**Overview of the efforts to demolish National Theatre building**

The discussion surrounding the National Theatre began in March 2018 as the Prime Minister Rama presented a construction project for a new theatre. At 3.000 m², the new National Theatre project occupied less than half of the original area, however. The rest was intended for the building of high-rises and a shopping centre. Rama argued that renovating the 80-year old theatre building was “impossible”, and instead several million euros of public funds had to be spent on a Public Private Partnership (PP).

The building project for the new National Theatre should have been implemented via a special law adopted in the Parliament where Rama holds an absolute majority. The so-called “Fusha Law” (named after the company Fusha shpk, which was to receive the contract), revealed serious shortcomings, such as the awarding of state property without a tender. Once people learnt about the news of a planned special law, artists and activists established the “Alliance for the Protection of the Theatre”, which was also joined by many prominent public figures such as historians, academics, and journalists. They organised protests, launched a petition, approached national and international organisations, and took legal action. For a period spanning 27 months, the Alliance protected the theatre against demolition.

In July 2018, the European Commission, too, had requested that the Albanian Government clarify the reasons for adopting this special law. One of the letters´s 15 questions was whether the special law is compatible with Albania´s obligations under the Stabilisation and Association Process. Thorsten Frei (Member of Parliament), at that time rapporteur for Albania of the CDU/CSU Parliamentary Group in the Bundestag´s Foreign Affairs Committee, also expressed doubts during an interview:  “*The special law for the National Theatre is highly ambiguous when it comes to how it complies with EU legislation and the Albanian constitution. As I see it, President Meta was right to send the law back to Parliament […] The case of the National Theatre will clearly demonstrate how serious Edi Rama is about EU accession*”.

On 25 July 2019, President Ilir Meta lodged a complaint with the Constitutional Court, requesting that the special law for the National Theatre be declared unconstitutional. Given that the court was not operational at that point, this complaint was only submitted for examination in late 2019. On 30 December 2019, the Constitutional Court called on the Parliament, the Council of Ministers, the Ministry of Finance, the Ministry of Culture, and the Municipality of Tirana to put forward their arguments for the special law. Yet, the case had not even been brought before court.

In February 2020, the Municipality of Tirana announced that the project for constructing a new theatre building had fallen through. Fusha shpk was not in a position to implement the project at short notice and in line with the requirements.

Following a long silence on the fate of the theatre, in May 2020, the Albanian Government resolved to assign the land, on which the National Theatre stood, to the Municipality of Tirana in order to make a decision about demolition. President Meta lodged another complaint with the Constitutional Court against this decision. Nevertheless, on the evening of 14 May, the Tirana City Council secretly approved the demolition of Albania´s National Theatre.

Decision No. 50 adopted by the City Council on 14 May 2020, states that the building is to be demolished based on the expertise of the Institute for Construction. The report was drawn up only on the previous day, on 13 May 2020, and attests that the building is not suitable for carrying out activities and that, regardless of any renovations, it cannot be made safe. The City Council resolution also authorised the Institute of Territorial Defence to evacuate, enter and then demolish the building. The resolution did not cite a date for demolition.

There was no legal basis for the Municipal Council´s vote. On the one hand, the Municipal Council can only take a decision on something that belongs to the Municipality. In this case, although it owns the land on which the theatre stands, the same cannot be said for the building itself. While the expertise document is an administrative-legal act that can only be subjected to judicial review, on the other. A political institution such as the Municipal Council of Tirana does not have any jurisdiction over a legal act put forward by a central government organisation.

Furthermore, it is unclear how the vote took place. No public announcement for the Municipal Council meeting was made public, as prescribed by law.

Finally, a decision by the Municipal Council only enters into force ten days following the announcement, as opposed to with immediate effect.

The Albanian Ombudsman has also initiated an administrative investigation into the transfer of the National Theatre´s land ownership to the Municipality of Tirana. The investigation aims to find out whether “actions of state institutions violated against the rights of citizens”.

President Meta referred to the decision taken by the Government and Municipality of Tirana to demolish the National Theatre as “a well-structured criminal activity”; the government´s actions and decisions have been “unbelievable". It is an “unforgivable constitutional, legal and moral crime”, especially at a time when the legality of this demolition was still subject to examination by the Constitutional Court.

The Democratic Party (DP) had tirelessly opposed the demolition of the National Theatre and called for it to be fully renovated while respecting its historical and cultural value. Only a few days ago, the Chairman of the DP, Lulzim Basha, described the theatre´s demolition as a “red line” and declared that: “*Any act of demolishing the theatre is an act of war, not only against art and the artists, but also against citizens themselves […*]”

In the wake of the demolition, Basha, accompanied by the leader of the socialist movement for integration (LSI), Monika Kryemadhi, and other representatives of the opposition, blocked the boulevard “Dëshmorët e Kombit” in the centre of the capital.

At the international level, the main criticism was a lack of understanding about the way in which it was demolished in the midst of the Covid-19 pandemic, along with the absence of dialogue. In a statement on Facebook, the German Ambassador to Tirana said:

“*The hurried demolition of the National Theatre in Tirana today at the crack of dawn is difficult for me to understand in the form in which we witnessed it. Especially during the current state of emergency, dialogue between government and civil society as well as transparent governance are extremely important.”*

Whereas the Mayor of Tirana, Erion Veliaj, during his first public appearance since the demolition, called on artists to work together to build a new theatre. He described the decision to demolish the building “as the most difficult in his life”, but added that “it was the right one”. […] „I will support you to create a better project. In the end, the product will prevail”, said Veliaj while adding that: “The old theatre is gone, now is the time to come together.”

Veliaj explained that the Institute for Construction had classified the building as “dangerous”, and that it was not a cultural monument nor was it on the list of protected cultural heritage. Previously, the Prime Minister, Edi Rama, had incessantly preached about how the building was an “old box” that needed to be demolished to build a new, more modern theatre building.

Sixteen civil society organisations have condemned the Albanian Government´s demolition of the National Theatre, and the violence exercised against protesters during the clearance. In a press release, they warned that demolishing the theatre during this period harbours the greater danger of suppressing freedom of thought and civic resistance. They called on local and international institutions and embassies to react against the Albanian government´s authoritarian tendencies.

The organisations added that democracy, fundamental human rights and the existence of civil society have never been in greater danger in Albania.

According to media reports, the Corruption Prosecutor´s Office (SPAK) initiated proceedings following a charge made by the “Alliance for the Protection of the National Theatre” on 6 May. The Alliance accuses Mayor Veliaj of abuse of power and corruption. The Alliance has also sued three civil engineers from the Institute that drew up the expert report for demolition for abusing their authority. For instance, the Alliance declared that the expert report presented by the engineers was based on forged documents. It is said that three of the five engineers who drew up the report, had never personally examined the National Theatre building.

The measures taken by the Albanian Government occur at what is a seemingly tactically astute time for them. Albania has weathered the Covid-19 pandemic, and almost all restrictions have now been lifted or considerably relaxed. But the emergency situation whose restrictions include freedom of assembly, will remain in force until 23 June. That may be why the government went ahead with demolishing the theatre now, as they may have expected to encounter less protests as well as the fact that people have other problems owing to the economic and social damage caused by Covid-19.

**I.**

**PRESIDENT OF REPUBLIC COMPLAINTS IN CONTITUTIONAL COURT**

In the request addressed to the Constitutional Court dated 24.07.2019, the President of the Republic, in his capacity as the requesting party in the Constitutional Court trial, has requested the review of the constitutionality of law no. 37/2018 “On determining the special procedure for negotiating and concluding the contract with the object “Design and implementation of the urban project and the new building of the National Theatre ”, approved by the Assembly on 05.07.2018 and on 20.09.2018, as a legal act which:

• does not comply with basic constitutional principles.

• is in direct conflict with the provisions of the Constitution of the Republic of Albania.

• severely impairs Albanian national identity and heritage.

• does not guarantee the protection of public property.

• violates the principle of legal certainty regarding the exercise of property rights over private property rights.

• is contrary to the current legal system, on which the Albanian society is based.

• conflicts with international acts to which the Republic of Albania adheres or ratifies.

• is in contradiction with the provisions of the Stabilization and Association Agreement.

• the provisions of this law contained discriminatory criteria that did not guarantee free competition and contradicted the application of the constitutional principles of "equality before the law" and "freedom of economic activity of citizens", thus violating the functioning of the rule of law;

• seriously violated the constitutional principles of construction and functioning of local government bodies of "decentralization" and "local autonomy", while at the same time contradicting the principle of separation and balance of powers.

• is in conflict with the constitutional jurisprudence established by the Constitutional Court, on the principles of functioning of local government bodies and the exercise of their powers in accordance with the principle of decentralization and local autonomy.

• presents significant shortcomings and uncertainties in terms of economic and financial benefits of the state, creating suitable ground for abuse of public property and violation of public interest.

At the same time the President of the Republic requested from the Constitutional Court the determination of a date as close as possible to the review of the request for suspension of the implementation of the law, as it was clearly and publicly evidenced, the interested parties in this process (the Municipality of Tirana, the Council of Ministers, the Ministry of Culture, the Ministry of Finance and the Economy), were continuing with the procedures in implementation of this unconstitutional law, which foresaw and resulted in the demolition of the building complex of the National Theatre.

The Constitutional Court through decision no. 4, dated 30 December 2019, "Notice on the transfer of the case for consideration in the plenary session and its continuation", informed the President of the Republic that the College of the Constitutional Court on 24.12.2019, has decided to forward for review in the plenary session with open doors of the request of the President of the Republic.

On 21 January 2020, the President of the Republic submitted additional arguments to the Constitutional Court that: “*If the Theatre were to be demolished before the decision of the Constitutional Court, then the consequences would be irreparable. That fact must be taken into account.*" In this letter, the President of the Republic, among others, informed the Constitutional Court that the concern about the continuation of the procedure, which is considered completely unconstitutional, was followed by many actors, including the Executive President of the Movement for the Protection of Cultural Heritage. Europa Nostra”, a movement that has called for the protection of the“ precious National Theatre ”, which has been nominated as part of the civil society campaign in Europe, for the protection of the most endangered sites for 2020, by making them available to the Court.

In the letter dated 30 December 2019, the Constitutional Court also informs the President of the Republic that the date of the hearing will be set at a second time, once the Constitutional Court has the necessary quorum to consider the request in plenary session, according to Article 31, point 1 of law no. 8577/2000 “On the organization and functioning of the Constitutional Court”, as amended.

On 14 May 2020 The President have submitted a second complaint to the Constitutional Court requesting for Repeal of Decision no. 377, dated 8.5.2020 of the Council of Ministers “On the transfer of ownership of the Municipality of Tirana, of property no. 1/241, titled “The National Theatre“, at the cadastral zone 8150, Tirana, as incompatible with the Constitution.

The Council of Ministers in this decision, in its very point 1, expresses the will that, with the transfer of ownership to the Municipality of Tirana, of the “National Theatre”, this municipality must continue the procedures for the demolition of Theatre buildings and construction of new buildings. According to the President “*through this act, Albanians everywhere are today, are being ordered to lose a public property of high national interest. With its demolition, the cultural heritage and national identity embodied in these buildings are intended to disappear, and our shared collective memory to be lost.”*

This decision of the Council of Ministers continues to carry the unconstitutional goal of infringing on publicly owned property that is closely linked to national cultural heritage and national identity.

Thus it is clear that, through the phrase in point 1 of this decision where it is quoted “*with the purpose of constructing a contemporary building and with standards of the National Theatre*“, accompanied by the phrase in point 2 that, “*Tirana Municipality is prohibited to change the destination of property defined in point 1 of this decision* ”, the purpose for the destruction of the current buildings of the National Theatre complex has been imposed and ordered by the Council of Ministers, while the Mayor of Tirana and the Municipal Council, remain only to enforce this political will of the Government and the Prime Minister.

In essence, even this act of the Council of Ministers, although referring to the selected form and procedure, is covered under the argument of a routine decision of transfer of ownership of a public property from the central government to the local government, in essence, contains the same constitutional issues and the same risk as the special law no. 37/2018, which is currently under review by the Constitutional Court.

Both of these acts – law no. 37/2018 and DCM no. 377/2020, clearly express the same political purpose: The demolition of existing buildings of the National Theatre, which would constitute the most serious violation of constitutional principles related to Albanian national identity and heritage, values protected by the Constitution of the Republic of Albania and international acts to which the Republic of Albania has acceded or ratified.

**II**

**DECISION TO DEMOLISH NATITONAL THEATRE BUIDING BY MINICIPALITY COUNCIL OF TIRANA**

The decision to demolish Albania’s National Theatre was approved in secret and was not on the agenda for the meeting of the Tirana Municipal Council.

Tirana Municipal Council member Fabian Topollaj who is the only one that represents opposition in the Municipality has leaked emails that showed the meeting to vote on the demolition of the National Theatre would take place on May 15, at noon.

However, the municipal council published the approval of the decision in the evening of May 14. This, despite the fact that there was no official notice that the council would meet and vote on May 14.

It remains unclear how this decision was taken, that is how the vote took place, if it ever really did, and why it happened 24 hours earlier than the official schedule. An administrative investigation is likely needed to shed light on such a high public interest issue.

According to Topollaj, the chronology of the events was as follows:

- In the morning of May 13, municipal council members were notified by email of an online meeting. Discussion of the National Theatre was not on the agenda of this meeting.

- In the morning of May 14, members were notified by email that, during the meeting, they would vote on the demolition of the National Theatre. The issue would not be discussed but members had to vote by email by May 15 at noon.

- Suddenly, and with no prior notice, in the evening of May 14, the press published the decision of the municipal council that approved the demolition of the National Theatre with 60 out of 62 possible votes for.

- Following the publication of this decision, the Tirana municipality notified municipal council members of an upcoming meeting that would take place on May 18, at 11 am, wherein the construction of a new National Theatre building will be discussed.

On Thursday evening, the Tirana Municipal Council secretly approved the demolition of the Albanian National Theatre. Decision number 50, dated 14 May 2020 states that the building will be demolished based on the expertise of the Institute of Construction. It also states that the Inspectorate of Territorial Protection has the right to surround, enter and then demolish the building. The decision gives no date for demolition but says it will notify the Municipality 24 hours before it enters the building.

The expertise document drafted by the Institute of Construction was drafted only one day before   on May 13, and states the building is not suitable for carrying out activities and that regardless of any renovations, it cannot be made safe.

The subsequent vote on its contents by the Municipal Council is not based in the law:

*Firstly,* the Municipal Council can only take a decision based on something that belongs to the Municipality. In this case, while the land the theatre sits on does indeed belong to them, the building itself does not.

*Secondly*, the expertise document is an administrative-legal act that can only be subjected to judicial review. A political institution such as the Municipal Council of Tirana does not have any jurisdiction over a legal act put forward by a central government institution.

*Thirdly*, it is unclear how the vote took place. No public announcement for the Municipal Council meeting was made public, as required by the law.

*Fourthly*, the law and the Rules of Procedures of Municipal Council do not provide the voting of the members by e-mail.

**III.**

**USE OF POLICE AND UNPROPORTIONAL FORCE**

 Around 04:30 in the morning on Sunday, May 17-th, 2020 hundreds of police forces surrounded the National Theatre building, forcibly removed dozens of citizens sitting in front of the theatre, and cordoned off the area.

 The demolition operation started immediately, without any safety or technical condition standards, using excavator bulldozers.

Armed with automatic weapons, riot gear and black ski masks, the Albanian police and Special Forces units moved under the cover of darkness in the early hours of Sunday – when the capital was sleeping – and stormed the premises of the National Theatre in Tirana, detaining a handful of artists and activists that had barricaded themselves in there.

The area surrounding the building was then cordoned and citizens were kept from entering through.

The activists were forcibly put into police vans and detained, while a bulldozer moved in to turn the building into rubble. Dozens of citizens were detained and arrested for resistance, including opposition party 'LSI' leader Monika Kryemadhi and Albanian journalist Alfred Lela.

Tensions grew when more protesters gathered around the area guarded by police forces, chanting '"Down with Dictatorship" and calling the government's actions fascist.

Europa Nostra, which considered the National Theatre as one of Europe's seven most endangered heritage sites, called it a sad day for cultural heritage as well as democracy and rule of law in Albania and Europe. The organization also condemned the detention of civil society activists protesting against the demolition of the Theatre.

EU Ambassador to Albania Luigi Soreca stated on Twitter that the demolition of the National Theatre came at a time when dialogue between the government and civil society members was necessary. "*We regret that this call has not been followed up by the relevant national and local institutions,"* he wrote.

The U.K. Embassy in Albania also expressed concern over the demolition of the Theatre and emphasized the lack of dialogue as well as the evident violence among citizens and police. "*We support the democratic right to protest and call upon all involved to ensure they are peaceful. Violence undermines basic principles of democracy."*

German Ambassador Zingraf expressed concern of repercussions this might have on the country’s fight against coronavirus. “*The hasty demolition of the National Theatre in Tirana at dawn today is difficult for me to understand in the form in which we saw it. In the current state of emergency, dialogue between government and civil society and transparent government action are particularly important. Against the background of combating the corona pandemic, this development makes me all the more concerned, since the crowds that have already happened and are still to be expected can mean a step backwards. I call on all actors to engage in dialogue and restraint,” the Ambassador stated.*

The German Ambassador’s message and concern was also shared by the Dutch Ambassador to Albania, Guusje Korthals Altes.

**IV.**

**OTHER LEGAL BREACHES**

It is incomprehensible why the municipality of Tirana has to deal with the procedures of demolition and construction of the new National Theatre. Law no. 10352, dated 18.11.2010 "On the art and culture", clearly defines the status of the National Theatre as the responsibility of the central government and also regulates the legal status of theatres owned by the municipality.

For this reason, the National Theatre cannot be responsible for local government, including its construction.

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