



# DECISION 38/2022 OF THE CONSTITUTIONAL COURT, REFERENCE MODELS AND LEGAL IMPACT

*Development of legal warranties on the right to vote for  
immigrants*

*Policy document*



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### ***Introduction and review of the document***

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## Abbreviations

CC	Constitutional Court
ECHR	European Convention on Human Rights
CEC	Central Elections Commission
VC	Venice Commission
EC	Electoral Code
PP	Political parties
RA	Republic of Albania

## I. THE POLITICAL CONTEXT AND VOTING FROM ABROAD AS PART OF THE STANDARDS RELATED TO THE INTEGRATION PROCESS

Representative democracy and the principles of free elections together with the functioning of the democratic government, included in **chapter 23 of the first group of negotiating chapters (Cluster One)**, are part of the main criteria of the negotiation process for integration into the European Union.

The discussion on voting from abroad is an important topic in the context of Albania's progress towards the standards of rule of law and functional democracy, as well as the EU membership negotiations. The standards of representative democracy and the implementation of political freedoms, rights and equality before the law, constitutional principles and the decisions of the Constitutional Court are important elements in this debate.

- *In constitutional terms, the principle of voting for all citizens over 18 years of age is guaranteed. The decision of the Constitutional Court 38/2022, based on this principle, confirmed the violation of the constitutional right of immigrants to vote in the parliamentary elections due to the legal gap, as well as the obligation of the Parliament to fill the legal gap within one year.*
- *The Electoral Code already includes partial provisions and its completion remains one of the obligations within the electoral reform.*

Beyond the technical aspects of the reform (Electoral Code, by-laws, register of voters, method of voting, method of representation and method of administration), the institutional and political treatment of out-of-country voting remains essential, as a standard related to the maturity of institutions and the level of representative democracy.

### VOTING FROM ABROAD AND INCLUSION OF INSTITUTIONS

The main institutions, including the Parliament of Albania, have addressed the challenge of diaspora participation in political decision-making, not only as part of the constitutional responsibility and the need for functional democracy, but also as an important standard for a country in negotiations for membership to the European Union. Out of all candidate countries, no other country has a higher percentage of migration over the years than Albania, where, according to the CEC, diaspora voters constitute about 40% of the total number of potential voters with a right to vote.

Unlike some of the other obligations, which are related to progress in specific sectors of governance or economic and social development, the issue of political representation of the diaspora is a problem that requires broad political and social consensus, interaction from a large number of institutions, high participation and multilateral interest, and may also include the need to review the Constitution and the electoral legislation in Albania.

- The issue has been and still is part of the discussions in the European Integration Commission and the Foreign Policy Commission, as well as part of the periodic reports drafted by executive institutions such as the Ministry for Europe and Foreign Affairs, as well as the Chief Negotiator's office.

## INTERNATIONAL REPORTS ON ALBANIA

The main international documents related to Albania, including the progress reports of the European Union, have directly or indirectly emphasized Albania's priority challenge for the electoral reform in accordance with constitutional principles, standards of free elections and the implementation of all **ODIHR/OSCE recommendations**.

- **The EU Progress Report 2022** confirmed the lack of electoral reform and emphasized the need for such a reform, linking it to the decisions of the Constitutional Court. The report also included the issue of voting from abroad, citing the initiation by the CEC of high-level discussions on the implementation of the vote of Albanians living abroad.
- **ODIHR / OSCE Report on 2023 Local Elections Albania** emphasizes that the goals of its recommendations are related to the aim of supporting "*efforts to bring elections in Albania in accordance with OSCE commitments, international obligations and standards for democratic elections*". In the priority recommendations, ODIHR requested "*to ensure a comprehensive and consistent electoral framework, all decision-making entities, including parliament, its political parties and other electoral stakeholders, should commit to meaningful electoral reform and address all ODIHR recommendations*".
- Regarding "voter registration", ODIHR emphasized that "*the final voter lists contained 3,650,658 voters, including a significant proportion of voters living abroad*", citing that "*there is no voting from abroad in Albania. According to a 2020 report of the Institute of Statistics, around 1.6 million Albanian citizens live abroad. The CEC estimated in its public briefings that some 40% of the voters reside abroad*".

The latest official document, **the joint statement of the European Union-Albania Stabilization and Association Parliamentary Committee (SAPC)**, issued from the meeting held in Tirana on July 19, 2023, defines some concrete priorities for the reform.

- According to the statement, the parties "*call on the Albanian authorities to urgently implement the outstanding changes to the electoral and party financing framework well ahead of the 2025 parliamentary elections*".

- The declaration suggests that the changes should be *“in line with the Venice Commission and the recommendations of OSCE/ODIHR report”*
- The declaration highlights some important aspects on election integrity, including the addressing of *“the right to a free and secret choice, ensuring the security of citizens’ personal data, the misuse of administrative resources, and in due time before the next general election, to strengthen Albania’s democratic parliamentary culture”*.

## STRATEGIC DOCUMENTS RELATED TO VOTING FROM ABROAD

The implementation of the right of the Albanian diaspora to participate in elections is defined as an obligation in several strategic documents approved by the Albanian government and Parliament, including the ***National Strategy for Development and Integration 2021-2030***.

- In this binding document for the institutions, the first goal in the list of priority policy goals in the field of electoral processes administration is the commitment to *“enable “voting from abroad” in the parliamentary elections, for voters who have permanent residence outside the territory of the Republic of Albania”*<sup>1</sup>.

The Albanian government, by decision 585/2020 has also approved the document ***“National strategy of the Albanian diaspora 2021-2025”***, in which the register of voters from the diaspora and the diaspora vote is among the main priorities.

- The document states that *“the right to vote and involvement in politics will create a new space for the diaspora’s protagonism in Albanian society”,* and that *“the inclusion of diaspora representatives in the electoral and political system makes it possible for engagement in expertise and protection of interests to be realized within the system”*.<sup>2</sup>
- In this framework, the Strategy, which is in force since 2020, foresees *“the registration of immigrants as voters and the right to vote (after approval in the Parliament)”*<sup>3</sup>. Among the four priority projects “voting from the diaspora” is also listed, while priority measures of the Strategy are *“the organization of public activities and civil society on the purpose of the system of registration and voting from abroad”*.<sup>4</sup>

## II. CONSTITUTIONAL AND LEGAL CONTEXT

The electoral law and electoral reform have been part of the constitutional discourse and have played a key role in political discussions in recent years. At the same time, it is worth

<sup>1</sup> Council of Ministers (2023). [https://konsultimipublik.gov.al/documents/RENJK\\_538\\_Draft-Strategjia-Kombetare-per-Zhvillim-dhe-Integrim-2021--2030-.pdf](https://konsultimipublik.gov.al/documents/RENJK_538_Draft-Strategjia-Kombetare-per-Zhvillim-dhe-Integrim-2021--2030-.pdf)

<sup>2</sup> Council of Ministers (2020). Decision 585/2020. National Strategy of Albanian Diaspora 2021 -2025, <https://diaspora.gov.al/ep-content/uploads/2020/07/STRATEGJIA-KOMBETARE-E-DIASPORES-2021-2025-5.pdf>, pg. 41.

<sup>3</sup> Similar to the above, pg. 42.

<sup>4</sup> Council of Ministers (2020). Decision 585/2020. National Strategy of the Albanian Diaspora 2021 -2025, <https://diaspora.gov.al/ep-content/uploads/2020/08/STRATEGJIA-KOMBETARE-E-DIASPORES-2021-2025-2.pdf>, pg.136.

mentioning that the electoral law has been part of the review by the Constitutional Court (CC) almost three times in the last two years. But, contrary to the decisions of the CC no. 28, dated 30.6.2021 and no. 31, dated 4.10.2021, decision no. 38 dated 9.12.2022 presents a difference in terms of the type of decision-making and findings of the CC. Thus, while in the two previous decisions the CC found the unconstitutionality of the concrete provisions of the Electoral Code with a consequence of them becoming invalid, in the decision no. 38 that we are analysing, the CC found the existence of a legal gap with the consequence of the violation of fundamental rights and freedoms (read: the right to vote for Albanian citizens with permanent residence outside the Republic of Albania). This discussion will offer an interpretation of the consequences and effects brought about by the decision of the CC, no. 38 dated 9.12.2022.

The Constitutional Court of the Republic of Albania (CC) with decision no. 38 dated 9.12.2022 ruled on the request directed by the Association "**Diaspora for a free society**" with the subject:

- ***Stating the violation of the constitutional right of immigrants to vote in the Albanian parliamentary elections on 25.04.2021 and***
- ***Declaration of order no. 219, dated 19.04.2021 "On the quarantine of individuals coming to the Republic of Albania from the Republic of North Macedonia and Greece" of the Minister of Health and Social Protection, as incompatible with the Constitution of the Republic of Albania.***<sup>5</sup>

**Based on the request addressed to the CC, the Association "Diaspora for a Free Society" claimed** the violation of the constitutional right of immigrants to vote in the parliamentary elections of 25.04.2021 due to the **inaction of the bodies responsible, as per the Electoral Code**. Specifically, the request was based on the non-fulfilment of the obligations imposed by the Electoral Code on the Central Election Commission as a result of the changes approved by law no. 101/2020, dated 23.07.2020 "On some additions and changes to law no. 10019, dated 29.12.2008 "Electoral Code of the Republic of Albania".<sup>6 7</sup>

<sup>5</sup> Considering the fact that order no. 219/2021 was no longer part of the legal order, nor was it applied in an exceptional manner for the regulation of any legal consequences, that is, it no longer produced effects at the time of the consideration of the case by the CC, the CC assessed that it cannot become the object of constitutional control. Consequently, the Court has decided in this case that the judgment for order no. 219/2021 should be dismissed. Consequently, the analysis in this discussion will be based only on the first claim.

<sup>6</sup> This law is published in the Official Bulletin no. 143, date 04.08.2020 and it has entered into power on date 19.08.2020.

<sup>7</sup> Article 24 of the Electoral Code expressly provided that "**1.The CEC leads and supervises the process for the preparation of the conditions and the implementation of the measures that enable voting from abroad in the parliamentary elections, for voters who have permanent residence outside the territory of the Republic of Albania, have the address registered in the National Register of Civil Status of permanent residence abroad and ask the CEC to provide them with voting documentation from abroad. 2.Voting from abroad is organized and administered by the CEC in all its components, after the Regulator has approved all bylaws required for voting from abroad, according to this law. 3.The CEC must take a decision on the first inclusion of voting from abroad in the usual voting procedures. In the following elections, voting from abroad automatically becomes an integral part of the voting procedures. 4. The detailed procedures for voting from abroad are approved by a normative act of the CEC.**". Likewise, Article 184 of this code provided that: "**The CEC is tasked with issuing by-laws in implementation of this law within six months from its entry into force.**" However, despite these two provisions newly added to the Code, until the date of the general parliamentary elections on 25.04.2021, the CEC had not approved the normative acts to enable the voting of Albanian citizens living abroad and therefore their right to vote was not guaranteed.



In its decision, the CC underlines the importance of the right of vote for all Albanian citizens, regardless of their location or status, while emphasizing that:

*"...The right to vote, specifically the right to choose, is one of the basic political rights enjoyed by the individual. Its main contribution is guaranteeing the opportunity for all voters, without making distinctions based on strata or belonging to certain social groups, or on other bases that influence the formation of political will in a democratic society. **No part of the population should be excluded from exercising the right to vote, except for the cases defined in the basic law of the state**"<sup>8</sup>*

*In relation to the de facto guarantee of the right to vote, the CC assesses that:*

*"...The guarantee of the right to vote by the Constitution means that it is the **legislative body's duty to materialize and specify this right in relevant laws**. The latter must ensure that the right to vote is effectively exercised and not restricted."<sup>9</sup>*

Based on the fact that the Albanian legal framework (amended Electoral Code) created the legal basis to enable in practice the guarantee of the right to vote of Albanian citizens living abroad, the CC has based its analysis in this decision **on verifying whether the legal framework is in accordance with the constitutional principles and standards to ensure the effective implementation of this right and if the way the legal provisions are drafted, succeed in essentially guaranteeing the effective exercise of this constitutional right.**

From the analysis of Article 24 of the amended CEC, the Court notes that this provision **does not define a deadline within** which the Regulator would have to approve the rules for the registration of voters from abroad, for their voting procedures, for the administration and counting of votes from abroad and their inclusion in the general result of the parliamentary elections. Likewise, this provision **does not define a deadline within which the Regulator would have to approve the conduct of voting from abroad for the first time**, just as **no provision of the law defines a deadline for completing the technical-organizational measures by the Commissioner**. In the last and transitory provisions of the Electoral Code, precisely in its article 184, the legislator has provided that the CEC is tasked with issuing by-laws in implementation of this law within six months from its entry into force. Meanwhile, the Regulatory Commission, according to law no. 101/2020, was established and started functioning after 07.10.2020, with the election of its members by the Parliament.<sup>10</sup>

Based on the above assessments, the Court states that the Electoral Code, **although it created a legal expectation** for Albanian citizens living abroad that they would exercise the right to vote in the parliamentary elections, **in fact there are no clear provisions regarding the time** when the institution in charge of election administration must enable voting from abroad for

<sup>8</sup> Constitutional Court, Decision no. 38 date 9.12.2022, paragraph 48.

<sup>9</sup> Ibid, paragraph 49.

<sup>10</sup> Constitutional Court, Decision no. 38 date 9.12.2022, paragraph 60

this category of voters <sup>11</sup>. The drafting of Article 184 of the Electoral Code, according to the Court, **does not meet the requirements of Article 118 of the Constitution**, which stipulates that by-laws are issued based on and for the implementation of laws by the bodies foreseen in the Constitution and that the law must authorize the issuance of by-laws, to determine the competent body, the issues to be regulated, as well as the principles on the basis of which these acts are issued.

In this sense, despite the fact that the Court accepts that the Albanian legislator **has chosen to accept by law the right to vote of Albanian citizens with permanent residence outside the territory of the Republic of Albania**, in the parliamentary elections, the ambiguity of the norms of the Electoral Code in terms of the deadline, the competent body and the principles on the basis of which by-laws should be issued for this **matter ,not only violates the principle of legal certainty, but in fact constitutes a legal gap, which violates the constitutional right to vote.**

Based on this argument, the CC, by assessing that the constitutional right to vote for Albanian citizens residing outside the territory of the Republic of Albania has been violated due to the legal gap as a result of the shortcomings of the Electoral Code, has decided:

- a. *Stating the violation of the constitutional right of immigrants to vote in the parliamentary elections, due to the legal gap.*
- b. *The obligation of the Parliament to fill the legal gap within one year.*

### III. ON THE INTERPRETATION OF THE DECISION OF THE CONSTITUTIONAL COURT

The decision of the CC is important not only referring to the fact that it is related to the creation of real and practical guarantees for enabling one of the basic rights and freedoms of individuals (the right to vote), but also taking into consideration the fact that almost 37% of Albanian citizens (about 1.7 million citizens) live abroad<sup>12</sup>.

If we analyze the decision of the CC in this case, it is worth mentioning the fact that in this decision the Court has taken a more proactive role by providing at the same time:

- The body which must implement the decision (Parliament)
- Deadline within which this decision should be implemented (1 year within the entry into force of the decision)

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<sup>11</sup> Ibid, paragraph 63.

<sup>12</sup> *Albanian Diaspora in numbers, Instat, 2020.*

- Deficiencies of the Electoral Code that must be corrected in order to fill the legal gap (deficiencies of the EC in granting authorization to issue by-laws related to the rules for registering voters from abroad, for their voting procedures, for administration and counting of votes from abroad and their inclusion in the general result of the parliamentary elections, for the appointment of the competent body, the principles on the basis of which these acts are issued, as well as the deadline within which they must be issued).

The decision-making of the CC in this matter is based on point 5 of Article 76 of Law No. 8577, dated 10.2.2000 (amended by Law No. 99/2016) "On the organization and functioning of the Constitutional Court of the Republic of Albania" according to which:

*"When the Constitutional Court, during the review of a case, finds that there is a legal gap, as a result of which there have been negative consequences for the fundamental rights and freedoms of the individual, among others, it establishes the obligation of the legislator to complete the legal framework within a certain period".*

*The approach above seems to be taken from the German model. In this country, the Federal Constitutional Court, which seems that it has allowed itself the right to give binding decisions for the legislator to approve, change or adjust the legislation, setting a certain date in the future. This competence of the German Federal Constitutional Court derives from Article 35 of the organic law, which states that "in its decision, the Federal Constitutional Court may declare the body that will carry out the execution; in special cases it may determine the manner of execution".*

The existence of legal gaps and the obligation of the competent authorities to fill the legal gap has been accepted by the CC in other earlier decisions. According to the constitutional judge, F. Abdiu, the CC has maintained a consolidated position through its jurisprudence, according to which, when we are faced with a legal gap, it is the duty of the legislator to further improve them. According to him, "the duty of this Court is not to act as a positive legislator and determine legal regulations, but to check whether the solution given by the legislator is or not in accordance with the provisions of the Constitution".<sup>13</sup>

Similarly, the role of the CC as a negative legislator has been widely emphasized in the jurisprudence of the Court itself.<sup>14</sup> However, in contrast to other decisions, where the legal gap could be a consequence of the declaration of unconstitutionality of the legal provisions requested before the court, **in this case**, the legal gap is not a consequence of the decision-making of the CC, but it has existed before this Court reviewed the specific case, bringing

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<sup>13</sup> Constitutional Court, Decision no.33 date 12.9.2007, opinion of judge F:Abdiu.

<sup>14</sup> See, decision no.75/2002.

consequences directly related to the restriction of the right to vote for 37% of Albanian citizens.

The approach of the CC in this decision-making is somehow avoided by the request of the requesting party who claimed the violation of the right to vote as a result of the inaction of the bodies charged by the law, specifically the CEC. With this claim, the requesting party seems to accept the existence of the law and the obligation of the bodies dealing with the administration of the electoral process to clarify this right recognized by the law, through by-laws. Article 184 of the Electoral Code, having a general character, refers to the obligation of the CEC to issue any by-law within 6 months from its entry into force. However, despite the above, in its assessment, the CC states that in reference to the voting rules and procedures of Albanian citizens with permanent residence outside the Republic of Albania, the Code has a legal gap and should provide clear rules and specific deadlines regarding the approval of by-laws for this purpose. In concrete terms, this would be reflected in the addition of a provision related to the determination of deadlines for issuing by-laws in reference to Article 24 of the Electoral Code. By not contesting a concrete act before the Court, the decision-making in this case has not brought any consequence on the EC in force, which continues to produce the same legal effects.

### **What are the consequences of the decision?**

Based on Article 76 of Law no. 8577/2000 amended, regarding the legal effects of the decisions of the Constitutional Court, the decision of the Constitutional Court is final and binding for implementation. In this case, the decision of the CC is mandatory for implementation by the Parliament. Given that in this decision, the CC also foresees the deadline for implementation, this decision must be implemented **until 12.1.2024**, when the deadline of 1 year from the moment of entry into force of the decision is fulfilled.<sup>15</sup>

Based on Article 87 of the Regulations of the Parliament of the Republic of Albania entitled “Implementation of the decisions of the Constitutional Court”, the Speaker of the Parliament conveys to the Council for Legislation the decisions of the Constitutional Court on:

- a) evaluation of the constitutionality of the legislation initiated by an MP/MPs;*
- b) the final interpretation of the Constitution;*
- c) resolving competence disputes in cases when the Parliament is a party;*

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<sup>15</sup> The decision is published in the Official Bulletin no 5, date 12.1.2023.

*ç) dismissal of constitutional officials, who are elected by the Parliament;*

*d) cases where the request to the Constitutional Court is submitted by no less than 1/5 of the MPs.*

According to this regulation, **Decisions of the Constitutional Court, which have an effect on the legislation, are reviewed by the Council for Legislation within 30 days after their publication in the Official Bulletin<sup>16</sup>.** Also, the regulation of the Parliament foresees that **when it is necessary to take a legislative initiative for additions or changes in the legislation, the Council presents the necessary recommendations to the responsible committee and the initiator or undertakes the legislative initiative itself.<sup>17</sup>**

However, the nature of the issue foreseen in this Article is not reflected within provision 1, but since the decision-making of the CC has an effect on the legislation, then the Council of Legislation needs to examine the decision in order to analyse the decision and formulate the necessary recommendations to the responsible commission.

Specifically, regarding this issue, when the deadline set by the CC is almost being met, the Council of Legislation has delegated this decision-making to the Special Electoral Reform Commission, which in the current political discourse, is not operational.

On the other hand, despite the recognition of the mandatory effect of the decision of the CC by Article 132/1 of the Constitution of the Republic of Albania and Article 76 of the law on the CC, de facto, **there is no legal tool or coercive instruments** that can be used by the Constitutional Court as guarantee for the implementation of its decisions by the competent authorities (specifically the Parliament). Such an absence leads to the interpretation that the implementation of the decision of the CC depends more on the will of the institutions and the relations of cooperation between them, rather than on the obligation itself to implement the decisions of the CC. Having said that, in the absence of legal consequences related to the non-implementation of the decision of the CC, it is impossible to seriously engage the legislative body, in the conditions of the lack of political will as referred to the activation of the Special Electoral Reform Commission and the preparation of the additions that would complete the legal gap identified by the Court. In the conditions we are currently in, we are almost 3 months into the deadline set by the CC and the legislative body has not yet acted.

On the other hand, since in this decision, the gap did not come as a result of the annulment of the provisions by the CC, the Electoral Code continues to produce legal effects as before, leaving the same obligations and deadlines in charge of the Central Election Commission. However, under the conditions of issuing this decision, the CEC is also waiting for the completion of the legal framework in accordance with the reasoning given in the decision by

<sup>16</sup> Regulation of the Parliament of the Republic of Albania, Article 87 point 2

<sup>17</sup> Ibid, point 5.

the CC. This means that, on the one hand, the decision of the CC, which found a legal gap, and the inaction of the Parliament on the other hand, suspended the activity of the CEC, which in the arguments presented by them during the trial, considered it a difficult process to achieve in the first elections after the entry into force of the Code (2021), implying the possibility of issuing by-laws after the end of these elections.

This means that, today, we are facing an even more problematic situation, where the decision-making of the CC:

- a) It has brought consequences on the activity of the Parliament, "forcing" the latter to act, but based on the nature of the decision-making (the existence of a legal gap) it has transformed the decision of the CC rather into an advisory act.
- b) It has brought consequences to the normal activity of the competent body authorized by the law (Electoral Code) to issue by-laws to transform the right to vote of immigrants into a real and not utopian right, taking into consideration the suspension of the activity, by waiting for the implementation of the decision by the Parliament.
- c) It has not brought any consequence on the Electoral Code, despite the decision-making of the Constitutional Court, the existing provisions in the Judicial Electoral College remain in force and continue to produce the same legal effects.
- d) It has brought consequences related to the guarantee of the right to vote of immigrants in conditions where none of the bodies can act (neither the Parliament within the 1-year term, nor the CEC, if the legal gap is not completed by the Parliament.)
- e) It may create ambiguity regarding the competencies and legal authority of the CEC, after the 1-year deadline of the Parliament's obligation to implement the decision of the CC has passed.
- f) It is problematic if the political consensus is not reached and there is a will to allow the "de facto" voting of Albanian citizens with permanent residence outside the Republic of Albania.

It should be emphasized that the above problem is not encountered only in Albania. This approach has also been present in Hungary (before the Constitution of 2011), where although the Constitutional Court decided in a binding manner for the legislative body, setting orders on how to act and deadlines as well, they were often not implemented by the legislator.

In the Czech Republic, the Constitutional Court, in some cases, has also provided a detailed analysis of the law that will fit the Court's constitutional test, after the original law is annulled<sup>18</sup>.

However, these guidelines are not binding and practice shows that the legislator often does not obey the reasoning of the Court.<sup>19</sup>

<sup>18</sup> Decision *Anosymos Witness case* 12 October 1994, PL US 4/94

<sup>19</sup> Kuhn, Z. National Report of the Czech Republic, pg. 12, in Brewer-Carias.

The Constitutional Court of Albania has in fact faced a situation where, with decision no. 4, dated 15.2.2021, it left the task to the Parliament to fill the legal gap within six months from the entry into force of its decision. But the Parliament did not react within this time (the legal additions were made very late). For this reason, on the basis of an individual appeal, the Constitutional Court with its decision no. 33, dated 14.11.2022, highlighted that:

*40. ... As a result, the Court left a task to the Parliament to complete the law no. 133/2015 within the 6-month period, starting this period from 08.03.2021, but until the time of this decision, this obligation has not been fulfilled. ...*

*...*

*46. ... This situation is the result of several factors, starting with the inaction of the Parliament to fulfill the obligation set by decision no. 4, dated 15.02.2021 of this Court, with the existence for a considerable time of the legal gap, with the non-respect of the binding power of constitutional and international jurisprudence, and it goes on with the reasoning of the courts, which, in any case, must play their subsidiary role for the respect of fundamental rights, without avoiding this role even in cases of legal gaps.*

*47. The court notes that the proper way to restore the right of the petitioners is the examination from ordinary courts, if the evaluation of the property compensated to the petitioners respects the 10% threshold standard according to the decision-making of the Constitutional Court and the ECtHR. The court, based on the nature of the constitutional judgment of individual requests, as well as on the principle of subsidiarity that guides the relationship between the constitutional jurisdiction and the jurisdiction of ordinary courts, reiterates the irreplaceable role of the Supreme Court, which has the constitutional duty to ensure unity and the development of judicial practice. Despite the gap in the legislation, that court has no obstacle to solve the case itself based on the assessment principles already defined, directly applying the above-mentioned decisions, or to direct its solution from the lowest level court, unifying and developing the judicial practice as well, in accordance with the constitutional standards and those of the ECtHR.*

In this case, the solution suggested by the Constitutional Court is related to the correct implementation of the conclusions of the ECtHR and the Constitutional Court itself in the respective cases, based on Articles 5 and 132 of the Constitution.

Can this approach be implemented by the CEC without a complete legal framework for the way immigrants vote? So, can the CEC itself implement the decision of the Constitutional Court? In this case, the CEC encounters difficulties, since it is impossible to complete the legal framework itself that guarantees the vote of immigrants, states the voting method, the number and security of their security.

It is true that a Constitution, if it is not accompanied by the law that must be issued for its implementation, risks remaining on paper, but it is difficult to believe that the court will be able to cope with such a task that forces it to control the parliamentary agendas step by step. If we stick to the logic according to which whatever the court does in this area, it is something good, it turns into the opposite if we take into account that in such a situation the court itself shares the responsibility with the Parliament, the latter because it does not act, and the former because it does not force the legislator to act.<sup>20</sup>

To conclude, the Constitutional Court, with its decision no. 31, dated 19.11.2003, (where it refers to the decision dated 12.01.1995 of the Constitutional Court of Italy) by recognizing this weakness in the constitutional mechanism, stated that:

*On the other hand, as established in jurisprudence, "if the legislator does not react in response to the legislative gap, then the constitutional system does not offer any effective means, and this situation could lead to a crisis in the system of representative democracy."*

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<sup>20</sup> Kristaq Traja, *Drejtësia Kushtetuese*, Tirana 2000, pg.161-162.



