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

Prishtina, on 10 December 2018
Ref. no.:RK 1297/18

RESOLUTION ON INADMISSIBILITY

in

Case No. KI71/18

Applicant

Kamer Borovci, Mustafë Borovci and Avdulla Bajra

Constitutional review of Decision No. 02/38243 of the Municipality of Kamenica of 12 September 2017

THE 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 Kamer Borovci, Mustafë Borovci and Avdulla Bajra from the Municipality of Kamenica (hereinafter: the Applicants), who are represented by a lawyer Arben Toska.

Challenged decision

2. The Applicants challenge the constitutionality of Decision No. 02/38243 of the Municipality of Kamenica of 12 September 2017.

3. The abovementioned decision was served on the Applicants Kamer and Mustafë Borovci on 19 March 2018 and on the Applicant Avdulla Bajra on 16 May 2018.

Subject matter

4. The subject matter of this Referral is the constitutional review of Decision No. 02/38243 of the Municipality of Kamenica, which allegedly violate the Applicants' rights guaranteed by Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies], Article 46 [Protection of Property], and Article 54 [Judicial Protection of Rights] of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and Article 6 [Right to a fair trial], Article 13 [Right to an effective remedy] and Article 1 of Protocol No. 1 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the Convention).

5. The Applicants request the Court to impose an interim measure for annulment of Decision No. 02/38243 of the Municipality of Kamenica.

Legal basis

6. The Referral is based on paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution, Articles 22 [Processing Referrals] and 47 [Individual Requests] of the Law on the Constitutional Court of the Republic of Kosovo, No. 03/L-121 (hereinafter: the Law) and Rule 32 [Filing of Referrals and Replies] of the Rules of Procedure of the Constitutional Court (hereinafter: the Rules of Procedure).

7. On 31 May 2018, the Constitutional Court of the Republic of Kosovo (hereinafter: the Court) adopted in the administrative session the amendments and supplementation 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. Accordingly, in reviewing the Referral, the Court refers to the legal provisions of the new Rules of Procedure in force.

Proceedings before the Court

8. On 23 May 2018, the Applicants submitted the Referral to the Court.

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

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

11. On 16 August 2018, the President of the Court appointed Judge Safet Hoxha as Judge Rapproteur and on the same date the members of the Review Panel were appointed: Bajram Ljatifi (Presiding), Selvete Gërxhaliu-Krasniqi and Radomir Laban.

12. On 25 September 2018, regarding this Referral, the Court requested additional information from the Municipality of Kamenica.

13. On 4 October 2018, the Municipality of Kamenica - Office of the President of the Municipality submitted additional information and comments regarding the Applicants' allegations.

14. On 21 November 2018, the Review Panel considered the report of the Judge Rapporteur and unanimously recommended to the Court the inadmissibility of the Referral.

Summary of facts

15. The Referral concerns the expropriation of certain immovable properties, including the immovable property of the Applicants, expropriated by the Municipality of Kamenica, at the request of the airline company "Air Energy LLC" (hereinafter: "Air Energy"). The expropriation and compensation of immovable property was made based on the tables set by the Ministry of Finance-Department of Property Tax, namely the Office for the Evaluation of Immovable Property. The purpose of the expropriation was the implementation of the "Energetic Park Kitka" for the installation of wind generators with a capacity of 32.5 megawatts, and the extension of the high voltage transmission lines from Kitka to Berivojce, as well as the establishment of the right of servitude for public interest of length 14671 meters and width of 7 meters, starting from the cadastral zone Berivojce towards the cadastral zones Moqarë - Qarakoc - Kollokeq - Shipashnicë e Epërme - Hogosht – Poliqkë up to the TS - Poliqkë building, Municipality of Kamenica.

16. On 25 April 2017, the "Air Energy" submitted a request to the Municipality of Kamenica for the expropriation of the abovementioned parcels.

17. On 28 July 2017, the Municipality of Kamenica initially rendered the Preliminary Decision, Sh. 02-no. 31936/2017, which approved the request of "Air Energy" to initiate the procedures for the expropriation of the abovementioned immovable properties.

18. On 12 September 2017, the Municipality of Kamenica subsequently rendered the Final Decision No. 02/38243, which approved the request of the company "Air Energy" for the expropriation of immovable properties located in the cadastral zones, as mentioned above.

19. On 25 October 2017, the Applicants Borovci addressed the Municipality, with the request (No. 02/42592), requesting clarification regarding the granting the use of immovable properties in favor of "Air Energy".

20. On 19 March 2018, the Applicants Borovci were served with final decision No. 02/38243, of 12 September 2017, by the Property Legal Service of the Municipality of Kamenica. Whereas, on 16 May 2018, the decision in question was also served on the Applicant Bajra.

21. On 4 October 2018, the Municipality of Kamenica submitted to the Court the following comments:

> *"For the properties of the owners, possessors or claimants, all regular and timely procedures have been conducted, getting acquainted with the procedures from the beginning to the end, and from whom we did not have any remarks or concerns of any owner until the procedure of compensation-payment, according to the Report-Evaluation act by the Ministry of Finance-Property Tax Department - Office for Real Property Evaluation and Report on Damage Valuation with the financial value for payment. (...) In the present case Kamer Borovci, Musafë Borovci and Avdulla Bajra, in their property no complete expropriation procedure has been developed, because according to the elaborate project there are no high voltage pylons installed but over a part of their plots pass the wires of the overheadlines, we are dealing with servitudes, and for the passage of wires over the space of about 35 m high, MF-DTP-ZVPP has evaluated and for the same there is value in financial means for payment. The latter were not submitted to the competent body for the provision of number of current account and receipt of payment. (...) We would like to inform you that from these two parties we have never had any objections or concerns addressed to the municipal bodies regarding the realization of the project - Kitka 32.5 MW Energetic Park".*

Applicants' allegations

22. The Applicants allege that the challenged decision of the Municipality of Kamenica violates their rights guaranteed by Article 31 [Right to Fair and Impartial Trial] of the Constitution and Article 6 [Right to a fair trial] of the Convention, namely:

> a) Right to a public hearing:
>
> *"...any person whose rights are subject to a procedure must be publicly heard. This also implies that the person must be informed of the procedure in which his rights are subject, as well as must be given the opportunity to take part in the procedure, present facts and evidence in relation to these facts for objecting the allegations of the opposing party... is able to undertake all the procedural actions, in order to protect his rights guaranteed by the Constitution"*
> *[...]*
> *Therefore, the Municipality has not made possible for the applicants a fair and public hearing, in the procedure of expropriation and creation of*

servitude, so now when the Decision is already brought they are put before a fait accompli".

b) Equality of arms:

"Furthermore, the Applicants and "Air Energy" during the proceedings are not treated as equal parties. While "Air Energy" was able to participate actively in this procedure (since it has been informed about the conduction of the procedure), by taking procedural actions in the form of requests or evidence presentation, the Applicants have been denied the equal protection of rights before the Municipality, as an administrative authority. Thereby the principle of equality of arms was violated, as an essential part of the right to fair and impartial trial. The principle of "equality of arms" is natural in the sense of a broader concept of a fair trial. The requirement of "equality of arms", in the sense of a "fair balance" between the parties, applies to civil, criminal as well administrative proceedings (See the Case Feldbrugge vs. Netherlands, ECHR, Request/Claim No. 8562/79, Judgment of 29 May 1986, paragraph 44). [...]"

23. The Applicants also allege violation of Article 32 [Right to Legal Remedies] and Article 54 [Judicial Protection of Rights] of the Constitution and Article 13 [Right to an effective remedy] of the Convention, reasoning:

"The violation of this right has to do with the denial of the right of appeal to review the legality of the expropriation, which also results in the violation of Article 54 [Judicial Protection of Rights] of the Constitution ... [...].
Therefore, acting in accordance with the aforementioned provisions of the Law No. 03/L-139 on Expropriation of Immovable Properties, as amended by the Law No. 03/L-205 on Amending and Supplementing Law No. 03/L-139 on Expropriation of Immovable Property (hereinafter LEIP) has determined that the subject whose rights are the object of the expropriation is entitled to exercise the right to appeal to the competent court, with the aim of assessment of legality of the procedure and the decision itself.
[...]
By the very fact that the Municipality did not notify the applicants of the preliminary decision, against which they were entitled to appeal to the competent court, it has denied the applicants' right to effective legal remedies".
[...]

24. Moreover, the Applicants also complain of a violation of Article 46 [Protection of Property] of the Constitution, and of Article 1 of Protocol No. 1 of the Convention, due to the fact that:

"Bearing in mind the fact that the Municipality has created the servitude in the property of the applicants, by preventing them to protect their rights in the procedure before the Municipality, as Air Energy has done; by failing to notify them about the start of the expropriation procedure

and rendering of the preliminary decision, the Municipality has consequently denied the applicants' right to legal remedies and judicial protection of rights, and created the servitude, namely the arbitrary limitation of applicants' property rights".

In this way, the Applicants were deprived of the right to property without respecting any constitutional standard related to the conduction of the procedure and the purpose of expropriation. In this case it must be emphasized that the deprivation of ownership does not imply only formal deprivation of property ownership (the registration of someone else as the owner of the property in question), but also the limitation of the use of property. As a result of the creation of servitude, the applicants cannot use their land the way they want to, namely, in the absolute way as the law permits them. This is because the owner's formal title is meaningless, for the time the owner cannot use his immovable property! And this is exactly the situation which we have in the present case, so there is a deprivation of the right of ownership, because the applicants cannot use the property for investments, as for example the applicant Bajra wishes to".

25. The Applicants further reason the need to impose an interim measure by the Court, emphasizing:

"Based on the decision of the Municipality, "Air Energy" has started with its work even though no compensation was provided or it might be better to say the procedure was not completed as required by the LEIP. Several provisions of this law have prohibited all interventions at the expropriated immovable properties prior to compensation taking place.
[...]
Therefore, if the Decision remains in force, the applicants will suffer irreparable damage to their property, by having their property depreciated. This is due to the fact that, as long as this request is kept at the Court, Air Energy can complete its work, thus even if the Court annuls the Decision, restitution of the property to the condition as it has been prior to the completion of work will be made impossible".

26. Finally, the Applicants request the Court:

I. To declare the Referral admissible;
II. To impose interim measure against the Final Decision of the Municipality of Kamenica 02/382434 of 12 September 2017, by suspending its legal effect pending the final judgment of the Court; and III. To prevent "Air Energy", the Municipality of Kamenica or any other entity or authority that under the final decision of the Municipality of Kamenica 02/382434 of 12 September 2017 to take any action until the repeal of the interim measure.

Admissibility of the Referral

27. The Court first examines whether the Applicants have fulfilled the admissibility requirements established by the Constitution, as further specified by the Law and foreseen by the Rules of Procedure.

28. In this respect, the Court refers to paragraphs 1 and 7 of Article 113 [Jurisdiction and Authorized Parties] of the Constitution which establish:

> *1. "The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.*
>
> *[...]*
>
> *7. 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.*
>
> *[...]"*

29. The Court also examines whether the Applicants have fulfilled the admissibility requirements established in Articles: 48 [Accuracy of Referral] and 49 [Deadlines] of the Law, which stipulate:

> Article 48
> [Accuracy of Referral]
>
> *"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge".*
>
> Article 49
> [Deadlines]
>
> *"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...".*

30. As to the fulfillment of these criteria, the Court finds that the Applicants are authorized parties; have submitted the Referral in time; have specified the act of the public authority which constitutionality they challenge before the Court, and have specified the constitutional provisions which have allegedly been violated by the act in question.

31. However, the Court also examines whether the Applicants have fulfilled the admissibility requirement established by paragraph (2) of Article 47 [Individual Requests], which foresees:

> Article 47
> [Individual Requests]
>
> *"[...]*
> *2. The individual may submit the referral in question only after he/she has exhausted all the legal remedies provided by the law".*

32. In addition, the Court also takes into account Rule 39 (b) of the Rules of Procedure, which stipulates:

Rule 39
[Admissibility Criteria]

(1) "The Court may consider a referral as admissible if:

(b) all effective remedies that are available under the law against the judgment or decision challenged have been exhausted".

33. In this regard, the Court recalls that the Applicants allege that the Municipality of Kamenica, by issuing its acts, violated their constitutional rights, guaranteed by Articles 31, 32, 46 and 54 of the Constitution, as well as by Articles 6 , 13 and 1 of Protocol No. 1 of the Convention.

34. In the circumstances of this case, the Court will assess the fulfillment of the admissibility criteria, namely it will assess the Applicants' allegations related only to the exhaustion of legal remedies, having regard to the fact that for the judicial protection of their rights they have directly addressed the Court, rather than the regular courts, as required by paragraph (7) of Article 113 of the Constitution and paragraph (2) of Article 47 of the Law.

35. The Court first of all recalls its obligation deriving from Article 53 [Interpretation of the Human Rights Provisions] of the Constitution, which establishes: *"Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights".*

36. The Court first notes that in the present case we are dealing with administrative acts issued by an expropriating body, namely by the Municipality of Kamenica, based on the rules and procedures established by Law No. 03/L-139 on the Expropriation of Immovable Property, of 26 March 2009 (hereinafter: the LEIP) and Law No. 03/L-205 on amending and supplementing the LEIP, of 28 October 2010, as applicable law in the present case.

37. Given the fact that administrative acts (decisions) were rendered by a local administrative body of a local level, namely by the Municipality of Kamenica, the Court will assess whether the authority in question has met the requirements of Article 31 of the Constitution, in conjunction with Article 6 of the Convention.

38. In this regard, the Court refers to the case law of the European Court of Human Rights (hereinafter: the ECtHR) and its case law, which establish: *"[For the fairness of a* procedure *as a whole, the decisions of administrative authorities must satisfy the procedural guarantees of Article 31 of the Constitution in conjunction with Article 6 of the Convention, as long as the decisions of such administrative authorities are subject to subsequent control by a "judicial body that has full jurisdiction", including the power to annul such decisions in all respects, both in matters of fact and law".* (See ECtHR Judgment of 10 February 1983, *Albert and Le Compte v. Belgium*, Applications no. 7299/75, 7496/76, paragraph 29, and ECtHR Judgment of 23 October 1995, *Gradinger*

v. Austria, Application no. 15963/90, paragraphs 42; see also the case of the Court, KO12/17, Applicant *Ombudsperson*, 30 May 2017).

39. Therefore, the Constitution and the Convention, based on relevant case laws, incorporate two modalities: 1) that the administrative bodies itself meet the criteria of Article 31 of the Constitution, in conjunction with Article 6 of the Convention, or in the event that they do not meet these criteria; 2) be subject to judicial control having full jurisdiction and which contains the guarantees of Article 31 of the Constitution in conjunction with Article 6 of the Convention. (See, *mutatis mutandis*, the case of *Albert and Le Compte v. Belgium*, cited above, paragraph 28.).

40. From this definition it is understandable that, according to the LEIP, the acts of the expropriation authority could be directly subject to judicial control by the court of first instance, as a competent court that fulfilled the criteria of Article 31 of the Constitution, in conjunction with Article 6 of the Convention.

41. As regards the criteria for exhaustion of effective legal remedies the Court further refers to the ECTHR test, namely the cases: *Akdivar v. Turkey* para. 68-69, and *Khashiyev and Akyeva v. Russia*, para. 116-117), and examines: 1) was the legal remedy in the Applicant's case provided by law; 2) was legal remedy available to the Applicant; 3) was the legal remedy effective in practice; and 4) have there been obstacles to using the legal remedy.

1) was the remedy in the Applicants' case provided by law

42. In this regard, the Court refers to the LEIP provisions, namely Articles: 35 paragraph (2), 36 paragraph (2) and 37 paragraph (2), and notes that these provisions define:

> *Article 35*
> *Complaints Challenging a Preliminary Decision on the Legitimacy of a Proposed Expropriation*
>
> *[...]*
> *2. If the Expropriating Authority is the Expropriating Authority of a Municipality, the complaint shall be filed with the concerned municipal court. If the Expropriating Authority is the Government, the complaint shall be filed with the Supreme Court of Kosovo.*
> *[...]*
>
> *Article 36*
> *Complaints Challenging the Adequacy of Compensation*
> *[...]*
> *2. If the Expropriating Authority is the Expropriating Authority of a Municipality, the complaint shall be filed with the concerned municipal court. If the Expropriating Authority is the Government, the complaint shall be filed with the Supreme Court of Kosovo.*
> *[...]*
>
> *Article 37*

Complaints for Compensation for Damages Arising from a Partial Expropriation
[...]
2. If the Expropriating Authority is the Expropriating Authority of a Municipality, the complaint shall be filed with the concerned municipal court. If the Expropriating Authority is the Government, the complaint shall be filed with the Supreme Court of Kosovo.
[...]

43. It is important to note that paragraph (2) of Articles 35, 36 and 37 was not modified even by the Law No. 03/L-205, on amending and supplementing the LEIP, of 28 October 2010.

44. In this regard, the Court considers that the legal remedies were foreseen by Law No. 03/L-139 on the Expropriation of Immovable Property, of 26 March 2009, the applicable law.

2) was the legal remedy available to the Applicant

45. As noted by the cited provisions, the LEIP has explicitly foreseen that the parties affected by the expropriation enjoy the right to use the regular remedies against the acts of the expropriating body, namely the Municipality of Kamenica, regarding the legality of the expropriation, the amount of compensation and damages suffered by expropriation by filing an appeal to the court of first instance.

46. In this context, the Court considers that legal remedies were available to the Applicants, which use directly dependen on their will.

3) was the legal remedy effective in practice

47. As to the effectiveness of the legal remedy, the Court recalls the ECtHR case law which provides that: the obligation to exhaust legal remedies is limited to making use of those remedies the existence of which is sufficiently certain, not only in theory, but also in practice; which are available, accessible and effective; and which are capable of redressing directly the alleged violation of the Convention (see, ECtHR, case *Selmouni v. France,* paragraphs 71-81, *Ocalan v. Turkey* paragraphs 63-72 and and *Kleyn and others v. the Netherland*, paragraphs 155-162).

48. According to ECtHR case law, the burden of proof falls on the Applicants to prove and substantiate that the legal remedy provided by law, would for some reason be inadequate and ineffective in their circumstances. (see, ECtHR, in case *Selmouni v. France*, paragraph 76). In addition, according to the ECtHR, the Applicants must prove that they did everything that could reasonably be expected of them to exhaust legal remedies by providing concrete references indicating that such a remedy was used, but that the case law has shown that it was not effective for the expected result. (see, ECtHR, in case *D. H. and Others v. the Czech Republic*, paragraph 116).

49. In this context, the Court notes that the Applicants allege that it was impossible to use legal remedies against the acts of the Municipality of Kamenica because, about their existence they "understood when the final Decision No. 02/38243, of 12 September 2017, has started to produce legal effects". As a result, they claim that even if they used the legal remedies provided by the LEIP, they would not be adequate and effective in their case.

50. In this regard, the Court emphasizes that despite the doubts that the Applicants had regarding the "effectiveness and efficiency of legal remedies" they had to exhaust them, as of the moment they understood about the existence of the acts of the Municipality of Kamenica, for the possession of which has started to run the legal deadline for them to address with the appeal the first instance court, as the competent court. However, such an action has not been taken by the Applicants.

51. Furthermore, the Court notes that the Municipality of Kamenica in its comments submitted to the Court states that: "*... from these two parties we have never had any objections or concerns addressed to the municipal bodies regarding the implementation of the project - Kitka Energetic Park 32.5 MW*".

52. Setting from this fact, the Court considers that the "mere doubts" of the Applicants about the effectiveness of legal remedies do not absolve them from the obligation to exhaust legal remedies foreseen by LEIP. (see, ECtHR, in case *Epözdemir v. Turkey*, paragraph 1, pg. 6). On the contrary, it is in the Applicants' interests to apply to the appropriate court to give them the opportunity to exercise competencies through its power of interpretation. (See, ECtHR, *Ciupercescu v. Romania*, paragraph 169).

53. In this regard, the Court notes that the Applicants have not substantiated and did not provide evidence that the legal remedies provided by the LEIP were ineffective or would have been ineffective even if they had been exhausted.

4) have there been some obstacles to using the legal remedy

54. The Court, as elaborated above, that even if there were obstacles to the use of legal remedies for the fact that the Applicants were not aware of the expropriation procedure, however, at the moment they understood the expropriation procedure was taking place, the legal ways have been open to them to address with appeal the first instance court to seek judicial protection of their rights, as guaranteed by Article 54 of the Constitution.

55. In this context, the Court finds that the question of the use of legal remedies was dependent exclusively on the Applicants. The Court further notes that the LEIP did not set any preconditions that should be met by the Applicants before the use of legal remedies. Moreover, their use at any moment was not dependent on the will or assessment of a third party as a prerequisite for the use of legal remedies which could affect the effectiveness of their use.

56. Based on the foregoing, the Court considers that no reasonable barrier existed in the Applicants' case for the use of legal remedies and to seek judicial protection of their rights in the regular courts.

57. In addition, the Court recalls that the exhaustion of legal remedies includes two important elements: 1) the exhaustion in the formal-procedural aspect, which implies the possibility of using a legal remedy against an act of a public authority, in a higher instance with full jurisdiction, and 2) exhausting the remedy in a substantial aspect, which means reporting constitutional violations in "substance" before the regular courts so that the latter have the opportunity to prevent and correct the violation of human rights protected by the Constitution and the Convention. The Court considers as exhausted the legal remedies only when the Applicants, in accordance with applicable laws, have exhausted them in both aspects.

58. The purpose of the obligation under Article 113.7 of the Constitution to exhaust legal remedies is to provide regular courts with the opportunity to prevent or remedy possible violations of the Constitution, caused by actions or acts of public authorities. In the context of the ECtHR, this obligation is based on the assumption that the domestic legal order of the Republic of Kosovo provides effective remedies against the violation of the rights protected by the Constitution and the Convention. Moreover, the Court recalls that the Applicants are liable when their cases are declared inadmissible by the Court, if they fail to use regular procedures or fail to report constitutional violations in the regular proceedings.

59. In conclusion, the Court concludes that the Applicants' Referral does not meet the admissibility procedural requirements, because the Applicants have not exhausted all legal remedies provided by law, as required by Article 113.7 of the Constitution, Article 47 of the Law and Rule 39 (1) (b) of the Rules of Procedure.

60. Therefore, the Court concludes that the Applicants' Referral is to be declared inadmissible on constitutional basis.

Request for interim measure

61. The Court recalls that the Applicants also request the Court to render a decision on the imposition of an interim measure, namely the Court: "*To prevent "Air Energy", the Municipality of Kamenica or any other entity or authority that under the final decision of the Municipality of Kamenica 02/382434 of 12 September 2017 to take any action until the repeal of the interim measure. [...] Therefore, if the Decision remains in force, the Applicants will be subject to irreparable damage to their immovable property, by devaluating it*".

62. In this regard, the Court refers to Rule 57, first part of the sub-Rule (1) of the Rules of Procedure, which stipulates:

> *(1) "If the Judge Rapporteur considers that the Referral submitted is inadmissible, then the request for interim measures will be reviewed along with the basic referral following the order of deciding the referrals in the Court.(...)"*

63. The Court has just concluded that the Applicants' Referral does not meet the admissibility procedural requirements, because of non-exhaustion of legal remedies.

64. Therefore, in accordance with Article 27.1 of the Law and pursuant to Rule 57 (1) of the Rules of Procedures, the Applicants' request for interim measure must be rejected because it cannot be the subject of review, while the Referral is declared inadmissible.

FOR THESE REASONS

The Constitutional Court, in accordance with Article 113.7 of the Constitution, Article 20, 27 and 47.2 of the Law and Rule 39 (1) (b), 57 (1) and 59 (2) of the Rules of Procedure, on 21 November 2018, unanimously

DECIDES

I. TO DECLARE the Referral inadmissible;

II. TO REJECT the request for interim measure;

III. TO NOTIFY this Decision to the Parties;

IV. TO PUBLISH this Decision in the Official Gazette in accordance with Article 20.4 of the Law;

V. This Decision is effective immediately.

Judge Rapporteur **President of the Constitutional Court**

Safet Hoxha Arta Rama-Hajrizi

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