



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 1 February 2017
Ref. No.:RK1034/17

RESOLUTION ON INADMISSIBILITY

in

Case No. KO120/16

Applicant

Slavko Simić and 10 other deputies of the Assembly of the Republic of Kosovo

Constitutional review of Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of:

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge and
Bekim Sejdiu, Judge
Selvete Gërzhaliu-Krasniqi, Judge and
Gresa Caka-Nimani, Judge

Applicant

1. The Applicants are Slavko Simić, Jelena Bontić, Saša Milosavljević, Milka Vuletić, Jasmina Živković, Slobodan Petrović, Bojan Mitić, Milena Miličević, Srđan Popović, Nenad Rašić and Adem Hodža (hereinafter: the Applicants), all elected deputies of the Assembly of the Republic of Kosovo (hereinafter: the Assembly).

2. The Applicants authorized Mr. Slavko Simić to represent them in the proceedings before the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).

Challenged law

3. The Applicants challenge the constitutionality of Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo (hereinafter: the Law on Strategic Investments), adopted by the Assembly on 11 October 2016.

Subject matter

4. The Applicants request the Court to assess the constitutionality of the challenged Law on Strategic Investments on substantive and procedural grounds.
5. The Applicants claim that the challenged Law on Strategic Investments is in conflict with Articles Article 22 (Direct Applicability of International Agreements and Instruments), Article 46 (Protection of Property), Article 49 (Right to Work and Exercise Profession), Article 58 (Responsibility of the State), Article 60 (Consultative Council for Communities), Article 78 (Committee on Rights and Interests of Communities), 81.1 (Legislation of Vital Interest), Article 123 (General Principals), and Article 124 (Local Self-Government Organization and Operation) of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), as well as the European Charter of Local Self-Government.
6. The essence of the Applicants' Referral is that the challenged Law on Strategic Investments is of vital interest for the Serb community in Kosovo, and therefore, it was necessary to follow the procedure provided in Article 81.1 of the Constitution. As a law of vital interest, according to the Applicants, the Law on Strategic Investments had to be adopted by the majority of Assembly deputies present and voting and the majority of the deputies of the Assembly present and voting that hold reserved seats for the representatives of communities that are not in the majority in Kosovo.
7. The Applicants also request the Court to impose interim measures and that the Law on Strategic Investments is *"SUSPENDED in accordance with Article 27 of the Law on Constitutional Court until the final decision on the constitutionality of the challenged Law is rendered. This decision shall enter into force immediately after it is rendered."*

Legal basis

8. The Referral is based on Article 113.5 and 116.2 of the Constitution, and Articles 27, 42 and 43 of Law No. 03/L-121 on the Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Court

9. On 18 October 2016, the Applicants submitted the Referral and copies of their identity cards to the Court.
10. On 19 October 2016, the President of the Court appointed Judge Ivan Čukalović as Judge Rapporteur, and the Review Panel composed of Judges: Snezhana Botusharova (Presiding), Arta Rama-Hajrizi and Gresa Caka-Nimani (judges).
11. On 19 October 2016, the Court notified the Applicants about the registration of the Referral.
12. On 19 October 2016, the Referral was forwarded to the President of the Republic of Kosovo, the Prime Minister of the Republic of Kosovo, the Ombudsperson of Kosovo, and the President of the Assembly with the instruction that the opportunity be granted to all deputies of the Assembly to submit comments. The Referral was also forwarded to the Secretariat of the Assembly, which was requested to submit a copy of the final adopted version of the Law on Strategic Investments, a copy of the minutes of the plenary session of the Assembly, and including other valid documents related to this case. All of the above-mentioned institutions were requested to submit their comments on the Referral, if any, by 2 November 2016.
13. On 21 October 2016, the Office of the President of the Assembly submitted additional documents related to the Referral, including: the decision of the Government of 1 December 2015, which adopted a draft Law on Strategic Investments; the certificate of procedural compliance of the draft Law on Strategic Investments of 1 December 2015; the letter of 4 December 2015 of the President of the Assembly sending the draft Law on Strategic Investments to the relevant Parliamentary Committees for consideration; the report with recommendations of the Functional Committee for Economic Development, Infrastructure, Trade and Industry of 22 December 2015; the decision to hold the plenary session of the Assembly sent to the deputies of the Assembly with the recommended agenda for 16 February 2016; the minutes of the plenary session held from 19 February to 24 February 2016; the decision of the Assembly on approval in principle of the draft Law on Strategic Investments, of 19 February 2016; the report with amendments of the Committee on Economic Development on the draft Law on Strategic Investments of 21 April 2016; the report with recommendations from the Ministry of Finance of 10 May 2016; the report with recommendations of the Committee for European Integration of 10 May 2016; the report with recommendations of the Functional Committee for Economic Development, Infrastructure, Trade and Industry of 31 May 2016; the notification of 3 June 2016 of the President of the Assembly sent to deputies on holding the plenary session and the recommended agenda; the minutes of the plenary session held on 9 June 2016; the request of the Functional Committee for Economic Development, Infrastructure, Trade and Industry for review of the law following the recommendations of 9 June 2016; the report of the Functional Committee for Economic Development, Infrastructure, Trade and Industry of 21 June 2016; the notification of 4 July 2016 of the President of the Assembly sent to deputies on holding the plenary

session and including the agenda; the minutes of the plenary session held from 7 July to 11 July 2016; the request of 13 September 2016 of the Functional Committee for Economic Development, Infrastructure, Trade and Industry to the President of the Assembly for including the draft Law on the Strategic Investments in the agenda; the notification of 10 October 2016 of the President of the Assembly sent to deputies on holding the plenary session with a recommended agenda; the minutes of the plenary session held on 11 October 2016; the decision of 11 October 2016 of the President of the Assembly on the adoption of the Law on Strategic Investments; the copies of the Law on Strategic Investments in the official languages of the Republic of Kosovo.

14. In the letter of 21 October 2016, the President of the Assembly indicated that at the plenary session of the Assembly held on 19 February 2016, the Assembly adopted the Law on Strategic Investments in first reading, and appointed the relevant committees to review the draft Law and provide their comments within the deadline foreseen in the Assembly's Rules of Procedure.
15. The appointed committees were: (1) the Functional Committee on Economic Development, Infrastructure, Trade and Industry; and the standing committees: (2) the Committee on Budget and Finance; (3) Committee on Rights, Interests of Communities and Returns; (4) Committee on Mandates, Immunities, Rules of Procedure and supervision of the Anti-Corruption Agency and (5) the Committee for European Integration.
16. On 25 October 2016, the Functional Committee for Economic Development, Infrastructure, Trade and Industry submitted its comments regarding the Referral.
17. On 2 November 2016, the authorized representative of the Applicants submitted supplementary arguments in support of the referral.
18. On 7 December 2016, the Court sent to the Secretary General of the Assembly and to the authorized representative of the Applicants a request for additional clarification of the Assembly procedure related to the adoption of the law.
19. On 13 December 2016, the Secretary General of the Assembly submitted a response.
20. On 15 December 2016, the authorized representative of the Applicants submitted a response.
21. On 20 January 2017, the Review Panel considered the Report of the Judge Rapporteur and made a unanimous recommendation to the Court to declare the referral inadmissible and to reject the request for interim measures as not applicable.

Summary of facts

22. On 1 December 2015, by Decision No. 01/61, the Kosovo Government adopted the draft Law on Strategic Investments, and forwarded it to the Assembly for further procedure.

23. On 4 December 2015, the President of the Assembly sent a letter 05/L-079 with the draft Law on Strategic Investments to the deputies of the Assembly and to the Functional Committee for Economic Development, Infrastructure, Trade and Industry, to review the draft law and submit to the Assembly a report with recommendations.

24. On 21 December 2015, the Functional Committee for Economic Development Infrastructure, Trade and Industry, sent to the deputies of the Assembly their recommendation on the adoption in principle of the Law No. 05/L-079 on Strategic Investments. The recommendation of the Committee reads:

“The Committee, after reviewing in principle Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo, assessed that it meets the requirements of Article 56 of the Rules of Procedure of the Assembly and at the same time adopted the latter in principle.”

25. On 16 February 2016, the President of the Assembly sent a notice to the deputies of the Assembly on scheduling a plenary session of the Assembly for 19 February 2016, starting at 10:00 hrs. The notice contained a recommended agenda; where item 13 of the agenda of the plenary session is listed as *“the first reading of the Law on Strategic Investments in the Republic of Kosovo.”*

26. On 19 February 2016, the Assembly adopted in principle the draft Law on Strategic Investments. According to the comments submitted on 21 October 2016 by the President of the Assembly,

“The Assembly of the Republic of Kosovo, at the plenary session held on 19 February 2016, approved the first reading of the Draft Law no. 05/L-079 on Strategic Investments in Republic of Kosovo and appointed the functional Committee on Economic Development, Infrastructure, Trade and Industry and the standing committees: the Committee on Budget and Finance; Committee on Rights, Interests of Communities and Returns; Committee on Mandates, Immunities, Rules of Procedure and supervision of the Anti-Corruption Agency and the Committee for European Integration, that in due time with the Rules of Procedure, review the Draft Law on Strategic Investment in the Republic of Kosovo and submit to the Assembly the reports with recommendations for second reading in plenary session.”

27. On 21 April 2016, the Functional Committee for Economic Development, Infrastructure, Trade and Industry, sent its recommendation, including amendments, to the Law on Strategic Investments to the standing committees of the Assembly. According to the comments submitted on 21 October 2016 by the President of the Assembly,

“The Functional Committee for Economic Development, Infrastructure, Trade and Industry, in several meetings held, reviewed and amended Draft Law on Strategic Investments in the Republic of Kosovo, and in its meeting held on 21 April 2016, proceeded for consideration the Report with amendments to standing committees: the Committee on Budget and Finance; Committee on

Rights and Interests of Communities and Returns; Committee on Mandates, Immunities, Rules of Procedure and supervision of the Anti-Corruption Agency and the Committee for European Integration.”

28. On 10 May 2016, the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and Oversight of the Anti-Corruption Agency, sent its recommendations on the draft Law and amendments to the Functional Committee for Economic Development, Infrastructure, Trade and Industry.
29. On 10 May 2016, the Committee for European Integration sent to the Functional Committee for Economic Development, Infrastructure, Trade and Industry the Report No. 49/05, indicating that the Draft Law on Strategic Investments is not contrary to European Union legislation.
30. On 21 May 2016, the Committee for Budget and Finance sent to the Functional Committee for Economic Development, Infrastructure, Trade and Industry the Report No. 05/2029/L-079, and concluded that the draft Law was within affordable budget costs for the budget of Kosovo.
31. According to the comments submitted on 21 October 2016 by the President of the Assembly,

“The Committee on the Rights and Interests of Communities and Returns, has not reviewed the Draft Law on Strategic Investments in the Republic of Kosovo, together with amendments of Functional Committee for Economic Development, Infrastructure, Trade and Industry, within the deadline stipulated in Article 57 paragraph 8 of the Rules of Procedure of the Assembly.”
32. On 3 June 2016, the President of the Assembly sent a notice to the deputies of the Assembly on scheduling the plenary session of the Assembly on 9 June 2016, starting at 10:00 hrs. The notice contained a recommended agenda, where as item 9 of the agenda of the plenary session was listed, *“Second reading of the Draft Law on Strategic Investments in the Republic of Kosovo.”*
33. On 9 June 2016, the Assembly did not adopt the draft Law on Strategic Investments, because of the two (2) amendments to Article 32 of the Law, proposed by the Committee on Budget and Finance. The draft law was returned to the Functional Committee for Economic Development, Infrastructure, Trade and Industry, to another review.
34. On 13 September 2016, the Functional Committee for Economic Development, Infrastructure, Trade and Industry, sent to the Presidency of the Assembly a proposal that the draft Law No. 05/L-79 on Strategic Investments be included on the agenda of the autumn session of the Assembly, with a technical correction to Article 32 of the Law.
35. On 10 October 2016, the President of the Assembly sent the notification SP-077 L-V with a proposed agenda to all deputies of the Assembly that the next plenary session of the Assembly would be held on 11 October 2016 at 10:00 hrs.

36. On the agenda of the plenary session scheduled for 11 October 2016, as 9th (ninth) item, was listed, *"the second reading of the Draft Law No. 05/L-79 on Strategic Investments in the Republic of Kosovo."*
37. On 11 October 2016, by Decision No. 05-V-362, after the second reading of the draft Law at the plenary session, the Assembly adopted the Law No. 05/L-79 on Strategic Investments in the Republic of Kosovo. During the plenary session when the Law on Strategic Investments was adopted there were eighty-two (82) deputies present of whom fifty-seven (57) deputies voted in favor of the draft law, fourteen (14) deputies voted against, while eleven (11) deputies abstained.
38. The purpose of the Law on Strategic Investments is stated in Article 1 of the Law, which stipulates that,
1. *The purpose of this Law is to facilitate promoting, attracting and conditions and realization of strategic investments in the Republic of Kosovo, and the establishment of administrative procedures and criteria for evaluation, selection, implementation and monitoring of strategic projects, as well as determining the procedures for granting the use of the property of the Republic of Kosovo, for the purpose of implementing strategic investments projects.*
 2. *The institutions and authorities of the Republic of Kosovo for the implementation of this law shall respect the principles of free movement of goods, services and capital, the principles of free competition, equal treatment, non-discrimination, transparency, proportionality and mutual respect.*
 3. *This law supports the principles and conditions established by applicable laws on state aid and principles deriving from the Treaty on Stabilization and Association Agreement.*
39. The scope of the Law on Strategic Investments is stated in Article 2 of the Law, which provides that,
- "1. The status of strategic investment or a strategic investment project is obtained according to the criteria and procedures established by the law for projects with a priority sector for economic and social development that contribute to economic growth, employment and application of modern technology, increasing the competitive capacity of the Kosovo economy, increasing exports and reducing the trade deficit and generally impact on improving the living conditions and welfare of the citizens of the Republic of Kosovo in the following sectors:*
- 1.1. *energy with infrastructure and mining;*
 - 1.2. *transport and telecommunication;*
 - 1.3. *tourism;*
 - 1.4. *processing industry;*
 - 1.5. *agriculture and food industry;*

- 16. health;
- 1.7. industrial parks and technology;
- 1.8. water and wastewater management”

- 2. The minimum investment required for obtaining the status of a strategic investor is to sub-paragraphs: 1.1.1.2 and 1.6 at least thirty (30) million euro; for sub paragraphs: 1.3 and 1.4 at least twenty (20) million, and for sub paragraphs: 1.5, 1.7 and 1.8 at least ten (10) million.
 - 3. In the selection of strategic investment projects, priority shall be given to large investment projects that create more jobs.
 - 4. According to this law the status of strategic investments can obtain projects implemented within the framework of international agreements and projects implemented in cooperation with the EU and those with international financial institutions.
 - 5. The proposed investments to be considered as strategic within the meaning of this law, must meet the additional criteria:
 - 5.1. investment entity, in the moment of applying for the status of strategic investment must submit evidence, proving its financial capability to fulfil the investment.
 - 5.2. proposed investments must be in compliance with environment standards defined by the legislation of Kosovo and European Union;
 - 5.3 proposed investments must not be in contradiction with the obligations of Republic of Kosovo defined by international conventions and agreements.”
40. The Law on Strategic Investments refers to the transfer of the right of use of immovable properties of state-owned, publicly-owned and socially-owned enterprises in articles 18, 22 and 23, respectively. These articles provide that,

“Article 18. Use of state-owned immovable properties for execution of strategic investments

- 1. Disposal with immovable property of the Republic of Kosovo to implement projects related to strategic investments shall be regulated by laws dealing with governance and use of state and public property, the property rights, the law on bonds and laws governing the use and disposition of property of the Republic of Kosovo, if by this Law is not provided otherwise.
- 2. Property of the Republic of Kosovo, including forests, forest land, agricultural land, public roads shall be available to the Government of Kosovo in accordance with spatial and urban regulation. This property can be used by the Government to implement projects through direct negotiations, according to the provisions of Article 4 paragraphs 1. to 6. of this Law.

3. The Government provides procedures for granting the use of property referred to in paragraph 2. of this Article and may engage a judicial expert to determine the value of immovable property provided for use.

4. The Public Procurement Rules shall be adhered to, where the transfer of the property referred to in the paragraph 2. of this Article is made in order to implement strategic projects that have element of contracts provided by the relevant Law on Public and Private Partnership.

Article 22. Transfer of the right to use public and socially-owned immovable properties by the interested investor

1. The Government of the Republic of Kosovo can transfer the right to use a socially owned immovable property for strategic investment under the Law on Expropriation of the Immovable Property, only after the Assembly of Kosovo renders a decision with a simple majority of votes.

2. The Government of the Republic of Kosovo can transfer the right to use the publicly owned immovable property for strategic investment only after the Assembly of Kosovo renders a decision with a simple majority of votes.

3. The Government of the Republic of Kosovo can transfer the right to use a municipal immovable property for strategic investment only after the respective Municipal Assembly renders a decision with a simple majority of votes.

Article 23. Transfer of the right to use the publicly-owned enterprise's property to the investment entity

1. The Government of the Republic of Kosovo can transfer the right to use the property of public enterprises to the investment entity for the purpose of implementing a strategic investment project.

2. The method of making immovable property owned by public enterprises available for the development and implementation of strategic investment projects shall be regulated through bylaws, which shall be issued in compliance with the provisions of this law and provisions of the relevant Law on Publicly Owned Enterprises.”

41. The Law on Strategic Investments refers to limitations on the duration of the transfer of the right of use of immovable properties of state-owned, publicly-owned and socially-owned enterprises in Article 24. This article provides that,

“Article 24. Duration of the right to use the property of the Republic of Kosovo by the investment entity

1. Duration of the right to use the property in which strategic investment has taken place, shall be determined by the agreement on investments

taking into account the maximum duration allowed by this law, however such right shall last up to ninety-nine (99) years.

2. Responsible public authority shall be entitled to give the consent for extending the right of using the property for another period with a reasonable time limit, if in the property in which foreign or local capital investments have been made are constructed facilities and buildings that are actively used for business purposes.

3. When the decision for granting the status of strategic investment is revoked, or upon termination of the agreement, according to the criteria of this law, the Committee shall terminate the investment entity's right to use the property of the Republic of Kosovo, which is provided for use with the purpose of implementing strategic investment."

Applicants' allegations

42. The Court recalls that the Applicants claim violations of Article 22 (Direct Applicability of International Agreements and Instruments), Article 46 (Protection of Property), Article 49 (Right to Work and Exercise Profession) Article 58 (Responsibility of the States), Article 60 (Consultative Council for Communities), Article 78 (Committee on Rights and Interests of Communities) and 81.1 (Legislation of Vital Interest) Article 123 (General Principals) and Article 124 (Local Self-Government Organization and Operation) of the Constitution, as well as the European Charter of Local Self-Government.
43. As regards Article 81.1 of the Constitution, the Applicants allege that: *"When adopting the Law on Strategic Investments, the procedure envisaged by Article 81, paragraph 1, of the Constitution of Kosovo was not respected which expressly provides that laws of vital interest for communities shall require for their adoption the majority of the Assembly deputies present and voting and the majority of the Assembly deputies present and voting holding seats reserved or guaranteed for representatives of communities that are not in the majority. The Law on Strategic Investments presents a law which has direct impact to implementation of the rights of communities and their members provided in Article 81, paragraph 1, item 2, of the Constitution."*
44. As to Article 78 of the Constitution, the Applicants allege that: *"when adopting the Law on strategic investments there was violation of the regular procedure for adoption of law and against the responsibility for its consideration by the Committee on the Rights and Interests of Communities provided in Article 78 of the Constitution, namely the Law was not reviewed by the Consultative Council for Communities provided in Article 60 of the Constitution, by which the rights of the Serbian community were violated hence it entails responsibility of Kosovo provided in Article 58 of the Constitution."*
45. Regarding Article 60 of the Constitution, the Applicants allege that: *"In accordance with Article 60 of the Constitution, the Consultative Council for Communities provides a mechanism for regular exchange of opinions between the Communities and the Government of Kosovo, therefore it affords to the Communities the opportunity to comment on legislative or policy*

initiatives that may be prepared by the Government. Given that the Consultative Council for Communities was deprived from the opportunity to comment on the draft Law on Strategic Investments when the Law on Strategic Investments was adopted, it presents a violation of Article 60 of the Constitution.“

46. Regarding Article 58 of the Constitution, the Applicants allege that: „By Article 58, paragraph 1 of the Constitution it has been regulated that Kosovo ensures appropriate conditions enabling communities, and their members to preserve, protect and develop their identity. By Article 58, paragraph 7, it has been regulated that Kosovo ensures on a non-discriminatory basis, that all communities and their members may exercise their rights specified in this Constitution. All above-mentioned examples indicate that the representatives of the Serb community in Kosovo were deprived from exercising their right in decision making process on strategic investments as their vital interest hence the Article 58 of the Constitution which describes the Kosovo’s responsibility was violated.“
47. As to Article 46 of the Constitution, the Applicants allege that: „Article 46, paragraph 1, of the Constitution guarantees the right to property. The right to property presents a fundamental human right protected by Article 1, Protocol 1 of the European Convention on Protection of Fundamental Human Rights and Freedoms. Article 22 of the Constitution provides direct application in the territory of Kosovo of international agreements and instruments which include also the European Convention on Protection of Fundamental Human Rights and Freedoms and protocols.
48. “Articles 18, 22, 23 and 24 of the Law on Strategic Investments are in contradiction with binding principles of the international law in terms of protection of the rights to property guaranteed by the Constitution, respectively by the Convention of the Council of Europe on Protection of Fundamental Human Rights and Freedoms. In fact, the strategic investor is given the opportunity to obtain without any compensation the property of socially owned enterprises which are under administrative authority of Privatization Agency of Kosovo. This is entirely in contradiction with Law on Privatization Agency of Kosovo in which is stated that the law was rendered with purpose to ensure that any person claiming to hold an ownership or creditor right or interest in, to or against an enterprise or property which is subject of privatization or it is under administrative authority of the Agency and that based on the respective proceedings are heard in relation to their claims and if they prove their claims, to enable them adequate money compensation for the damage caused to breach of rights or interests.”
49. As regards Article 49 of the Constitution, the Applicants allege that: “Article 22 of the Law on Strategic Investments provides that the Government of the Republic of Kosovo can approve the right to use the socially owned enterprise or any of its property, under the administrative authority of the Privatization Agency of Kosovo, only after the Assembly of Kosovo renders a decision with a simple majority of votes for the removal of any socially owned enterprise or its property from the administrative authority of the Privatization Agency of

Kosovo for the purpose of implementing a Strategic Investment project for the period of 40 years pursuant to Article 24 of the Law on Strategic Investments.

By the abovementioned articles, the issue of the socially owned enterprise's legal personality which property is transferred to the investor has remained entirely unsolved, respectively the issue of the destiny of employees with such enterprises in terms of renewal or termination of employment relationship and claims against the socially owned enterprise which is transferred to an investor. By provisions of the Law on Privatization Agency of Kosovo is envisaged that employees with a socially owned enterprise whose property is sold through the privatization or liquidation process, are entitled to a compensation of 20% of the sale price of the socially owned enterprise property. Taking into consideration that by the Law on Strategic Investments, there will be no sale of the property of a socially owned enterprise; instead it is transferred free of charge for use to the strategic investor, by which the employees claims remain unregulated same as their employment status.

50. The Applicants also allege that the proposed transfers of the right to use of immovable properties of state-owned, publicly-owned and socially-owned enterprises located on the territory of municipalities violate the provisions of the Comprehensive Proposal for the Kosovo Status Settlement (Ahtisaari Plan) on municipal competencies, as developed in Chapter X [Local Government and Territorial Organization] of the Constitution.
51. The Applicants state that, *"Ahtisaari's Plan in Article 3 of Annex III, provides a set of competencies of municipalities. In addition, Article 4 of Annex III stipulates a list of enhanced own competencies of the municipalities. These lists have been included in Law No. 03/L-040 on Local Self-Government, (hereinafter: Law on Local Self-Government).*

In Chapter 10. Local Government [of the Constitution], in Article 123, para. 3, is stated:

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.

By Article 17 of the Law on Local Self-Government is stipulated [own and enhanced competencies of municipalities]"

52. Finally, the Applicants requests the Court to impose interim measures in accordance with Article 27 of the Law, and to suspend the promulgation of the Law on Strategic Investments because: *"...the implementation of this law in this form may cause irreparable damage to the Serb community in Kosovo."*

Assessment of admissibility

53. In accordance with Article 113.5 of the Constitution, the task of the Court is to review whether the procedures followed for the adoption of the contested law by the Assembly and the substance of the contested law is in violation of the Constitution as alleged by the Applicants.
54. In this connection, the Court observes that, when a law or an act is under review under Article 113.5 of the Constitution, the review procedure will be of a suspensive nature in that the law will be barred from being promulgated until the Court has taken a final decision on the case.
55. In fact, in accordance with Article 43 (2) of the Law, in the event that a law adopted by the Assembly is contested under Article 113.5 of the Constitution, *“such a law [...] shall be sent to the President of the Republic of Kosovo for promulgation in accordance with the modalities determined in the final decision of the Constitutional Court on this contest.”*, meaning that the adopted Law should not be returned to the Assembly but should be forwarded to the President of the Republic of Kosovo for promulgation of the Law without the Articles which have been declared incompatible with the Constitution by the Court in its Judgment (See Resolution on Inadmissibility in case no. KO118/13, *Albana Fetoshi and 12 other Deputies of the Assembly*, Constitutional Review of the Law No. 04/L-201 on Amending and Supplementing Law No. 04/L-165 on Budget of the Republic of Kosovo for year 2013, paragraphs 36 and 37).
56. In order to adjudicate the Applicants’ Referral, the Court shall first examine whether the Referral fulfills the admissibility requirements laid down in the Constitution, and as further specified in the Law and Rules of Procedure.
57. Initially, the Court refers to Article 113.1 of the Constitution, which establishes that *“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”*
58. In addition, the Court notes that the Referral was filed in accordance with Article 113, paragraph 5, of the Constitution. This constitutional provision establishes:

“Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.”
59. In the present case, the Court notes that the Referral is submitted by 11 deputies of the Assembly, in accordance with the requirements of Article 113.5 of the Constitution. Thus, the Applicants have met the requirement to be recognized as an authorized party.
60. Furthermore, the Court takes into account Article 42 of the Law that regulates the filing of Referral based on Article 113.5 of the Constitution, which provides that,

“Article 42. Accuracy of the Referral

1. In a referral made pursuant to Article 113, Paragraph 5, of the Constitution the following information shall, inter alia, be submitted:

1.1. names and signatures of all deputies of the Assembly contesting the constitutionality of a law or decision adopted by the Assembly of the Republic of Kosovo;

1.2. provisions of the Constitution or other act or legislation relevant to this referral; and

1.3. presentation of evidence that supports the contest.”

61. The Court considers that the requirements of Article 42, paragraph 1, under points 1 and 2, of the Law have been met as regards the names and signatures of the deputies, specification of the contested law and relevant provisions of the Constitution related to the procedure followed during the voting and approval of the law in the Assembly.
62. Regarding the deadline, the Court notes that the Law on Strategic Investments was adopted on 11 October 2016, while the Referral was submitted to the Court on 18 October 2016. Thus the Referral was submitted within the established deadline of eight (8) days established by Article 113.5 of the Constitution.
63. However, the Court must also have regard to the requirement provided in Article 42, paragraph 1, under 3, of the Law, namely to what extent the Applicants have presented evidence in support of their allegations.
64. In this context, the Court recalls Rules 36 (1) (d) and 36 (2) of the Rules of Procedure, which provide that,

“(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded.

(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

(a) the referral is not prima facie justified, or

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights, or

(c) the Court is satisfied that the Applicant is not a victim of a violation of rights guaranteed by the Constitution, or

(d) the Applicant does not sufficiently substantiate his claim.”

As to the procedure followed

Alleged violation of Article 81.1 of the Constitution

65. The Applicants’ primary allegation is that the procedure for the adoption of the Law on Strategic Investments should have followed the procedure specified in

Article 81 of the Constitution regarding Legislation of Vital Interest. The Applicants claim that the Law on Strategic Investments comes within the scope of Article 81, paragraph 1, under 2, of the Constitution.

66. Article 81, paragraph 1, under 2, of the Constitution provides that,

“1. The following laws shall require for their adoption, amendment or repeal both the majority of the Assembly deputies present and voting and the majority of the Assembly deputies present and voting holding seats reserved or guaranteed for representatives of Communities that are not in the majority:

[...]

(2) Laws implementing the rights of Communities and their members, other than those set forth in the Constitution;”

67. The Applicants claim that the Law on Strategic Investments authorizes the transfer of the use of state-owned and socially owned property, and substantial portions of immovable property in Serb-majority municipalities are held by state-owned and socially-owned enterprises. The transfer of use of such properties within Serb-majority municipalities would affect large numbers of residents. As such, the Applicants allege that members of the Kosovo-Serb Community are disproportionately affected by the changes foreseen by the Law on Strategic Investments, and that, therefore, this Law is of vital interest to the survival of the Kosovo-Serb Community in Kosovo.

68. The Court notes that Article 81, Paragraph 1, provides a specific set of criteria to determine which laws are deemed to fall within the scope of the term ‘laws of vital interest’. Furthermore, the Court notes that item (2) of this Article refers specifically to laws implementing the rights of Communities and their members mentioned in the Constitution. These laws are referenced in Chapter III of the Constitution [Rights of Communities and Their Members] (see Case No. KO118/16, Constitutional Review of the Law No. 05/L-120 on Trepça, Resolution on Inadmissibility of 19 October 2016, paragraph 54).

69. The Court further notes that the scope of the Law on Strategic Investments, in Article 2 (1), concerns the determination of, *“The status of strategic investment or of the strategic investment project may be realized according to the criteria and procedures defined by Law, for projects from priority sectors of economic and social development which contribute [to] the economic growth, employment and implementation of new technologies, increase of competitive economic capabilities of Kosovo, increase of export and reduction of trade deficit and the ones having general impact in growth of welfare and living conditions of the citizens of the Republic of Kosovo [...].”*

70. Furthermore, the Court recalls the purpose of the Law on Strategic Investments as stated in its Article 1, namely that, *“This Law aims to stimulate, attract and create conditions of strategic investments in the Republic of Kosovo, as well as to establish administrative procedures and criteria for evaluation, selection, implementation and monitoring of strategic projects, as*

well as determining the procedures for granting the use of the property of the Republic of Kosovo, for the purpose of implementation of strategic investment projects.”

71. In addition, the Law on Strategic Investments, in Article 1 (2), provides that, *“Institutions and authorities of the Republic of Kosovo for implementation of this Law shall respect principles of free movement of goods, services and capital, principles of free competition and equal treatment, principles of non-discrimination, principle of transparency, proportionality and mutual respect.”*
72. As such, the Court notes that the objective of the Law on Strategic Investments is to improve economic growth, employment and implementation of new technologies with a view to increasing competitive capabilities of Kosovo for the purpose of improving general welfare and living conditions of all citizens of the Republic of Kosovo.
73. In that respect, the Court finds that the proposed benefits of the Law on Strategic Investments are not limited to one or another Community, but are of general public interest and aim at the well-being of the whole of society.
74. The Court considers that, beyond mentioning that many of the potentially affected businesses in the targeted economic sectors are located in Serb-Majority municipalities and employ many Kosovo-Serbs, the Applicants have failed to demonstrate how the Kosovo-Serb Community specifically would be damaged by the Law on Strategic Investments.
75. The Court reiterates that in a referral under Article 113.5 of the Constitution it is the responsibility of the Applicant to substantiate their claims, including whether a challenged Law should have been considered as a law of vital interest within the meaning of Article 81.1 of the Constitution (see, *mutatis mutandis*, Case No. KO94/16, Constitutional review of the Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency, Resolution on Inadmissibility of 25 October 2016, paragraph 48) .
76. The Court finds that the Applicants have not substantiated their allegations of a violation of the procedural provisions contained in Article 81, paragraph 1, under 2, of the Constitution.
77. Therefore, the Court concludes that this allegation should be rejected as manifestly ill-founded under the Constitution.

Alleged violation of Article 78 of the Constitution

78. The Applicants also allege a violation of the procedural provisions contained in Article 78 of the Constitution, because a session of the Committee on Rights and Interests of Communities and Returns was not held between the first and second readings of the draft Law on Strategic Investments.
79. Article 78 of the Constitution provides that,

“Article 78 [Committee on Rights and Interests of Communities]

1. *The Committee on Rights and Interests of Communities is a permanent committee of the Assembly. This committee is composed of one third (1/3) of members who represent the group of deputies of the Assembly holding seats reserved or guaranteed for the Serbian Community, one third (1/3) of members who represent the group of deputies of the Assembly holding seats reserved or guaranteed for other communities that are not in the majority and one third (1/3) of members from the majority community represented in the Assembly.*
 2. *At the request of any member of the Presidency of the Assembly, any proposed law shall be submitted to the Committee on Rights and Interests of Communities. The Committee, by a majority vote of its members, shall decide whether to make recommendations regarding the proposed law within two weeks.*
 3. *To ensure that community rights and interests are adequately addressed, the Committee may submit recommendations to another relevant committee or to the Assembly.*
 4. *The Committee may, on its own initiative, propose laws and such other measures within the responsibilities of the Assembly as it deems appropriate to address the concerns of Communities. Members may issue individual opinions.*
 5. *A matter may be referred to the Committee for an advisory opinion by the Presidency of the Assembly, another committee or a group composed of at least ten (10) deputies of the Assembly.”*
80. The Court notes from the comments of 21 October 2016 of the President of the Assembly that the Committee on Rights and Interests of Communities and Returns was appointed on 19 February 2016 to review the draft Law on Strategic Investments and to provide their comments within the deadlines prescribed in the Assembly Rules of Procedure.
81. In addition, the President of the Assembly indicated in his comments that on 25 April 2016 the Report with amendments of the Functional Committee for Economic Development, Infrastructure, Trade and Industry, was proceeded for review to the Commission for the Rights and Interests of Communities and Returns.
82. The President of the Assembly further stated that, “[The] Committee on the Rights and Interests of Communities and Returns, has not reviewed the Draft Law on Strategic Investments in the Republic of Kosovo, together with amendments of Functional Committee for Economic Development, Infrastructure, Trade and Industry, within the deadline stipulated in Article 57 paragraph 8 of the Rules of Procedure of the Assembly. (Rules of Procedure, Article 57, paragraph 8, “Standing committees shall submit their

reports to the functional committee within ten (10) working days from receipt of amendments from the functional-reporting committee)."

83. The Court notes that on 2 November 2016 the Applicants informed the Court that there had been no meeting held of the Committee on Rights and Interests of Communities and Returns in between the first reading and second reading of the challenged Law.
84. On 7 December 2016, the Court requested the Applicants to further substantiate this claim. On the same date, the Court requested the Secretary-General of the Assembly to provide further clarifications regarding the allegation of the Applicants that the Committee on Rights and Interests of Communities and Returns had not met to discuss the challenged draft Law.
85. On 12 December 2016, the Secretary-General of the Assembly confirmed to the Court that all information regarding the holding of a meeting by the Committee on Rights and Interests of Communities and Returns was included in the comments submitted by the President of the Assembly on 21 October 2016.
86. On 14 December 2016, the Applicants confirmed to the Court that no meeting was held of the Committee on the Rights and Interests of Communities and Returns, and indicated that this failure to meet could be confirmed by one of the Applicants as Chairperson and other Applicants as members of this Committee. In addition, the Applicants indicated that the failure to hold a meeting of this Committee could also be confirmed from the information contained on the website of the Assembly.
87. Furthermore, the Court notes from the comments of 25 October 2016 submitted by the Chairman of the Functional Committee for Economic Development, Infrastructure, Trade and Industry, that from the date of the submission of the draft Law on Strategic Investments to the Functional Committee on 21 December 2015, one of the Applicants participated in all sessions of this Committee.
88. In addition, the Court notes from these comments that one of the Applicants proposed amendments to the draft Law on Strategic Investments, and that all of these proposed amendments were voted and either approved or rejected by the full Committee.
89. The Court notes that the Committee on Rights and Interests of Communities and Returns had available to it the same amount of time to review the draft Law on Strategic Investments and to prepare its opinion on the draft Law as all of the other standing committees.
90. Furthermore, the Court notes that neither the Applicants nor the Assembly have indicated the reasons why the Committee on Rights and Interests of Communities and Returns did not meet to review the challenged Law.

91. In these circumstances, the Court finds that the Applicants have not substantiated their allegations of a violation of the procedural provisions contained in Article 78 of the Constitution.
92. Therefore, the Court concludes that this allegation should be rejected as manifestly ill-founded under the Constitution.

Alleged violation of Rules 56 and 57 of the Rules of Procedure of the Assembly

93. With respect to the Applicants' allegations regarding the application of Rules 56 and 57 of the Rules of Procedure of the Assembly regarding the review of the draft Law on Strategic Investments by various committees, the Court notes the scope of jurisdiction of the Court under Article 113.5 of the Constitution is to review the compliance with the procedural rules contained in the Constitution of the procedure followed in the Assembly, which does not include a review of the application of the Assembly's own Rules of Procedure.
94. In this regard, the Court considers that the Applicants have not substantiated how this allegation, which is related to the Rules of Procedure of the Assembly, presents a constitutional violation which the Court would have competence to review (see, *mutatis mutandis*, Case No. KO94/16, Constitutional review of the Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency, Resolution on Inadmissibility of 25 October 2016, paragraph 53) .

Alleged violation of Article 60 of the Constitution

95. As far as the procedural allegation that the Applicants relate to Article 60 of the Constitution, that the draft Law on Strategic Investments should have been submitted to the Consultative Council for Communities for consideration, the Court recalls that under Article 60, paragraph 3, of the Constitution, the mandate of the Consultative Communities is defined as follows,

"3. The mandate of the Consultative Council for Communities shall:

- (1) provide a mechanism for regular exchange between the Communities and the Government of Kosovo.*
- (2) afford to the Communities the opportunity to comment at an early stage on legislative or policy initiatives that may be prepared by the Government, to suggest such initiatives, and to seek to have their views incorporated in the relevant projects and programmes.*
- (3) have any other responsibilities and functions as provided in accordance with law."*

96. The Court notes that the mandate of the Consultative Council for Communities deals, inter alia, with *"the opportunity to comment at an early stage on legislative or policy initiatives that may be prepared by the Government"*.
97. In view of the stage at which the mandate of the Consultative Council for Communities comes into play, precedes the legislative procedure proper. It concerns the phase of *"policy or legislative initiative"* and is not part of the

procedure for the adoption of a law by the Assembly, within the meaning of Article 113.5 of the Constitution.

98. Therefore, the Court considers that the Applicants' allegation that the Consultative Council for Communities should have been consulted does not come under Article 113.5 of the Constitution. That consultation is not part of the constitutional legislative procedure that leads to the adoption of a law by the Assembly. Therefore, the Court finds that this allegation is to be rejected as irrelevant.
99. As far as the Applicants have invoked the State's responsibilities towards Communities and their members under Article 58 of the Constitution, in connection with the adoption of the Law on Strategic Investments, the Court finds that these allegations are not related to the adoption of this law either in procedure or in substance.

As to the substance

Alleged violation of Article 46 [Protection of Property], in conjunction with Article 1, Protocol 1, ECHR

100. The Applicants allege that the transfer of use of state-owned and socially-owned enterprises, as authorized by the Articles 18, 22 and 23 of the Law on Strategic Investments, constitutes an expropriation of property in violation of Article 46, paragraph 3, of the Constitution. This Article provides that,

"3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of the public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated."

101. The Applicants also allege that this transfer of use of enterprises is also in violation of Article 1, Protocol 1, [Protection of Property] of the ECHR. This Article provides that,

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

102. The Applicants allege that the Law on Strategic Investments, by authorizing the transfer of use of immovable properties, effectively expropriates the property of state-owned, publicly-owned and socially-owned enterprises, without

compensation in violation of the obligations under Article 46 of the Constitution.

103. The Court recalls that Article 46 [Protection of Property], paragraph 3, of the Constitution provides that,

“3. No one shall be arbitrarily deprived of property. The Republic of Kosovo or a public authority of the Republic of Kosovo may expropriate property if such expropriation is authorized by law, is necessary or appropriate to the achievement of a public purpose or the promotion of a public interest, and is followed by the provision of immediate and adequate compensation to the person or persons whose property has been expropriated.”

104. In addition, the Court refers to Article 1 of Protocol 1 of ECHR which reads:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

105. Although these provisions of the Constitution and the ECHR contain several elements, the Court notes that the Applicants' allegations only concern the issue of compensation for the alleged expropriation of property.
106. The Court notes that the challenged Articles 18, 22 and 23 of the Law on Strategic Investments indicate that any transfer of use of immovable properties of state-owned, publicly-owned or socially-owned enterprises shall be subject to, respectively, laws on the use of state and public property, spatial and urban regulation, the Law on Expropriation of Immovable Property, and the Law on Publicly Owned Enterprises, as well as further regulation in supplementary laws and subsidiary legislation.
107. The Court notes that the Law on Strategic Investments only refers to the “transfer of the right of use of immovable property”, and does not imply the transfer of full ownership. This transfer of the right of use will be subject to other conditions as specified in other laws and regulation, including in some cases the Law on Expropriation of Immovable Property.
108. Furthermore, Article 24 of the Law on Strategic Investments limits the duration of any transfer of the right of use and states that the transfer of the right of use may be terminated in cases where the status of strategic investment is revoked or the agreement with the investor is terminated.
109. In these circumstances, the Court considers that it is not possible to determine exactly how the proposed transfers of the right to use of immovable property of

State, public and socially-owned companies will take place. Furthermore, it is not clear from the Law on Strategic Investments that no compensation will be paid for the right of use of immovable property of state, public, or socially-owned enterprises.

110. Thus, the Court finds that the Applicants have failed to substantiate their claims to a violation of the right to property as protected by Article 46 of the Constitution.
111. Therefore, the Court concludes that the Applicants' claim that the Law on Strategic Investments violates the provisions of Article 46 of the Constitution, in conjunction with Article 1, Protocol 1, ECHR, must be declared manifestly ill-founded under the Constitution.

Alleged violation of Article 49 [Right to Work and Exercise Profession]

112. The Applicants also allege that, because the transfer of use for a period of 40 years of immovable properties of socially-owned enterprises constitutes an expropriation of property without compensation, as discussed above, this effectively also interferes with the rights of employees of socially-owned enterprises to benefit from the 20% of the value of the enterprise following privatization. The Applicants allege that this violates the right to work of all employees of the affected socially-owned enterprises, in violation of Article 49 [Right to Work and Exercise Profession] of the Constitution.

113. Article 49 of the Constitution provides that,

“Article 49 [Right to Work and Exercise Profession]

- 1. The right to work is guaranteed.*
- 2. Every person is free to choose his/her profession and occupation.”*

114. The Court recalls Articles 14 and 15 of the Law No. 03/L-139 on Expropriation of Immovable Property (as amended), which set out the basic rules regarding compensation for expropriation. These Articles provide that,

CHAPTER IV - TRANSFERS OF EXPROPRIATED PROPERTY TO A BENEFICIARY Article

14. Transfers of Expropriated Property to a Beneficiary; Allocation of Costs

“1. If the Government intends to expropriate surface rights to enable the holder of a license or permit issued by the ICMM to exercise the holder's rights under such license or permit, the Government shall first require such holder to execute a written commitment to pay the required compensation to the expropriated person(s). The Government shall conclude the Expropriation Process only after the payment of such compensation by the licensee or permit holder. The Government shall then grant a right of use over the concerned property to the concerned licensee or permit holder. The scope and duration of such right of use shall be

reasonably related to enabling the licensee or permit holder to exercise its rights under the concerned license or permit.”

CHAPTER V – COMPENSATION

Article 15. Basic Rules Governing the Determination of Amount of Compensation

“1. Compensation shall be paid on the basis of the market value of the property as determined in accordance with the further provisions of the present law and the subsidiary legislation issued pursuant to paragraph 6 of this Article.”

115. The Court notes that both the Law on Strategic Investments and the Law on Expropriation foresee compensation for expropriation of immovable property for the purpose of transfers of the right of use.
116. Furthermore, the Court recalls Article 3, paragraph 4, of the Law on Expropriation of Immovable Property. This Article provides that,

“Article 3. General Provisions

[...]

4. It is further provided that the Government, acting under the authority of paragraph 3 of Article 4 of the present law, may expropriate the ownership or other rights of a Municipality or a Municipal Public Authority in or to immovable property. In such a case, it is specifically provided that the concerned Municipality or Municipal Public Authority shall have the same rights provided by the present law to a private Person, including the rights to challenge in court the legitimacy of the expropriation and/or the adequacy of compensation. [...]

117. The Court recalls that it has earlier been called upon to review the compliance with the Constitution of the Law on Expropriation of Immovable Property, and that it found this law to be in compliance with the Constitution (see Judgment in Case no. KO 04/11, Constitutional review of the Law on Expropriation, No. 03/L-139).
118. The Court notes that the manner in which the Law on Strategic Investments authorizes the transfer of the right of use of immovable properties does not necessarily imply that there will be no compensation required for this transfer nor that municipalities will be denied their rights. Furthermore, it is not possible for the Court to determine that such transfers of the right of use would interfere with the privatization process, as alleged by the Applicants.
119. Regarding the Applicants' statement that the right of use of property of socially-owned enterprises may be transferred for a period of 40 years, the Court notes that Article 24 of the Law on Strategic Investments authorizes the transfer of the right of use to immovable property for a period up to 99 years. The relevance of this statement regarding the 40 year period is not clear to the Court, despite two requests to the Applicants for clarifications of their allegations.

120. In addition, the Court finds that the Law on Strategic Investments does not prevent or deny anyone the right to work or exercise a profession, within the meaning of Article 49 of the Constitution (see, *mutatis mutandis*, Resolution on Inadmissibility No. RK734/14 in the case K109/14 of 24 November 2014, paragraph 29).
121. The Court finds that the Applicants have failed to substantiate their claims to a violation of the right to work as protected by Article 49 of the Constitution.
122. Therefore, the Court concludes that the Applicants' claim that the Law on Strategic Investments violates the provisions of Article 49 of the Constitution must be declared manifestly ill-founded under the Constitution.

Alleged violation of Articles 123 and 124

123. Finally, the Applicants allege that, authorized transfer of the right of use of immovable properties of socially-owned enterprises located on the territory of municipalities violates the exclusive competencies of municipalities as guaranteed by the Comprehensive Proposal for the Kosovo Status Settlement (*Ahtisaari Plan*), Annex III [Decentralization], as developed in Chapter X [Local Government and Territorial Organization] of the Constitution, and further provided in Article 17 of the Law on Local Self-Government.
124. The Court recalls Chapter X of the Constitution, which provides that,

“Chapter X. Local Government and Territorial Organization

Article 123 [General Principles]

1. *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.”*
125. The Court notes that Article 124 (3) of the Constitution provides that municipalities shall have “*own, extended and delegated competencies in accordance with the law*”.
 126. However, the Court notes that the Constitution does not regulate what these competencies are or how they are to be implemented or secured by municipalities. That is a matter of the Law.
 127. Therefore, the Court finds that the Applicants have failed to substantiate their allegations of a violation of the competencies of municipalities as guaranteed by Articles 123 and 124 of the Constitution.
 128. As such, this allegation should be rejected as manifestly ill-founded under the Constitution.
 129. Furthermore, the Court recalls Article 113.4 of the Constitution, which provides that, “*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.*”

Request for imposition of interim measure

130. The Court recalls that the Applicants requested that the Law on Strategic Investments be “*SUSPENDED in accordance with Article 27 of the Law on Constitutional Court until the final decision on the constitutionality of the challenged Law is rendered*”.
131. In that respect, the Court refers to Article 43, paragraph 2, of the Law, which provides that,
 - “2. *In the event that a law or decision adopted by the Assembly of the Republic of Kosovo is contested in accordance with Article 113, Paragraph 5, of the Constitution, such a law or decision shall be sent to the President*

of the Republic of Kosovo for promulgation in accordance with modalities determined in the final decision of the Constitutional Court on this contest.”

132. The Court considers that the purpose aimed at by the Applicant's Request is already achieved by the Law.
133. Therefore, the Court rejects the request for an interim measure as not applicable and thus inadmissible

Conclusion

134. In conclusion, the Court finds that the Applicants did not substantiate their claim on constitutional grounds and did not provide evidence indicating how and why the challenged Law on Strategic Investments has violated the Constitution, either in procedure or in substance.
135. The Court concludes that the Applicants' Referral, as far as it concerns alleged violations of Articles 22, 46, 49, 58, 60, 78, 81.1, 123 and 124 of the Constitution, on a constitutional basis, is manifestly ill-founded, in accordance with Article 42 of the Law and Rule 36 (1) (d) and 36 (2) of the Rules of Procedure.
136. Accordingly, the Court declares that Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo is in compliance with the Constitution, meaning that it is constitutional.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.5 of the Constitution, Article 27 and Article 42, paragraph 1.3, of the Law and Rules 36 (1)(d) and (2), and 55 (4) of the Rules of Procedure, on 20 January 2017 , unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO DECLARE that the Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo is constitutional as regards its substance and the procedure followed for its adoption by the Assembly of the Republic of Kosovo;
- III. TO REJECT the Request for Interim Measures as not applicable under Article 43.2 of the Law on the Constitutional Court;
- IV. TO DECLARE that the Law No. 05/L-079 on Strategic Investments in the Republic of Kosovo as adopted by the Assembly of the Republic of Kosovo shall be sent to the President of the Republic of Kosovo for promulgation;
- V. TO NOTIFY this Decision to the Applicants, the President of the Republic of Kosovo, the President of the Assembly of Kosovo and the Government of Kosovo;
- VI. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law on the Constitutional Court; and
- VII. TO DECLARE this Decision effective immediately.

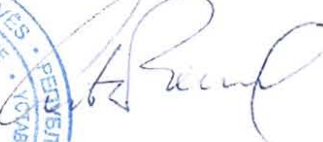
Judge Rapporteur



Ivan Čukalović



President of the Constitutional Court



Arta Rama-Hajrizi