



REPUBLIKA E SHQIPËRISË  
REPUBLIC OF ALBANIA  
CONSTITUTIONAL COURT  
PRESIDENT

Nr. 1057 Prot.

Tiranë, më 10.12.2024

**Subject: Kind request for Amicus Curiae Opinion**

**Addressed: Mrs Claire BAZY MALAURIE  
President of the Venice Commission**

Honorable Madame President,

First of all, please accept my deepest gratitude and highest regards, also on behalf of the Constitutional Court, for the cooperation and invaluable contribution of the Venice Commission throughout the entire activity of this Court in matters of particular importance.

The judicial reform of 2016 brought, among other things, changes to the constitutional framework that regulates the formula and procedure for the appointment of judges to the Constitutional Court, intervening also with transitional provisions aimed at ensuring its regular renewal.

These constitutional provisions began to be implemented with delay, resulting in the late appointment of the constitutional judges, which created uncertainty regarding the duration of their mandates and brought consequences concerning the respect of the principle of the full judges term of 9 years and the rule of regular renewal of the Court every three years with a third of its members.

According to the current legal framework, Article 125, paragraph 3, of the Constitution provides that judges of the Constitutional Court serve for 9 years without the right to reappointment, and they, according to Article 129 of the Constitution, begin their duty after taking oath before the President of the Republic. The cases of termination of mandates are foreseen in Article 127, while Article 125, paragraph 6, of the Constitution

foresees the renewal of the composition of the Constitutional Court every three years with one third of its members, according to the procedure defined by law.

Article 179, paragraph 3, of the Constitution (transitional provision), provides that in order to ensure the regular renewal of the composition of the Constitutional Court, the judge who will replace the one whose mandate ended in 2017, will remain in office until 2025, and the new judge who will replace the one whose mandate ended in 2020, will remain in office until 2028. Furthermore, according to this provision, other judges of the Constitutional Court are appointed for the entire duration of their mandate, in accordance with the law.

These constitutional provisions are also reflected in the provisions 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 organic law).

The current appointments of constitutional judges and their respective vacancies before appointment are as follows:

<b>Judge</b>	<b>Year of appointment</b>	<b>Year of vacancy</b>
Marsida Xhaferllari	2019	2019
Fiona Papajorgji	2019	2019
Elsa Toska	2019	2016
Sonila Bejtja (Besnik Muçi)	2019	2016
Sandër Beci	2020	2020
Ilir Toska	2022	2022
Gent Ibrahimini	2022	2022
Marjana Semini	2023	2022
Holta Zaçaj	2023	2017

Judge Holta Zaçaj has been appointed to fill the vacancy of judge Vitore Tusha, whose full mandate ended on March 10, 2017.

With Decision No. 2, dated January 16, 2023, the High Court, as the appointing body for this vacancy, declared: "The election of Mrs. Holta Zaçaj as a member of the Constitutional Court with a partial mandate until the renewal process in 2025."

Judge Holta Zaçaj began exercising her duty as a member of the Constitutional Court on January 25, 2023.

Today, December 10, 2024, media reported that the High Court, as the appointing body, has stated that the Constitutional Court should declare not later than today, the end of the mandate of constitutional judge, Mrs. Holta Zaçaj, which means three months before March 10, 2025, which is the date of the expiration of her mandate, relating it thus to the end of the predecessor judge, Mrs. Vitore Tusha's mandate, whose full mandate ended on March 10, 2017.

According to paragraph 3 of Article 127 of the Constitution, the end of a judge's mandate shall be declared upon the decision of the Constitutional Court. According to Article 9 of the Organic Law of the Constitutional Court, paragraphs 2 and 3, the request for the declaration of the termination of a judge's mandate is made by the President of the Constitutional Court, who, no later than 3 months before the end of a judge's mandate, shall notify the appointing body about the vacant position.

Consequently, referring to the position of the High Court, it appears that the President of the Constitutional Court should initiate the process for the declaration of ending Mrs. Holta Zaçaj's mandate. On the other hand, in exercising her functions and competencies, the President of the Constitutional Court has considered that the date on which her mandate ends, shall be December 31, 2025, according to: Article 179, paragraph 3, of the Constitution, which only mentions the year 2025 as the deadline for the completion of her constitutional mandate; and general legal rules on time terms calculation. Similarly, the High Court decision on judge Holta Zaçaj appointment to office contains only the year, without specifying the date on which this mandate ends.

Furthermore, the date of mandate's termination of the predecessor judge, in cases where they have completed their full mandate, is not referred by the Constitution or the organic law as a legal event that determines the end of the successor judge's mandate. Such a rule was never applied also in the institutional practice until now.

In this situation, considering the rule for the regular renewal of the Constitutional Court in 2025 according to Article 179, paragraph 3, of the Constitution, it is expected that the President will also face the need for interpretation of the mandate's term of Judge Sonila Bejtja, who is serving as a substitute judge entering in the full mandate of Mr. Besnik Muçi, who swore in on 18.10.2019.

As mentioned above, the interpretation of the constitutional provisions on the mandates and terms of office of constitutional judges has led to different positions from different bodies involved in the process, which can give rise to a potential conflict of competencies, especially between the appointing bodies and the Constitutional Court.

In these circumstances, in my capacity as the President of the Constitutional Court and in consideration of the competencies and responsibilities according by law, I have decided to address this issues to the Venice Commission, as an advisory body, and to request *an amicus curiae opinion* on the interpretation of the constitutional judges terms of office, in general and, as well as specifically, their terms of office under Article 179, paragraph 3, of the Constitution.

I believe that, the clarity of interpreting these constitutional provisions on the 9 years term of office principle, as opposed to the rule of renewal of the Court every three years with three judges, is important in guaranteeing the independence of constitutional judges and that of the Court as well. This bears a special significance considering the Albanian constitutional jurisprudence, which stipulates: *“The guarantee of the mandate’s term and its inviolability protects the judge from the influence of political forces that may come into power. Only an independent court, whose members mandate inviolability is guaranteed can be considered a court that administers constitutional justice, in accordance with constitutional principles. Although the mandate of a constitutional judge is understood as a given mandate (not an earned one through the votes of active voters), the principle of independence also implies that the judge, at the time of appointment, must know the term of his mandate, based on the relevant legal regulations, and this term cannot be left to the discretion of the bodies that appointed/elected the judge.”* (Constitutional Court Decision No. 24, dated 09.06.2011, paragraph 31).

Based on the above, I consider important to address the following questions:

*Question No. 1*      *What will be the end date of the mandate for the constitutional judges for whom the transitional constitutional provisions, Article 179, paragraph 3, of the Constitution, have only specified the final year of their term (in the case of Ms. Holta Zaçaj, 2025, and in the case of Mr. Sandër Beci, 2028)?*

*Question No. 2*      *Can the end date of the full mandate of the predecessor judge be used as the date for calculating the end of the term of the succeeding judge, in the following scenarios:*

- In general, for all constitutional judges, considering the content of Article 125, paragraph 3, and Article 129 of the Constitution?

- Specifically, for judges whose mandates end in specified years, according to Article 179, paragraph 3, of the Constitution (namely 2025 and 2028)?

*Question No. 3*      *If a judge is elected/appointed for a full mandate based on the vacancy declaration as such and with such reference for full mandate in the decision of the appointing body, can this mandate then be limited later justified by the rule of regular renewal of one-third of the judges every three years? Which principle should prevail in these cases, the principle of 9 years mandate term or the principle of regular renewal?*

*Question No. 4*      *If a judge is appointed/elected for a full mandate with a delay after the vacancy has been opened (while the predecessor judge has the right to remain in office until the successor is appointed), will this delay affect the duration of his constitutional mandate by shortening the serving time as a judge with the time of appointment's delay? If the mandate term will not be shortened, how will the renewal rule be implemented in these cases? Can the renewal rule applies to less than three judges every three years?*

Allow me to express once again my deepest appreciation and highest regard for the continuous support of the Venice Commission.

**HOLTA ZAÇAJ**  
**PRESIDENT**

