



REPUBLIC OF ALBANIA

THE PRESIDENT

No. Prot. 3535/1

Tirana, on 05.11.2019

Subject: On the election / appointment of the member of the Constitutional Court in the order dictated by the Constitution of the Republic of Albania and Law no. 8577/2000.

Addressed to: Mr. Gramoz RUÇI
SPEAKER OF THE ASSEMBLY

Mrs. Erinda BALLANCA
OMBUDSMAN

Mr. Ardian DVORANI
CHAIR OF THE JUSTICE APPOINTMENTS COUNCIL

TIRANA

Honourable Speaker of the Assembly

Honourable Ombudsman

Honourable Mr. Dvorani

The Justice Appointments Council (JAC), by letter no. 552 prot., dated 08.10.2019, has forwarded to the Institution of the President of the Republic “The Final List of the Ranking of Candidates Allowed for Candidacy and the Report of Reasons of their Ranking, for the completion of the vacancy in the Constitutional Court, full vacancy, announced for application by the President of the Republic by decree no. 10722, dated 07.02.2018 ”.

This documentation practice is administered by the Presidential Institution no. 3534, dated 08.10.2019. The above documentation refers to the vacancy created due to the termination of the term of former judge **Sokol Berberi**. His constitutional mandate has expired on **25.04.2016** and according to the constitutional and legal provisions it belongs to the

President of the Republic to complete the vacancy. The President of the Republic, after examining the practice followed by the Justice Appointments Council (JAC), by decree **no. 11313, dated 15.10.2019**, has selected and appointed **Mr. Besnik Muçi** as the first judge of the Constitutional Court. On 18.10.2019, 18:00 h, Judge Besnik Muçi was sworn in before the President of the Republic, H.E. Ilir Meta and, from that moment, the first judge of the Constitutional Court is in office.

Meanwhile, the Justice Appointments Council, on the same day, on **08.10.2019**, through letter no. 553 prot., **dated 08.10.2019**, has forwarded to the Institution of the President of the Republic also the "Final List of the Ranking of Candidates Allowed for the candidacy and the Report of Reasons of their Ranking, for completing the vacancy in the Constitutional Court, full vacancy, announced by the President of the Republic by Decree No.11133, dated 04.03.2019".

This documentation practice is administered by the Institution of the President no. 3535, dated 08.10.2019. The above documentation refers to the completion of the vacancy created due to the expiration of the term of former Judge **Altina Xhoxhaj**. The constitutional mandate of former Judge Xhoxhaj expired on **25.05.2019** and, according to the constitutional and legal provisions, belongs to the President of the Republic for completion. The creation of this vacancy was notified to the President of the Republic by the Constitutional Court by letter no.79, dated 25.02.2019 and was announced by the President for application by decree no. 11133, dated 04.03.2019.

As it is very clear from the information conveyed by JAC, it results that the Chair of JAC, on the same date of **08.10.2019**, has completed the administrative process of submitting the lists to the President of the Republic **for the completion of 2 (two) vacancies at the same time**. It does not appear that JAC has, in a collegial manner, made any decision on the manner and timing of submitting the lists to the nominating bodies, but this administrative action was carried out by the Chair of the Justice Appointments Council, who pursuant to Article 226 paragraph. 2/e, of law no.115 / 2016, has the sole function of signing the verification, evaluation and ranking acts and forwarding them to the nominating body.

The administrative procedure followed by the Chair of JAC for submitting the lists, as will be explained in more details below, creates the conditions of a legal difficulty, not mentioning that in a *prima facie* assessment it makes it logically impossible that within 30-days, the President of the Republic observe the constitutional provisions that dictate the order and alternation of selection for the appointment/election of new constitutional judges, respectively by the President of the Republic and the Assembly, in the capacity of the nominating body.

The process of appointing judges of the Constitutional Court must be carried out in full compliance with the procedure and order laid down in Article 179 paragraphs 2 and 12 of the Constitution and Articles 7 paragraph 2 and 86 paragraph 4 of Law no. 8577, dated 10.02.2000

“On the organization and functioning of the Constitutional Court of the Republic of Albania”, as amended.

The above constitutional and legal provisions, specify in details the competence, the chronological order, option and time limit within which each of the nominating bodies must act, in cases where each of them is entitled to appoint/elect more than one member of the Constitutional Court, at the same time.

Article 179, paragraph 2 of the Constitution, provides: “***The first member*** to be replaced in the Constitutional Court is appointed by the President of the Republic, ***the second*** is elected by the Assembly and ***the third*** is appointed by the Supreme Court. ***This order is followed for all appointments that will be made after the entry into force of this law.***”

Meanwhile, in the same Article, with regards to the competence of the President of the Republic during the transitional phase of the implementation of constitutional changes in paragraph 12, it is specified:

“12... .. Upon the establishment of the High Judicial Council, the President appoints the judges of the High Court pursuant to Article 136 of the Constitution. ***The President completes the first vacancy*** in the Constitutional Court pursuant to paragraph 2 of this Article and Article 125 of the Constitution. ”

Found in such a situation, in order to comply with constitutional and legal orders, after the administration of both lists simultaneously by JAC concerning the filling (appointment) of members of the Constitutional Court for 2 (two) vacancies announced by the President of the Republic, with **the letter no. 3571 prot., dated 10.10.2019**, the Institution of the President of the Republic addressed the Justice Appointments Council with a request for information on whether or not this body (JAC) has forwarded to the Assembly of Albania the “Final List of the ranking of the candidates for judges in the Constitutional Court, for the vacancy announced by the Assembly on 12.02.2018 ”, as well as the “ Final List of the Ranking of Candidates for Judges in the Constitutional Court, for the vacancy announced by the Assembly on 04.03. 2019”.

The President of the Republic considered that this preliminary information was necessary in order to:

Firstly, to begin the process of the completion of the vacancies in the Constitutional Court as soon as possible;

secondly, the renewal of the Constitutional Court with new judges, should follow the chronological order dictated by the Constitution and the law, with the President of the Republic appointing the first constitutional judge, only after the Assembly had administered the final list by JAC of the required number of candidacies (not less than three);

thirdly, because observing this chronological order of completion will also serve as a basic rule for their future renewal.

In addition to these reasons, there is another reason why this information was necessary.

In all the current vacancies for which JAC has conducted the vetting, evaluation and ranking procedure, there are applicants who are at the same time candidates for both the Presidential or the Assembly vacancies. The eventual appointment of one applicant in the President's list necessarily affects the number of applicants on the list (s) of the Assembly.

Given that the Constitution provides that the Assembly must have available or administered 3 (three) candidacies to make its selection, the President should be provided that the appointment he makes should not harm the evaluation space of the Assembly in its selection.

The fact that the same applicants are on the Assembly list complicates the constitutional competence of electing members of the Constitutional Court. Thus, a possible selection by the President, without preserving the chronological order set by the Constitution, could theoretically bring about, even putting the Assembly under the conditions of the practical impossibility of having the necessary number of candidates to elect its members.

The President takes this stance based on the constitutional principle of loyalty (co-operation) between state bodies and on finding opportunities for the Constitutional Court to be completed as soon as possible.

In response to a request for information, the Justice Appointments Council, by letter **no. 655 Prot., Dated 14.10.2019** informs the President of the Republic that “Today, by letter no. 653 prot., Dated 14.10.2019 and by letter no. 654, dated 14.10.2019, has forwarded and submitted to the Assembly of the Republic of Albania:

1. The Final Listing of Candidates Allowed for Candidacy and the Report of Reasons for their Ranking, for the filling of the vacancy in the Constitutional Court, full vacancy, announced by the Assembly of the Republic of Albania, **on 12.02.2018;**
2. The Final Listing of Candidates Allowed for Candidacy and the Report of Reasons for their Ranking, for the filling the vacancy in the Constitutional Court, full vacancy, announced by the Assembly of the Republic of Albania, **on 04.03.2019.**”

It resulted that JAC, on **14.10.2019** (*that is, after 6 days of sending the lists to the Institution of the President*), has carried out the administrative process of submitting the lists to the Assembly, to fill both vacancies simultaneously belonging to the Assembly for election.

From the information provided, it turns out that JAC in its meeting dated **21.09.2019** approved by final decision the lists of candidates, the rankings of candidates and the evaluation reports on their rankings for the eligible candidates running in all 4 (four vacancies) announced and belonging for appointment/election as the nominating body to the President of the Republic and the Assembly of Albania appearing, as following:

1. Decision no. 128, dated 21.09.2019 and Decision no. 129, dated 21.09.2019 on approving the Final List of Candidate Rankings and the Report of Reasons on the Ranking of Candidates for the completion of the vacant position of Judge in the Constitutional Court, full

vacancy, announced for application by **the President of the Republic on 07.02.2018**, in this order:

1. Arta Vorpsi 89.642
2. Elsa Toska 85.428
3. Besnik Muçi 81.928
4. Regleta Panajoti 80.285

2. Decision no. 130, dated 21.09.2019 and Decision no. 131, dated 21.09.2019 on approving the Final List of Candidate Rankings and the Report of Reasons on the Ranking of Candidates for the completion of the vacant position of Judge in the Constitutional Court, full vacancy, announced for application by the **Assembly of Albania on the date 12.02.2018**, in this order:

1. Arta Vorpsi 89.642
2. Elsa Toska 85.428
3. Besnik Muçi 81.928

3. Decision no. 132, dated 21.09.2019 and Decision no. 133, dated 21.09.2019 on approving the Final List of Candidate Rankings and the Report of Reasons on the Ranking of the Allowed Candidates to complete the vacant position of Judge in the Constitutional Court, full vacancy, announced for application by the **President of the Republic on the date 04.03.2019**, in this order:

1. Arta Vorpsi 89.642
2. Fiona Papajorgji 88.785
3. Elsa Toska 85.428
4. Marsida Xhaferllari 82.000

4. Decision no. 134, dated 21.09.2019 and Decision no. 135, dated 21.09.2019 on approving the Final List of Candidate Rankings and the Report of Reasons on the Ranking of the Candidates to complete the vacant position of Judge in the Constitutional Court, full vacancy, announced for application by **the Assembly of Albania on the date 04.03.2018**, in this order:

1. Arta Vorpsi 89.642
2. Fiona Papajorgji 88.785
3. Elsa Toska 85.428

Referring also to the system of numbering of the decisions of JAC, as well as their listing in the publication on the High Court's website, it turns out that the Justice Appointments Council has reviewed and decided on the approval of the final ranking list for each vacancy announced by the nominating bodies, trying to respect the order to be followed for the

appointment/election of new constitutional judges, provided for in Article 179, paragraph 2 of the Constitution, Articles 7, paragraph 2, and 86, paragraph 4 of Law no. . 8577, dated 10.02.2000 “On the organization and functioning of the Constitutional Court of the Republic of Albania”, as amended.

From all the administered information, it turns out that JAC has done **at the same time** the ranking of the candidates and the creation of 4 lists, for both institutions – the President of the Republic and the Assembly - within the same date 21.09.2019 in which, even, and the numbering of decisions is alternated according to the respective vacancies of the President and the Assembly.

Meanwhile, in the acts sent to the Institution of the President of the Republic, there is no data that explains the reasons for sending both lists at the same time or the reasons for delaying the sending of two lists at the same time by one week difference to the Assembly.

This administrative action of JAC does not respect neither the time of compiling the lists (*the lists were approved within the same day*) nor the order of their approval (the first list approved is by the President, the second list is by the Assembly, the the third is by the President, and the fourth list is of the Assembly) and neither the mandatory chronological order, which the Constitution and the law have set for completing the vacancies.

Respecting the order of selection described above is dictated and related also with another very important procedural moment. The nominating bodies (President, Assembly) have set in motion the Justice Appointments Council to fill vacancies that belong to them for completion as nominating bodies, **at different time frames**, according to a chronological order that was also to be respected by JAC.

This chronological order of investment by JAC is the same as the chronological order required by law. Specifically:

1. Completion of the vacancy created by the termination of the mandate of former judge **Sokol Berberi (2016)**, announced by the President of the Republic by decree dated **07.02.2018** and the candidate lists sent to JAC by **letter no.2668 / 2 prot, dated 28.02.2018.**
2. Completion of the vacancy created by the termination of the mandate of former Judge **Vladimir Kristo (2016)**, announced by the Albanian Assembly on **12.02.2018** and the candidate lists sent to JAC by letter **no.1031 / 2 prot, dated 25.04 .2018.**
3. Completion of the vacancy created by the termination of the mandate of former Judge **Altina Xhoxhaj (2019)**, announced by the President of the Republic by decree dated

04.03.2019 and the candidate lists sent to JAC by letter **no. 930 prot, dated 27.03. 2019.**

4. Completion of the vacancy created by the termination of the mandate of former Judge **Bashkim Dedja (2019)**, announced by the Albanian Assembly **on 04.03.2019** and the candidate lists sent to JAC with letter **no. 1446 prot, dated 04.04. 2019.**

Pursuant to Article 179 paragraph 2 of the Constitution, Articles 7 paragraph 2, and 86 paragraph 4 of law no. 8577, dated 10.02.2000 “On the Organization and Functioning of the Constitutional Court of the Republic of Albania”, as amended, the Justice Appointments Council, in the final stage of approving and submitting final lists, must comply with the above requirements of the Constitution and the law.

By approving and forwarding the lists to each nominating body in this order and in a timely differentiated manner, JAC would avoid the paradoxical procedural situation that is created.

JAC, by simultaneously forwarding the candidate lists to fill both vacancies belonging to the President of the Republic, has placed the Institution of the President of the Republic in difficulty, trying to establish a state of affairs in which the President according to JAC must also express his decision within the 30-day legal deadline also for the appointment of the other judge for the completion of the other vacancy, eventually before the Assembly expresses its decision for the appointment of the second constitutional judge.

If the President of the Republic follows this logic as the Chair of JAC has acted administratively, this would necessarily lead to a violation of the provisions of the Constitution and law no. 8577/2000, with regards to the respecting of the order of the appointment or the election of new constitutional judges.

It should be emphasized that these constitutional and legal provisions are important, as they relate to the Constitutional Court's renewal mechanism, which was reformed in 2016 by constitutional amendments, due to the failure of implementation that had the original formulation of this mechanism.

The constitutional changes that took place in the context of the justice reform system on July 21-22, 2016, placed great importance on how the composition of the Constitutional Court would be restored. Article 179 paragraph 2 of the Constitution states:

“The first member to be replaced in the Constitutional Court is appointed by the President of the Republic, the second is elected by the Assembly and the third is appointed by the High Court. This order is followed for all appointments that will be made after the entry into force of this law. ”

Thus, according to this provision of the Constitution, the President of the Republic cannot appoint two judges at the same time, or two judges one after another, but only the first member, while the second member of the Constitutional Court must be appointed by the Assembly and the third by the High Court.

This arrangement has been of great importance to the Constitution-maker, insofar as, in the same provision of Article 179, paragraph 12, last paragraph, it has repeated this rule by specifying:

*"12. The President of the Republic shall remain Chairman of the High Council of Justice until the establishment of the High Judicial Council within eight months of the entry into force of this law. Upon the establishment of the High Judicial Council, the President shall appoint the judges of the High Court pursuant to Article 136 of the Constitution. **The President shall fill the first vacancy in the Constitutional Court pursuant to paragraph 2 of this Article and Article 125 of the Constitution.**"*

For the foregoing, in the present conditions of completion of the vacancies in fulfillment of the constitutional provisions, the President of the Republic cannot appoint another judge of the Constitutional Court, at least without the prior consent of the Assembly of Albania, for the election of the second Judge.

These constitutional arrangements have been dealt with in Law no. 8577, dated 10.02.2000 "On the Organization and Functioning of the Constitutional Court of the Republic of Albania", as amended, in which it is explained in details how these obligations are to be fulfilled.

Article 7, paragraph 2 of Law no. 8577, dated 10.02.2000 provides:

*"The composition of the Constitutional Court is renewed every three years, with one-third of it. **The new members are appointed by order, respectively by the President of the Republic, the Assembly and the High Court. This rule shall also apply in cases of termination before the term of office of a member of the Constitutional Court.**"*

In more detail, even for the treatment of this concrete case related to the completion of 4 (four) current vacancies, this rule is also reinforced in Article 86 paragraph 4 of Law No. 8577/2000, which provides:

*"4. The renewal of the Constitutional Court judges **by 2022** will take place according to the scheme **provided below**:*

*a) **The judges who will replace the judges whose term of office expires in 2016 shall be appointed according to the order by the President of the Republic and the Assembly.***

b) The judge who will replace the judge whose term of office expires in 2017 is elected by the High Court and remains in office until 2025.

c) Judges who will replace the judges whose term of office expires in 2019 shall be appointed according to the order by the President of the Republic and the Assembly.

ç) The judge to replace the judge whose term of office expires in 2020 is elected by the High Court and remains in office until 2028.

*d) Judges who will replace the judges whose term of office expires in 2022 shall be appointed according to the order by **the President of the Republic, the Assembly and the High Court.***

Referring to the current state of the completion of the vacancies pursuant to Articles 125, 179, paragraphs 2 and 12 of the Constitution and the above provision of the law, Article 7, paragraph 2, 86, paragraph 4, letters "a" and "c", for a better explanation and clarity, the following table clearly illustrates the former judges and the timing of the expiry of their constitutional mandate, as well as the order of nomination and appointment of judges, respectively by the President and the Assembly of Albania.

O R D E R	FORMER JUDGES, WHOSE MANDATES ARE COMPLETED	YEAR OF THE TERMINAT ION OF MANDATE	THE NOMINATING BODY THAT DOES THE APPOINTMENT/ ELECTION	TIME OF ANNOUNCEM ENT OF APPLICATION PROCEDURE	NOMINAT ED / ELECTED CANDIDA TE
1.	Sokol BERBERI	2016	PRESIDENT	07.02.2018	Besnik MUÇI
2.	Vladimir KRISTO	2016	ASSEMBLY	12.02.2018	
3.	Altina XHOXHAJ	2019	PRESIDENT	04.03.2019	
4.	Bashkim DEDJA	2019	ASSEMBLY	04.03.2019	

As evidenced above, in compliance with the constitutional provisions and the above provisions of Law No. 8577/2000, the President of the Republic, after examining the practice and documentation sent on 08.10.2019 by the JAC, **by decree no. 11313, dated 15.10.2019**, has selected and appointed **Mr. Besnik Muçi**, as a judge in the Constitutional Court.

This appointment and the decree of the President of the Republic were officially announced to the Speaker of the Assembly, the Constitutional Court, the Ombudsman, the High

Judicial Council, the High Prosecutorial Council, the Judicial Appointments Council, the General Prosecutor's Office and the Prosecutor's Office at the First Instance Court for Serious Crimes.

As you are aware, at the Institution of the President of the Republic, on 18.10.2019, 18:00 in the presence of representatives of independent and constitutional institutions, ambassadors, as well as representatives of European Union countries and the United States of America, took place the swearing-in ceremony before the President of the Republic, H.E. Ilir Meta, of the first member of the Constitutional Court, Judge Besnik Muçi.

In this way, the President of the Republic has fulfilled without any delay the constitutional obligation for the election of the FIRST MEMBER, Mr. Besnik Muçi, who has currently started exercising the duty of the judge of the Constitutional Court of the Republic of Albania.

Meanwhile, the President, according to the constitutional provisions and the status of vacancies for completion, is awaiting the decision of the Albanian Assembly to elect at least **the second member** of the Constitutional Court.

After the decision of the Assembly, the President of the Republic will immediately express his decision for the appointment of the other member who will complete the vacancy created by the termination of the mandate of former judge, **Mrs. Altina Xhoxhaj**.

The exercise of this constitutional right of the President of the Republic has been attempted to be openly violated by the administrative activity pursued by the Chair of the Justice Appointments Council, who has submitted the lists for the completion of this vacancy on the same day as the first vacancy on 08.10.2019.

Compared to the moment when JAC sent the lists to the Assembly (14.10.2019), the exercise of this right and competence by the President in the order dictated by the constitution and law is complicated, as the Assembly has 30 days to express itself.

This means that the Assembly may choose to vote for the election of the next constitutional judge within **13 November 2019**, which coincides with the expiry of the 30-day deadline set by Article 125, paragraph 2 of the Constitution, as a constitutional deadline, meanwhile this date (13 November 2019), goes beyond 7 November 2019, a time that the President would have to express his decision according to the proposal of JAC.

Referring to the Constitution, which provides the order for the completion of the vacancies in the Constitutional Court and law no. 8577/2000, the right of each institution to appoint/elect a constitutional judge within a 30-day period shall take effect **only after the precursor vacancy completion procedure has been fulfilled or, at least, it has started earlier in time.**

In the above provisions, it is described the institutional **belonging** for following the appointment/election procedure for each vacancy (President, Assembly, High Court), but also in cases where at least two institutions happen to proceed with filling of the relevant vacancies, which end at the same time (see letters "a", "c" and "d" of paragraph 4 of article 86), the law

has also specified the relevant **chronological order** according to which **the institutions can and should act accordingly**.

Thus, the Constitution and the law have emphasized two essential notions throughout the process of completion of vacancies in the Constitutional Court:

The appropriateness of the nominating body (the institution that has the right to appoint), individualizing not only that each of the institutions has the right to fill 3 vacancies, but also individualizing the concrete vacancy to be filled by the factual situation;

and **the order of their completion**, specifying the chronological order of operation of each institution. The general chronological order, set out in Article 179/2 of the Constitution and Article 7 of the law, is as follows: **President - Assembly - High Court**.

On the other hand, the chronological order according to letters "a", "c" of paragraph 4 of article 86 of law no. 8577, is clearly detailed for each case, in this order: **President-Assembly**.

This rule, provided in the Constitution and reinforced many times in Law no. 8577/2000 of the Constitutional Court is essential to be respected not only by the relevant institutions (President, Assembly, High Court) **but also by the Justice Appointments Council (KED)**.

This is for the simple legal reason, that the right of each of the institutions for the appointment / election must really be interpreted in details **within a 30-day period, but on the other hand, this right of each institution starts and becomes effective only after the procedure for the completion of the precursor vacancy has started earlier in time.**

Given that the 30-day deadline for the President of the Republic is only set forth in **Article 7 / b, paragraph 4 of law no. 8577/2000** it is important to observe the constitutional provision on the chronological order of appointment that **the Constitution has established, but which the law itself has exhaustively clarified. This constitutional and legal obligation must be applied not only by the nominating bodies but also must be followed in the recent administrative actions of JAC.**

In view of the above, for the purpose of updating in orderly manner and according to the constitutional provisions, of the composition of the Constitutional Court, given that each nominating body, in this case (President, Assembly) has 30 days to express itself upon the appointment / election of a member of the Constitutional Court, the President of the Republic has analyzed the letter sent by JAC in the light of the provisions of the Code of Administrative Procedure (CAP) and the constitutional and legal rules described above.

According to Article 3 paragraph 9 of CAP, the process that the President of the Republic performs after receiving the relevant letter from JAC is a proper administrative procedure. This procedure is triggered by the fact that a documentation practice is formally presented by the Justice Appointments Council. In itself, the documentation practice introduced by JAC, as its final administrative activity, receives the value of a request to initiate this procedure within the meaning of Article 41 of CAP.

Pursuant to Article 44/2 of CAP, the Institution of the President has reviewed in advance the documentation practice presented by JAC, analyzing each of the elements provided for in this provision or other laws.

According to this provision, as well as Article 66/1 of CAP, it turns out that the right of the President of the Republic to operate with the selection and appointment of a candidate for the next vacancy starts and becomes operational only after another body, in this case the Assembly, completes the issue that it has under its competence and is currently under review; i.e, the election of the second member of the Constitutional Court who, in turn, belongs to be elected by this body.

Only after this preliminary matter has been considered and resolved (that is, the appointment of the second member by the Assembly) which, by the constitutional deadline, must end by **13 November 2019**, then the President of the Republic is obliged to exercise his constitutional right for the appointment of the other member of the Constitutional Court.

The President has concluded that the substantive review of the proposals of the Justice Appointments Council cannot be carried out at this time, as currently under Article 179, paragraphs 2 and 12 of the Constitution, as well as Articles 7 paragraph 2 and 86 paragraph 4 of the law. no. 8577, dated 10.02.2000 “On the Organization and Functioning of the Constitutional Court of the Republic of Albania”, as amended, is the turn of the Assembly of Albania to Express itself on the election of the second member of the Constitutional Court.

For this reason, the President of the Republic, based also on Article 66 of CAP, suspends the administrative procedure, as it is constitutionally and legally prohibited to act until a final decision is made by the Assembly on the issue of the election of the second member of the Constitutional Court, pursuant to Article 125, paragraph 2 and Article 179, paragraph 2 of the Constitution, and Article 86, paragraph 4 of Law No. 8577/2000.

Based on this reasoning, as well as on the factual situation created by the administrative violations of JAC, the President of the Republic hereby invites the Assembly to act within the working calendar and work program, to act as soon as possible on the election of the second member of the Constitutional Court, in order for the President of the Republic to act thereafter on the appointment of the other member of the Court, for the respective vacancy.

The President, with this preliminary decision, aims to respect the constitutional norm of the implementation of the proper order in the appointment of the members of the Constitutional Court and to regulate this unusual situation created by the administrative activity of submitting lists badly-thought by the Chair of the Judicial Appointments Council.

This decision to suspend the continuation of the administrative process of reviewing the list and documentation forwarded by the JAC, until the completion of the election of the second member by the Assembly (date 13 November 2019), is intended to preserve the constitutionality of the appointment / election of the new members of this Court and clearly indicates the will of the President of the Republic, that in the capacity of the nominating body, the President will express himself to appoint the next member of the Constitutional Court from the list of candidacies submitted by JAC.

Furthermore, from a preliminary examination of the documentary practice administratively communicated by JAC, it turns out that based on Article 44/2 letter “c” of CAP, it is necessary to carry out other administrative actions from the latter before a final consideration regarding this practice.

The Justice Appointments Council has made available to the President of the Republic only the acts formed/created by Justice Appointments Council. In assessing some of the circumstances that have come to our attention, the President of the Republic, pursuant to Article 92 / h of the Constitution and Article 44/2 letter c) of CAP, requires from JAC to be provided with a copy of the documentation administered and reviewed by JAC that contains the nomination file of each of the 4 (four) candidates allowed and listed by JAC for the completion of this vacancy.

JAC, on page 10, the last paragraph of the Final Report on Order of the Candidates, has expressed its readiness to make available a full copy of the documentation. Referring also to this fact, this data and this information is required to be forwarded as soon as possible, but no later than 7 days after the administration of this letter in order for the President of the Republic to alternate with the Assembly of Albania to comply with the constitutional provisions. In case JAC does not forward the required data, the President of the Republic will proceed with the examination of the matter with the information available to him.

In the light of the foregoing, the President of the Republic calls for the engagement of the Chair of the Justice Appointments Council, as this matter, which has been valued with very little importance, is creating a pathway to irreparable consequences for the nominating bodies and the process as a whole.

I must bring to Your attention that for the President of the Republic, the appointment/election of the new members of the Constitutional Court, in accordance with the constitutional and legal conditions and criteria, has been a continuous and repeated request to the Justice Appointments Council.

To this end, the representative of the Institution of the President of the Republic and the Ombudsman have repeatedly raised at the Council meetings not only this concern, but also other issues related to the transparency of the Council's activities, or the problems that are present in some aspects of the bylaws on the vetting and evaluation process adopted by the Council on certain legal criteria for allowing and prohibiting the candidates who compete for members of the Constitutional Court.

Concerned with some issues of the activity and the decision-making of the Council, via letter **no. 2941/1 prot, dated 31.08.2019**, the President of the Republic has requested the Council inter alia:

".. to carry out as soon as possible the fulfillment of the functional tasks for the verification, evaluation and scoring of candidates, in accordance with the requirements of the Constitution and the law, by forwarding to the Institution of the President of the Republic and the Assembly of Albania the lists with the necessary number of the candidates evaluated and ranked for each vacancy, to enable the nominating bodies to elect as soon as possible and by the right order the new members of the Constitutional Court, so that this Court can function as soon as possible in order to make decisions and to address a range of issues that concern all social life in the country. "

Although concerns about the manner and timing of how candidates' lists would be presented by the Council to the nominating bodies have previously been expressed by the President, still the Chair of Justice Appointments Council failed to comply with this constitutional obligation.

The following of this process by the President of the Republic, according to the proposal by JAC would constitute an open violation of Article 179, paragraphs 2 and 12 of the Constitution, as well as Article 7, paragraph 2, 86, paragraph 4, of Law no. 8577/2000 "On the Organization and Functioning of the Constitutional Court of the Republic of Albania", as amended.

It is unacceptable for the President of the Republic to admit a violation of the constitutional provisions because of the wrong administrative activity of the Justice Appointments Council in forwarding the lists.

This issue would not have arisen had the Justice Appointments Council complied with the constitutional provisions, or would have appreciated the effects that the final administrative activity of JAC according to the constitutional activity and obligations, that have the other bodies involved in this process (President, Assembly).

The new system of appointment/election of constitutional judges where three members are appointed by the President of the Republic, three are elected by the Assembly and three are elected by the High Court, who are selected from the candidates listed in the top three positions on the list by Justice Appointments Council, by law, place the institutions involved in the process in a position of requiring respect for the principle of constitutional loyalty, **which essentially requires mutual respect by each institution over the competences of the other, and implies the establishment of a co-operation relationship between them.**

In this particular case, the observance of this principle required that the Justice Appointments Council, in the final administrative process of submitting lists, be guided, inter alia, by the objective of ensuring that the appointment / election of new members of the Constitutional Court not only ensured a qualitative composition and opportunity for election by the nominating bodies, but also ensured that the whole process must be accomplished,

following the order of appointment / election of judges in accordance with the constitution and law.

The President of the Republic uses the opportunity to bring to the attention of the Justice Appointments Council and the Assembly of Albania that the Constitutional Court of the Republic of Albania has for years dealt by decision-making with issues of precisely of this nature, that are related to how they should behave and interact with each other the constitutional institutions throughout the process of appointing / electing higher level judges in which the constitutional judges are included.

The Constitutional Court, in its decisions no.2 / 2005; no. 24/2011 and 41/2012, has extensively argued over the principle of constitutional loyalty (co-operation), a principle that should guide the institutions involved when the system of selecting and nominating candidates for these senior positions in the judicial system is completed by more than a constitutional body.

In paragraph 22 of Decision No. 24/2011 the Constitutional Court argues: *“This nomination system, accepted by the Constitution, places the subjects involved before the requirement of respect for the principle of constitutional loyalty which, in essence, expresses mutual respect. from each subject for the competences of the other, and implies the creation of a co-operation relationship between them ”.*

In another point of this ruling, the Constitutional Court reiterates: *“37. In applying the basic principle of the rule of law, that of separation and balances between powers, the constitution maker has determined, for each of the bodies representing these powers, the powers that comply/respond with its purpose. As long as these powers are determined by constitutional norms, **it is disallowed for another body to take or ignore them at will.** ”*

With the procedure followed by JAC it appears that this body has violated the principle of constitutional loyalty, because in its last administrative activity it has not shown care and cooperation with the Institution of the President of the Republic in the procedures for appointing new members of the Constitutional Court.

Deeply overlooking and underestimating the effect that its administrative activity would create on the exercise of powers by the President of the Republic and the Assembly of Albania, the Justice Appointments Council has placed the bodies in difficulty in exercising their powers under the constitutional order.

Without a cooperation between the bodies involved in the process of appointing the new members of the Constitutional Court (JAC-President-JAC-Assembly), this process cannot be concluded in accordance with Article 179, paragraphs 2 and 12 of the Constitution and the principles drafted by the jurisprudence of the Constitutional Court itself.

Precisely in order to preserve the constitutionality of this process and in order to have the opportunity to express itself on the appointment of a Constitutional Judge, the President of the Republic, pursuant to Articles 4, 92, 179, paragraphs 2, 12 of the Constitution, Articles 7, paragraph 2, 7 / b, and 86 paragraph 4 of Law no. 8577, dated 10.02.2000 “On the organization and functioning of the Constitutional Court of the Republic of Albania”, articles 66 and 44/2, letter “c” of law no. 44/2015 “Code of Administrative Procedures”, has preliminarily decided:

- To suspend the administrative process of reviewing the list and the documentation practice for the completion of the vacancy in the Constitutional Court, full vacancy, announced by the President of the Republic by decree no.11133, dated 04.03.2019, until the election of the second member of the Constitutional Court by the Assembly of Albania or until the expiry of the constitutional deadline, within which the Assembly of Albania shall express itself for the election of members of the Constitutional Court for the completion of vacancies belonging to it as a nominating body and which, according to calculation, this deadline is 13 November, 2019;
- to require the Justice Appointments Council only the completion of the documentation practice and the submission within 7 (seven) days a copy of the documentation administered and reviewed by JAC that contains the candidacy file of each of the four (4) candidates allowed and listed by JAC for the completion of the vacancy announced by the President by decree no.11133, dated 04.03.2019, for the purpose of the continuation of the review;
- request the co-operation of the Assembly of Albania to consider the possibility of including for consideration in the plenary session, as soon as possible, the election of the second member of the Constitutional Court, in order for the President of the Republic to exercise his competence, in the order dictated by the Constitution and law no. 8577/2000.

The President of the Republic finds the opportunity once again to express his will that as he has acted so far, he will continue to offer the maximum support and cooperation with each of the institutions in order that the Constitutional Court of the Republic of Albania can function as soon as possible and all vacancies in this court be completed as soon as possible and in full compliance with the provisions of the Constitution and the requirements of the law.

THE PRESIDENT OF THE REPUBLIC

Ilir META