

Decision no. 3, dated 30.01.2024

(V-3/24)

Constitutional Court of the Republic of Albania composed of: Holta Zaçaj, President, Marsida Xhaferllari, Fiona Papajorgji, Sonila Bejtja, Sandër Beci, Ilir Toska, Genti Ibrahim, Marjana Semini, Elsa Toska, members, with court secretary Blerina Basha on 12.12.2023 and 10.01.2024, took under examination in public plenary session on the basis of submitted documents, the case no. 6 (Sh) 2023 of the Basic Court Register, pertaining to:

APPLICANT: **ASSOCIATION “OPPOSITION TO THE SKAVICA DAM”**, represented with authorisation, by lawyers Jordan Daci and Baftjar Rusi.

ASSOCIATION “ON THE PROTECTION OF THE PROPERTIES AND THE ENVIRONMENT OF BLACK DRIN BASIN`S”, represented with authorisation, by lawyers Dorian Matlija and Vladimir Meçe.

ALBANIAN HELSINKI COMMITTEE, represented with authorisation, by the Executive Director, Erida Skëndaj and Julian Mërtiri.

INTERESTED SUBJECTS:

ASSEMBLY OF THE REPUBLIC OF ALBANIA, represented with authorisation, by Mimoza Arbi and Xhilda Pinci.

COUNCIL OF MINISTERS, represented with authorisation, by Herald Jonuzaj, Besjan Kadiu, Erald Elezi, Enea Karakaçi, Ermal Nufi and state advocate Irma Qosja.

THE ALBANIAN POWER CORPORATION, represented with authorisation, by Artan Çela and Jurgel Koçi.

“BECHTEL LIMITED” COMPANY, in absentia.

OBJECT: Repeal of law no. 38/2021, dated 23.03.2021, "On determining the special procedure for negotiation and execution of the contract with "Bechtel International Inc." for the project and construction of the Skavica Hydropower, Plant", as incompatible with the Constitution of the Republic of Albania as well as the Stabilisation and Association Agreement.

Repeal of the Council of Ministers decision no. 485, dated 30.07.2021, "On the approval of the contract of the first phase "Contract for technical services – Skavica hydropower project" between KESH sh.a. and Bechtel Limited", as incompatible with the Constitution of the Republic of Albania as well as the Stabilisation and Association Agreement.

Stay of execution of the law no. 38/2021, dated 23.03.2021, "On determining the special procedure for negotiation and execution of the contract with "Bechtel International Inc." for the project and construction of the Skavica Hydropower, Plant", as well as of the Council of Ministers decision no. 485, dated 30.07.2021, "On the approval of the contract of the first phase "Contract for technical services – Skavica hydropower project" between KESH sh.a. and Bechtel Limited", until the final decision of the Constitutional Court enters into force.

LEGAL BASIS: Articles 3, 4, 7, 11, 17, 18, 38, point 1, 41, 42, 46, 48, 49, point 1, 56, 59, letters "d" and "g", 82, point 1, 131, letter "a" and 134, point 1, letter "h", of the Constitution of the Republic of Albania (*Constitution*); Articles 8 and 10 of the European Convention on Human Rights (*ECHR*) as well as Article 1 of its Protocol no.1; Articles 6 et seq. of the United Nations Convention "On the right of access to information, public participation in decision-making and access to justice in environmental matters" (The

Aarhus Convention), ratified by law no. 8672, dated 26.10.2000; law no. 9590, dated 27.07.2006 “On the ratification of “The Stabilisation and Association Agreement between the Republic of Albania and the European Communities and their Member States” (law no. 9590/2006); Articles 27 et seq., 45, 47, 49, 50 et seq. and 76 of law no. 8577, dated 10 February 2000 ““On the organization and functioning of the Constitutional Court of the Republic of Albania”, (law no. 8577/2000), amended.

Constitutional Court of the Republic of Albania, pursuant to Articles 131, point 1, letter “a” and 134, letter “h” and 2, of the Constitution, as well as Articles 71 and 72 of Law no. 8577, dated 10 February 2000 “On the organization and functioning of the Constitutional Court of the Republic of Albania”, amended, unanimously,

DECIDED:

1. Finding of the violation of the right of access to information on the state of the environment and its protection, guaranteed under Article 56 of the Constitution, in the procedures of the approval of law no. 38/2021.
2. Ordering of the public authorities to correct such violation and to guarantee the right to access to information during the first phase of the implementation of law no. 38/2021.
3. Obligation to consider the results of public participation on the environmental protection, as long as this is possible, in compliance with Article 8 of the Aarhus Convention.

This decision is final and enters into force on the day of its publication in the Official Gazette.