopted; and (ii) Minutes of the session when the Decision [01. nr. 06-1281/1] of the Municipal Assembly of 8 August 2012 was adopted.

14. On 16 June 2018, the mandate of the judges: Snezhana Botusharova and Almiro Rodrigues expired. On 26 June 2018, the mandate of the judges: Altay Suroy and Ivan Čukalović expired.

15. On 9 August 2018, the President of the Republic of Kosovo appointed the new judges: Bajram Ljatifi, Safet Hoxha, Radomir Laban, Remzije Istrefi-Peci and Nexhmi Rexhepi.

16. On 7 May 2019, since the mandate of the four above-mentioned judges to serve as judges of the Court had expired, the President of the Court, pursuant to the Law and Rules of Procedure, issued Decision KSH.KI77/17, replacing Judge Ivan Čukalović with Judge Arta Rama-Hajrizi.

17. On 22 July 2019, the Review Panel reviewed the report of the Judge Rapporteur and by majority vote recommended to the Court the inadmissibility of the Referral.

Summary of Facts

Procedure during the mandate of the Municipal Assembly of the 2009 elections

18. On 6 July 2011, the Municipal Assembly considered the request of "*Eurokos*" Company for the construction of hydropower plants, giving its consent to build 6 (six) mini-hydropower plants in the area of the Municipality of Dragash, in the river Brod and Restelica region. According to the case file, it turns out that on 18 October 2011, the Municipal Assembly adopted the decision to declare the area in the public interest and to install pipelines in the areas where hydropower plants will be built. These decisions were reviewed again on 22 February 2012, confirming the approval of the Municipal Assembly for the construction of the respective hydropower plants.

19. On 21 March 2012, the Municipal Assembly, due to the construction of the water pipeline and access roads for the hydropower plants, issued the Decision [01. nr. 06-368/1] for the declaration of general interest and determined the expropriation of a number of cadastral parcels in the villages of Brod, Dikance, Mlika, Baçka, Kukjan, Vranishte, Krusheva, Restelica and Globoçica. This decision was unanimously adopted at the third session of the Municipal Assembly.

20. On 8 August 2012, the Municipal Assembly again reviewed the Decision of 21 March 2012 because it was returned for reconsideration by the Ministry of Local Government Administration (hereinafter: MLGA) and again issued the Decision [01. nr. 06-1281/1] for the declaration of general interest and determined the expropriation of a number of cadastral parcels in the villages of Brod, Dikance, Mlika, Baçka, Kukjan, Vranishte, Krusheva, Restelica and Globoçica. This decision was adopted by a majority of votes, namely 20 votes in favour, 4 abstentions and 1 vote against, in the 8th session of the Municipal Assembly.

21. In both Decisions it was stipulated that "*Compensation for the expropriation of all cadastral parcels through which water pipes pass for hydropower plants, locations, power lines and damages caused during the works shall be*

compensated by the applicant, in this case Consortium "Eurokos JH & Loreto Consult AG" Zug-Switzerland".

22. On an unspecified date, the Mayor of Dragash Municipality submitted to the MLGA a request for assessment of the legality of Decision [01.nr.06-1281/1] of 8 August 2012. The MLGA requested from the Expropriation Department of the Ministry of Environment and Spatial Planning (hereinafter: MESP) to assess the legality of this Municipal Assembly Decision.

23. On 22 August 2012, the Expropriation Department of MESP held that the Decision of Dragash Municipal Assembly was in compliance with applicable law.

24. On 26 September 2012 and 1 October 2012, respectively, the Mayor of Dragash Municipality filed two lawsuits. The first challenged the above Decision of the Expropriation Department of the MESP in the Supreme Court of the Republic of Kosovo (hereinafter: the Supreme Court); whereas, through the latter, he challenged the same decision in the Department of Administrative Affairs of the Basic Court in Prizren, alleging that it was in breach of a number of provisions of Law No. 03/L-139 on the Expropriation of Immovable Property (hereinafter: the Law on Expropriation) and Law No. 03/L-040 on Local Self-Government (hereinafter: LLSG). On 23 January 2013, the Consortium "*Eurokos JH & Loreto Consult AG" Zug – Switzerland"* filed a submission with the Basic Court of Prizren, seeking "*recognition of the capacity of the interested party in the conflict*", which was being conducted in this court between the Municipality of Dragash as a claimant and MESP as a respondent.

Procedure during the mandate of the Municipal Assembly of the 2013 elections

25. On 10 March 2015, the Mayor issued the Decision [04. nr. 463-22/2012] on the Expropriation of Immovable Property for the Purpose of Construction of 6 (Six) Hydro Power Plants on the River Brod and Restelica by the Consortium "*Eurokos JH & Loreto Consult AG" Zug – Switzerland"*, Based on the Challenged Decisions, Decision [01. nr. 06-368/1] of 21 March 2012 and Decision [01. nr. 06-1281/1] of 8 August 2012 of the Municipal Assembly, respectively.

26. On 10 March 2017, residents of the villages of Rapqa and Krstec addressed the Dragash Branch of the Basic Court, suing the Municipal Assembly and the Mayor. The claimants, inter alia, alleged (i) a violation of the Expropriation Law because, according to the allegation, pursuant to paragraph 3 of Article 4 of this Law, only the Government is authorized to expropriate property for lawful public purposes, and that consequently, in adopting the Expropriation Decision, the Municipal Assembly acted outside its competence; (ii) violations of the procedures set forth by this law because, according to the claimants, the expropriation process was conducted without consultation with the owners of the expropriated properties; and (iii) according to the claimants, the expropriation can only be for the benefit of the State and not for the benefit of private persons, as in the present case with the Consortium "*Eurokos JH & Loreto Consult AG" Zug - Switzerland*".

27. On 21 June 2017, the Deputy Mayor for Communities, along with a number of assemblymen representing the non-majority community, requested that an extraordinary session be held in the Municipal Assembly to discuss the 2015 Expropriation Decision and the 2012 Contested Decisions.

28. On 23 June 2017, the 7th Extraordinary Session of the Municipal Assembly was held with one item on the agenda, namely the "*new situation created in the village of Vraniq during the construction of the hydropower plant*", which also called for the annulment of (i) Decision [01. nr. 06-368/1] of 21 March 2012 of the Municipal Assembly; (ii) Decision [01. nr. 06-1281/1] of 8 August 2012 of the Municipal Assembly; and (iii) Decision [04. nr. 463-22/2012] of 10 March 2015 of the Mayor for the expropriation of the respective properties.

29. The aforementioned extraordinary session by a majority of votes rejected the request for the annulment of the contested Decisions of the Municipal Assembly. According to the minutes of the extraordinary session in favour of the annulment voted 8 (eight) members, 11 (eleven) members voted against, and 2 (two) embers abstained.

Decision on Suspension and its Repeal

30. On 29 June 2017, the Municipal Assembly adopted the Decision [nr. 060-01-10846/3], temporarily suspending hydropower construction works.

31. On 3 July 2017, the MLGA delivered the aforementioned Decision [nr. 060-01-10846/3] of the Municipal Assembly for assessment of legality in MESP.

32. On 8 August 2017, MESP through Letter [VI-020-895/5] announced that Decision [nr. 060-01-10846/3] of the Municipal Assembly regarding the temporary suspension of works for the construction of the hydropower plant was in contravention of the applicable legislation. This Ministry found that there was no legal basis for the temporary suspension of works and that the Basic Court in Prizren, by Decision [CN.nr.59/17], dismissed the request for the imposition of injunction.

33. Through the same act, MESP proposed to the MLGA to request the Municipal Assembly to take concrete actions in order to harmonize the municipal act with the legislation in force within 30 (thirty) days from the date of receipt of the letter. MLGA through letter [nr. 020-895/5] of 8 August 2017 informed the Mayor about the decision of MESP and requested the Municipality to officially inform it about concrete actions taken.

Applicant's allegations

34. The Applicant alleges that despite the fact that according to the census, in the Municipality of Dragash live 43% of non-majority communities, their

representatives are consistently overridden in the Municipal Assembly and consequently their constitutionally guaranteed rights are not respected. In this context, the Applicant alleges that the challenged Decisions of the Municipal Assembly, respectively Decision [01. nr. 06-368/1] of 21 March 2012 and Decision [01. nr. 06-1281/1] of 8 August 2012, are in violation of Articles 24 [Equality before the Law], 31 [Right to Fair and Impartial Trial], 46 [Protection of Property], 52 [Responsibility for the Environment] and 58 [Responsibilities of the State] of the Constitution.

35. With regard to the alleged violations of Article 24 of the Constitution, the Applicant alleges that non-majority communities in the Municipality of Dragash were discriminated because *they were "not given the right to declare their rights as other citizens of Kosovo"*.

36. Regarding the alleged violations of Article 31 of the Constitution, the Applicant alleges that *"citizens have not been enabled, in accordance with the constitutional right, to participate actively, impartially and voluntarily, and without any political influence. in agreeing to build hydropower plants and expropriate land"*.

37. With regard to the alleged violations of Article 46 of the Constitution, the Applicant alleges that the Municipal Assembly expropriated private property without specifying the public purpose for the expropriation of these properties.

38. With regard to the alleged violations of Article 52 of the Constitution, the Applicant alleges that (i) the Municipal Assembly has not obtained the consent of the inhabitants for the construction of the respective hydropower plants; and that (ii) the private firm, namely the Consortium "*Eurokos JH & Loreto Consult AG Zug - Switzerland*", according to the challenged Decisions, gets to use the river for the exploitation and construction of hydropower plants, and consequently "*will significantly damage the whole ecosystem in this area and the disturbance of the plant and animal world will occur.*" In this regard, the Applicant refers to the case law of the European Court of Human Rights (hereinafter: ECtHR), without referring to any specific case, to argue that, under this practice, the decision-making in such cases and which have an environmental impact, should be based on *"appropriate research and studies to enable them to anticipate and evaluate the impact of these activities which could harm the environment and violate the rights of individuals*".

39. With regard to the alleged violations of Article 58 of the Constitution, in particular paragraph 4 thereof, the Applicant alleges that the State has failed to adopt adequate measures to promote full and effective equality between members of communities in all areas of economic, social, political and cultural life. In this regard, the Applicant alleges that the citizens' complaints and petitions against the challenged Decisions were not considered by the state authorities.

40. Finally, the Applicant requests the Court to declare the Referral admissible and to establish that *"... the decisions of the Municipal Assembly of Dragash have violated Articles 24, 31, 46, 52 and 58 of the Constitution of the Republic of Kosovo"*.

Admissibility of the Referral

41. The Court first examines whether the Referral has met the admissibility requirements laid down in the Constitution, provided by Law, and further specified in the Rules of Procedure.

42. In this regard, the Court refers to paragraph 1 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, which provides:

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

43. The Court further refers to paragraphs 3 and 4 of Article 62 of the Constitution, which provide:

> *"3. The Vice President for Communities shall promote inter-Community dialogue and serve as formal focal point for addressing non-majority Communities' concerns and interests in meetings of the Assembly and its work. The Vice President shall also be responsible for reviewing claims by Communities or their members that the acts or decisions of the Municipal Assembly violate their constitutionally guaranteed rights. The Vice President shall refer such matters to the Municipal Assembly for its reconsideration of the act or decision.*
>
> *4. In the event the Municipal Assembly chooses not to reconsider its act or decision, or the Vice President deems the result, upon reconsideration, to still present a violation of a constitutionally guaranteed right, the Vice President may submit the matter directly to the Constitutional Court, which may decide whether or not to accept the matter for review".*

44. The Court also notes that the LLSG, respectively, paragraphs 2, 3 and 4 of Article 55 (Duties of the Deputy Chairperson of a Municipality for Communities), contain relevant provisions which read as follows:

> *"55.2. The Deputy Chairperson of a Municipality for Communities shall be responsible for reviewing claims by communities or their members that the acts or decisions of the municipal assembly violate their constitutionally guaranteed rights.*
>
> *55.3. The Deputy Chairperson of a Municipality for Communities shall refer such matters to the Municipal Assembly for its reconsideration of the act or decision.*

55.4 In the event the Municipal Assembly chooses not to reconsider its act or decision, or the Deputy Chairperson of a Municipality for Communities deems that even upon reconsideration the act or decision presents a violation of a constitutionally guaranteed right, the Deputy Chairperson of a Municipality for Communities may submit the matter directly to the Constitutional Court, which may decide whether to accept the matter for review".

45. Furthermore, the Court also takes into account Rule 79 of its Rules of Procedure, which provides as follows:

[Referral pursuant to Article 62.4 of the Constitution]

(1) The Vice President of a Municipal Assembly submitting a referral shall indicate which constitutionally guaranteed rights have been violated.

(2) The referral shall be submitted not later than six (6) months after the final challenged Municipal Assembly decision is made.

(3) In case the Municipal Assembly does not reconsider the request within reasonable period of time, the Court shall consider the final decision to have been made".

46. Based on the above provisions, the Court notes that the relevant provisions of the Constitution, the LLSG and the Rules of Procedure set out four procedural criteria that must be met in order for the Referral of the Deputy Mayor for Communities of the Municipal Assembly to pass the admissibility test. (See also in this context the Court case KI32/10, Applicant *Fahrudin Megjedović*, Judgment of 14 March 2011).

47. More specifically, a referral to the Court based on paragraphs 3 and 4 of Article 62 of the Constitution must meet the following criteria: (i) issuance of the act or decision; (ii) the requirement to "*reconsider*" this act or decision; (iii) the action or inaction of the Municipal Assembly as a result of this request for "*reconsideration*"; and (iv) the timeliness of the Referral before the Court.

48. The first procedural criterion is that the Municipal Assembly has taken any decision or act. This criterion is set out in paragraph 3 of Article 62 of the Constitution.

49. The second procedural criterion is the request for "*reconsideration*" of the Deputy Mayor for Communities to the Municipal Assembly in case he/she and/or their communities or members consider that such acts or decisions violate their constitutionally guaranteed rights. This criterion is set out in paragraph 3 of Article 62 of the Constitution.

50. The third procedural criterion is the act or omission of the Municipal Assembly following the request for "*reconsideration*" of the Deputy Mayor for Communities. More specifically, the Deputy Mayor for Communities may address the Court with allegations of a violation of the rights of non-majority communities in case (i) the Municipal Assembly has not considered the request for a "*review*" of the act or decision; or (ii) the Municipal Assembly has considered the request for "*reconsideration*" of the act or decision and the outcome of this "*reconsideration*" is still alleged to consist of a violation of the constitutional rights of non-majority communities. This criterion is set out in paragraph 4 of Article 62 of the Constitution.

51. The fourth procedural criterion is the timeliness of the Referral before the Court. The Rules of Procedure stipulate that this deadline is 6 (six) months after the final contested decision of the Municipal Assembly has been taken. The Rules of Procedure do not set deadlines for the submission of a request for "*reconsideration*" to the Municipal Assembly by the Deputy Mayor for Communities or even for the period of time available to the Municipal Assembly to consider such a request. However, the Rules of Procedure stipulate that the time period must be "*reasonable*" and that, if the Municipal Assembly does not act within that period, the final decision will be deemed to have been taken.

52. Furthermore, the Court notes that these four procedural criteria must be met cumulatively. Completing them is a prerequisite for the admissibility of the Referral. However, even in these circumstances, the Constitution gives the Court discretion in admitting such a Referral for review. This discretion is set forth in paragraph 4 of Article 62 of the Constitution.

53. In the following, the Court will assess the fulfilment of these four procedural admissibility criteria in the circumstances of the present case, namely (i) the act or decision of the Municipal Assembly; (ii) the request for "*reconsideration*" of the Deputy Mayor for Communities; (iii) the act or omission of the Municipal Assembly; and (iv) the time limit within which such a Referral must be submitted to the Court.

54. The Court will commence consideration of these criteria starting with the latter, namely the time-limit for the submission of the Referral to the Court, because it has undergone changes after the Applicant's Referral has been submitted to the Court and before its examination as a result of the amendment of the Rules of Procedure as of 31 May 2018.

55. More specifically, the Court notes that the six (six) month time limit for the submission of referrals pursuant to paragraph 4 of Article 62 of the Constitution has been determined by the Court through the adoption of the new Rules of Procedure. The previous Rules of Procedure, respectively amended and adopted in 2015, did not set such a time limit. Consequently, and without prejudice to whether in the circumstances of the present case "*the final contested decision of the Municipal Assembly has been taken", the* moment from which, pursuant to

the Rules of Procedure in force, the 6 (six) month period begins, the Court in the circumstances of the present case, will apply the Preliminary Rules of Procedure, applicable at the time the Applicant's Referral was filed, and which do not specify a time limit for the submission of claims under Article 62 (4) of the Constitution, as a more favourable Rule to the Applicant in the circumstances of the present case. Consequently, the Court will treat the Referral as timely.

56. Further, the Court will consider the three remaining admissibility criteria, (i) the act or decision of the Municipal Assembly; (ii) the request for "*reconsideration*" of the Deputy Mayor for Communities; and (iii) the act or omission of the Municipal Assembly, respectively.

57. Concerning the first criterion, the Court recalls that the Municipal Assembly had issued two Decisions in 2012, Decision [01. nr. 06-368/1] of 21 March and Decision [01. nr. 06-1281/1] of 8 August respectively, through which it declared the general interest and determined the expropriation of a number of cadastral parcels for the purpose of constructing hydropower plants in the respective villages of Dragash Municipality by the Consortium "*Eurokos JH & Loreto Consult AG Zug - Switzerland*". These Decisions were assessed as lawful by the relevant MLGA department. In 2015, the Chairperson of the Municipal Assembly also issued the Decision [04. nr. 463-22/2012] on the expropriation of the relevant properties, based on the challenged Decisions.

58. The Court also recalls that these Decisions were challenged at the Department of Administrative Affairs of the Basic Court in Prizren and the Supreme Court. The Basic Court in Prizren, according to the case file, by Decision [CN. nr. 59/17], had rejected the request for injunction. However, it does not appear from the case file whether the Basic Court in Prizren and the Supreme Court have decided on the merits of the case. In this regard, however, the Court notes that, given that the Applicant's Referral has been submitted to the Court pursuant to paragraph 4 of Article 62 of the Constitution, the proceedings before the regular courts with regard to the assessment of the legality of the challenged Decisions are not subject to review in the circumstances of the present case before the Court.

59. Before the Court are challenged two Municipal Assembly Decisions of 2012, Decision [01.nr.06-368/1] of 21 March and Decision [01. nr. 06-1281/1] of 8 August, respectively, thus meeting the first procedural criterion for assessing the admissibility of the Referral set out in paragraph 3 of Article 62 of the Constitution.

60. Consequently, the Court will consider meeting of the second admissibility criterion, namely whether, in the circumstances of the present case, the Deputy Mayor for Communities has requested the Municipal Assembly to "*reconsider*" the challenged decisions. The Court notes that based on paragraph 3 of Article 62 of the Constitution, the Deputy Mayor for Communities requires the Municipal Assembly to "*reconsider*" the act or decision issued if it is alleged to violate the rights of non-majority communities guaranteed by the Constitution.

61. In this context, the Court recalls that the challenged Decisions were taken in 2012. According to the case file and the Applicant's allegations, these Decisions were not contested in the Municipal Assembly. More specifically, Deputy Mayor for Communities of the Municipal Assembly had not submitted a request for *"reconsideration"* of those decisions within the meaning of paragraph 3 of Article 62 of the Constitution.

62. Following the local elections in 2013, when the composition of the Municipal Assembly was changed, in 2015, the Mayor, based on the same Decisions, issued the Decision [04. nr. 463-22/2012] on the Expropriation of Affected Immovable Properties. According to the case file and the Applicant's allegations, this decision was not contested in the Municipal Assembly. More specifically, the Deputy Mayor for Communities did not submit to the Municipal Assembly a request for "*reconsideration*" of this decision within the meaning of paragraph 3 of Article 62 of the Constitution.

63. The Court further notes that, despite the fact that it had twice requested from the Applicant relevant evidence to establish that the Applicant had made a "*reconsideration*" request in relation to the challenged Decisions in the Municipal Assembly, such evidence has not been submitted to the Court. Consequently, the Court must find that, in the circumstances of the present case, the second procedural criterion set forth in paragraph 3 of Article 62 of the Constitution regarding the request for "*reconsideration*" has not been met.

64. The Court notes that the Applicant submitted to the Court the relevant request for extraordinary session of the Municipal Assembly of 21 June 2017, seeking the annulment of (i) Decision [01. nr. 06-368/1] of 21 March 2012 of the Municipal Assembly; (ii) Decision [01. nr. 06-1281/1] of 8 August 2012 of the Municipal Assembly; and (iii) Decision [04. nr. 463-22/2012] of the Mayor of 10 March 2015 on the Expropriation of Relevant Properties, due to the "*new situation created in the village of Vraniq during the construction of the hydropower plant*".

65. However, the Court notes that the 2017 request for Extraordinary Session seeking the annulment of the challenged Decisions cannot be considered a "*reconsideration*" request within the meaning of paragraph 3 of Article 62 of the Constitution because (i) this request must relate to alleged violations of community rights as a result of the issuance of an act or decision of the Municipal Assembly; and (ii) cannot relate to the "*new circumstances*" created in the village of Vranishte 5 (five) years after the challenged decisions were issued. The Court recalls that based on the case file, the annulment of the challenged Decisions was not sought because they were issued in violation of the constitutional rights of non-majority communities, but because of the "*new circumstances*" created in one of the affected villages through challenged Decisions. As a result, the request for Extraordinary Session of 2017 cannot be considered a request for "*reconsideration*" of the challenged Decisions of 2012, within the meaning of paragraph 3 of Article 62 of the Constitution.

66. The Court recalls that meeting the criteria for admissibility of the Referral within the meaning of paragraphs 3 and 4 of Article 62 of the Constitution is cumulative and therefore, it is not necessary to consider whether in the circumstances of the present case the third procedural criterion, namely action or omission of the Municipal Assembly as a result of a request for "*reconsideration*" has been met. However, the Court recalls that the Municipal Assembly, during the extraordinary session of 23 June 2017, had considered the "*new situation created in Vraniq*" and decided, by a majority vote, against the proposal to annul the contested decisions.

67. In regard to the above, the Court concludes that in the circumstances of the present case, the Applicant's Referral did not meet the admissibility criteria laid down in the Constitution, specifically because it fails to meet the second procedural admissibility criterion related with the request for "*reconsideration*" filed by the Deputy Mayor for Communities against the act or decision of the Municipal Assembly.

68. Accordingly, the Court finds that the Applicant's Referral is inadmissible for examination pursuant to Article 62 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to paragraphs 3 and 4 of Article 62 of the Constitution, in its session of 22 July 2019, by majority:

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO NOTIFY this Resolution to the Parties;

III. TO PUBLISH this Resolution in the Official Gazette, in accordance with Article 20.4 of the Law;

IV. This Resolution is effective immediately.

Judge Rapporteur | **President of the Constitutional Court**

Gresa Caka-Nimani | Arta Rama-Hajrizi

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