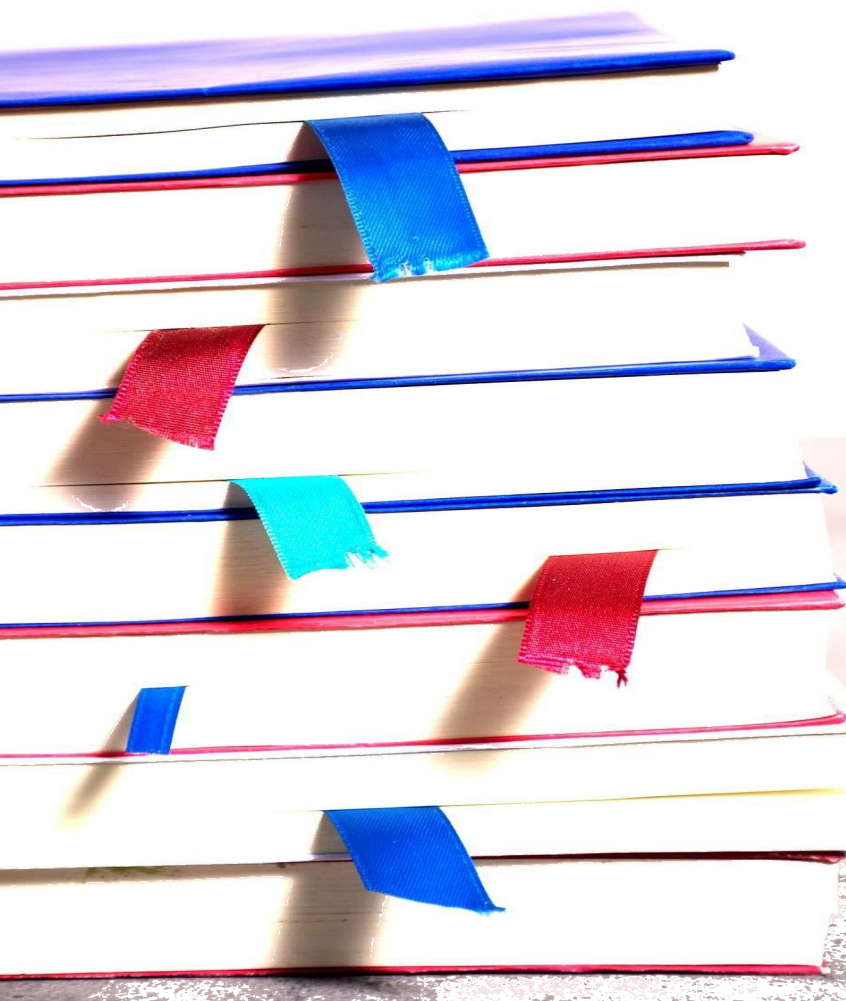




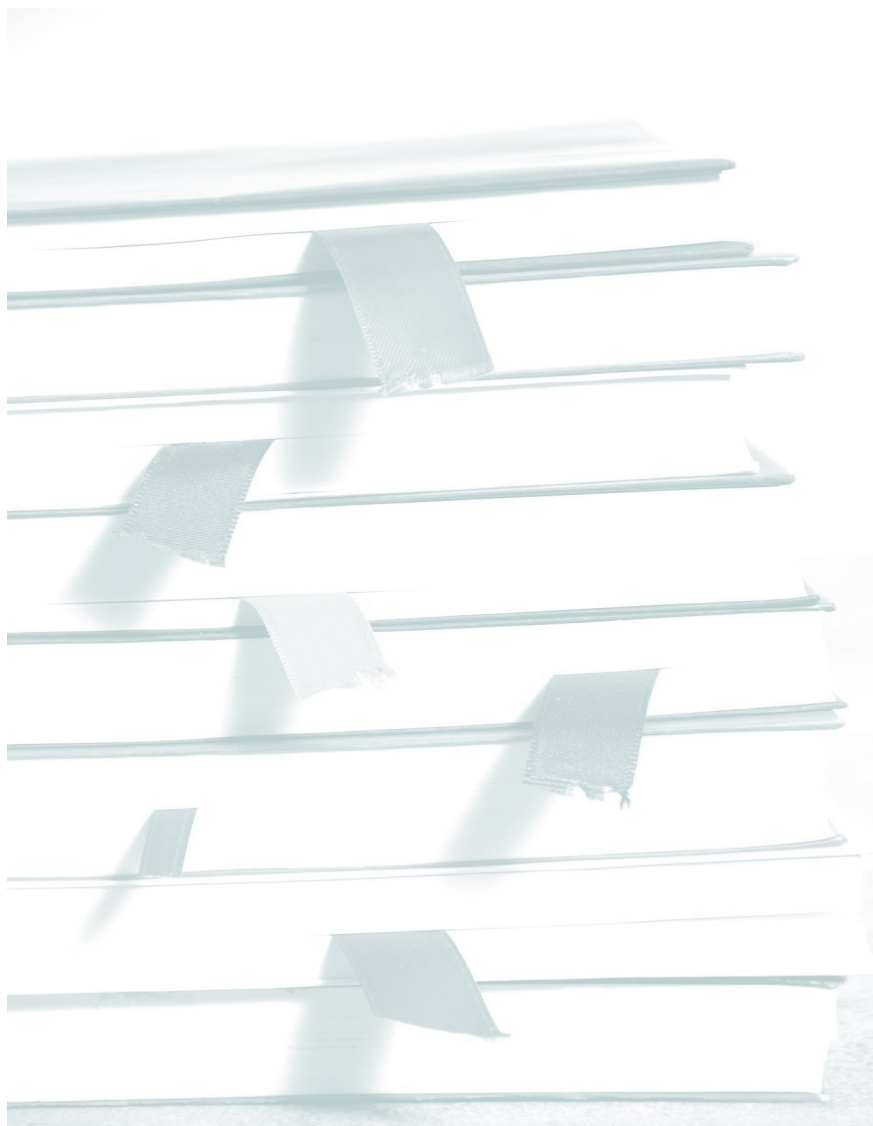
REPUBLIC OF ALBANIA
Constitutional Court

Periodical Newsletter *of the Constitutional Court*

Decisions March-April 2025



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INTRODUCTION

In the framework of continuous communication with the public and the media, in order to guarantee transparency, as well as to enhance access to the Constitutional Court, as one of the most significant and essential principles of administration of justice, the Court publishes for the first time a Periodical Newsletter of its judgments. This newsletter presents a summary of cases and respective judgments, decided between March and April 2025.

The Periodical Newsletter, as a novelty for the Court's activity, aims to inform and provide legal practitioners, law researchers, and every reader with the judgements and standings of the Constitutional Court. They are presented in a concise manner and in a comprehensive language to the reader. The publication contains facts related to each case, the Court's assessment regarding the applicant's claims, as well as its ruling and voting results.

This publication introduces final judgments issued during the relevant period, as well as selected decisions from the Meeting of Judges.

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Standing Criteria for Initiating Incidental Proceedings by Ordinary Courts

KEY WORDS

Judge/ Special Court against Corruption and Organized Crime/ promotion and appointment/ additional security criteria/ asset and background verification/ Special Commission for Asset and Background Verification/ verification report/ High Judicial Council/ Special Prosecution Office/ internal independence of the judiciary/ separation of powers

The Tirana Administrative Court of First Instance raised the issue without providing serious reasons regarding the contested provision unconstitutional, since the formula applied for the composition of the Verification Commission does not present such significance as to call into question the violation of constitutional principles, which inherently relate to the independence of the judiciary.

Tirana Administrative Court of First Instance (*repeal of point 5 of Article 6 of Law no. 95/2016*) – Judgment No. 22, of 23.04.2025

Facts

The High Judicial Council (*HJC*) initiated a procedure for promotion to the Special Court of First Instance against Corruption and Organized Crime for a vacant position. A judge serving in one of the general jurisdiction courts of first-instance has filed an application for such position. The *HJC* commenced the verification procedure to assess compliance with the legal criteria for judicial appointment, including additional security conditions and criteria. The documentation submitted by this candidate was forwarded to the Special Commission for Asset and Background Verification (*Verification Commission*), which, after obtaining information from the relevant state institutions, concluded that the candidate did not meet the security criteria, and the Verification Commission's report was submitted to the *HJC*. Thus, the candidate, contesting the report's findings, appealed to the referring court. The latter pursuant to Article 145(2), of the Constitution, raised the issue of the constitutionality of point 5 of Article 6 of Law no. 95/2016, suspending the ongoing proceedings. The contested provision stipulates the composition of the Verification Commission, consisting of five (5) members, namely – two prosecutors from the Special Prosecution Office; one judge from the special courts; one financial investigation officer from the Special Prosecution Office, appointed by the Head of the Special Prosecution Office; and one investigator from the National Bureau of Investigation (*BKH*).

Court's Assessment

Regarding the locus standi of the referring court - The referring court has claimed that point 5 of Article 6 of Law no. 95/2016 violates the principles of the rule of law related to internal organizational independence of the judiciary, separation and balance of powers, as well as legal certainty, enshrined in Articles 4, 7, and 138 of the Constitution.

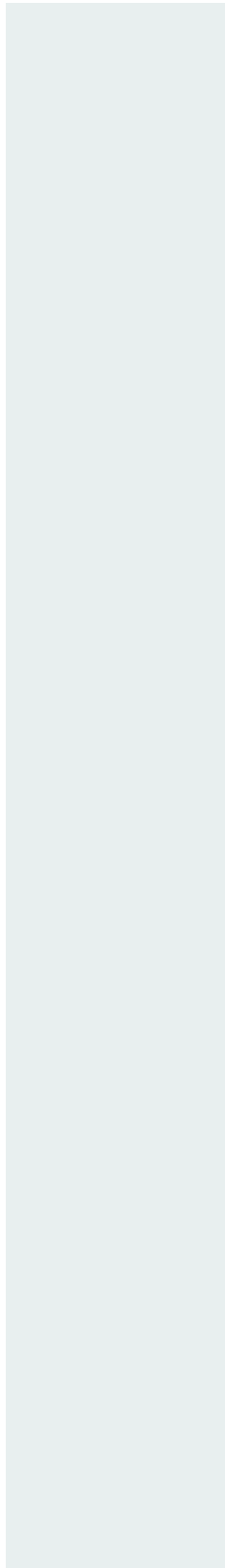
The Court deemed that the referring court meets the criterion of *identifying the applicable law and its direct connection to the proceedings in the referring court*.

Regarding the criterion for *submitting significant reasons for unconstitutionality*, the Court initially focused on analyzing the nature of the activities and role of the Verification Commission assessing whether such activities fall within the constitutional jurisdiction of the *HJC* regarding the promotion/appointment of judges to the special courts. The Court concluded that this activity is of a genuine administrative investigative nature and that the commission acts as an auxiliary body to the *HJC*, which has the constitutional function of appointing and promoting judges. The Commission's report assists the *HJC* in exercising its function; thus, it does not constitute an appointment act, but merely an informative and analytical act. This report is subject to *HJC's* review and assessment under the relevant statutory procedures. Consequently, the Verification Commission's activity does not infringe on the *HJC* constitutional authority to promote/appoint judges to special courts.

The Court found that the referring court failed to provide convincing reasons for the unconstitutionality of the contested provision, and since the standing criteria are cumulative, it did examine the third criterion related to the referring court's attempts to interpret the contested provision in accordance with the Constitution.

Decision-making

The Court decided, by majority vote, to reject the application (*one judge expressed a dissenting opinion*).



INDIVIDUAL CONSTITUTIONAL COMPLAINT

Right to a Hearing within a Reasonable Time

KEY WORDS

Reasonable Time/ freedom of belief and religion/ religious community/ religious group/ State Committee on Cults/ agreement

Considering the right to freedom of religion and the individuals affected by the trial of the case on the merits, whom the applicant represents as a community, the Court deems the applicant's interest, which is jeopardized by the Administrative Court of Appeal delay of proceedings, to be significant.

“Jehovah’s Witnesses in Albania” Association (Unreasonable length of proceedings in the Administrative Court of Appeal) - Judgment No. 9, of 04.03.2025

Facts

The applicant submits that, since 2018, it has maintained continuous correspondence with the Prime Minister's Office and the Albanian Committee on Cults, consistently requesting the conclusion of an agreement. Such agreement, sought in accordance with Article 10, point 5 of the Constitution, aimed to secure recognition of the Jehovah's Witnesses religious group as a “religious community” within the Republic of Albania. Under the circumstances of not receiving any response from the relevant institutions, the applicant filed a lawsuit seeking:

An order compelling the public authority to provide a response to her application, dated 12 March 2021.

Clarification of the public authority's obligation to consider its duties arising under the Constitution, the European Convention on Human Rights (*ECHR*), as well as the Covenant on Equal, Impartial, and Fair Treatment of Applications and

an order compelling the public authority to conclude an agreement with the applicant, as stipulated by Article 10, point 5 of the Constitution. Such agreement is deemed essential for the protection of its rights and interests and shall be concluded within a time limit considered reasonable by the court. The Tirana Administrative Court of First Instance rejected the applicant's lawsuit and discontinued proceedings regarding the request to compel the agreement, since concerning the public authority's obligation to provide a response, no evidence confirmed the letter's official registration in the protocol office of the public authority. Additionally, that court argued that the right claimed by the applicant stemmed directly from the Constitution, not civil law. Therefore, the defendant (the public authority) lacked passive standing to be sued, and consequently, the lawsuit was deemed inadmissible. Upon the applicant's appeal on 31 May 2022, the case was registered with the Administrative Court of Appeal. However, with no hearing date set after approximately two years and nine months, the applicant lodged an application with the Court, claiming a violation of the right to a fair trial within a reasonable time.

Court's Assessment

Regarding the Violation of the Right to a Hearing within a Reasonable Time – The Court analyzed the specific circumstances of the case in light of the criteria established by constitutional jurisprudence for assessing the reasonable time of the length of judicial proceedings.

Concerning the applicant's conduct – The applicant acted in accordance with procedural rights and did not cause or contribute to any delays. On the contrary, it maintained a consistent interest in the case, actively seeking its expedited resolution, a fact acknowledged even by the High Court in its decision. Therefore, the case's complexity does not justify the approximately two years and nine months duration of proceedings at the second instance.

The Court considers the total delay of approximately three years and nine months from the initial lawsuit, including two years and nine months at the Administrative Court of Appeal – with roughly one year and nine months exceeding the reasonable time limit – was caused by the courts' conduct.

Regarding what is at stake for the applicant – The Court held that the applicant's interest to a hearing within a reasonable time is intertwined with the impact and sensitivity of the case for the members of the religious community that it represents. The applicant also claims that the conclusion of such agreement would grant her access to financial and other benefits as stipulated by Law No. 10140/2009. In this context, considering the right to freedom of religion and the individuals affected by the trial of the case on the merits, whom the applicant represents as a community, the Court deems the applicant's interest, which is jeopardized by the delay, to be significant.

According to the Court, the total duration of the proceedings, compared to the importance of what is at stake for the applicant, has exceeded a reasonable time limit in the constitutional sense. Consequently, the Court also finds that the High Court's assessment is incompatible with the Constitution. Therefore, its decision to reject the request for a finding of a violation of the right to a hearing within a reasonable time and for acceleration of the proceedings must be overturned. A trial exceeding a reasonable time, justified merely by the state's failure to take effective measures, cannot legitimize the violation of individuals' constitutional rights, especially when court workload is a known and protracted issue, one that individuals are not responsible for and should not bear the burden of.

Decision-making

The Court decided, unanimously, to accept the application in part.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right of access -
Standard of reason-
ing of the judicial
decision - Right to
life and right to an
effective remedy in
accordance with law**

KEY WORDS

***Compensation for loss of
life/ safety measures on
beaches/ legal responsibil-
ity for safeguarding life on
beaches/ right to life/ posi-
tive obligations of the
state***

**The applicants' claim
concerns the positive
obligation of the state to
take the necessary
measures to establish
the facts and the
liability of those
responsible, as well as
to provide adequate
compensation to the
victim when death or
serious injury to health
has occurred as a result
of state negligence.**

**The narrow
interpretation of the
law by the lower courts
appears to have
infringed upon the
essence of the right to
life. Moreover, such
violation was not
remedied by the High
Court which, despite
being presented with a
claim of a constitutional
nature, considered the
appeal inadmissible for
lack of legal grounds,
thus failing to uphold
the right of access to
court and to an effective
remedy.**

Dhurata Boçi, Elvisa Boçi, Rosela Boçi (Compensation for loss of life of a family member) - Judgment No. 10, of 13.03.2025

Facts

The applicants are family members of a citizen who lost his life due to drowning at Divjaka beach. In their capacity as persons claiming to be harmed by the loss of life of their family member, they sought compensation from the state authorities for their failure to implement life-saving measures at Divjaka beach. According to the applicants, the state authorities had a responsibility to implement life-saving measures at the beach in accordance with DCM (*Decision of the Council of Ministers*) no. 321, dated 28.05.2014 "On safety at sea, beaches, inland waters in the territory and during the practice of water sports," as amended.

Their claim was rejected by the Administrative Court of First Instance Vlora, a decision upheld by the Administrative Court of Appeal. The High Court subsequently decided to reject the applicants' appeal.

Court's Assessment

Regarding the violation of the right of access to court related to the standard of reasoning of the judicial decision – At the time the victim lost his life, beach safety regulations were stipulated in DCM no. 321, dated 28.05.2014 "On safety at sea, beaches, inland waters in the territory and during the practice of water sports," which specified a minimum of safety measures for each zone, as well as the responsibilities of state bodies in this regard.

Although the applicants filed an application with the court seeking compensation for the loss of life of their family member as a result of the unlawful inaction of the state authorities in guaranteeing the safety and health on the beach, which relates to the right to life, the lower courts did not review the merits of such claim. They did not verify or determine the facts underlying the dispute to conclude whether any state body had responsibility for safety measures on beaches. The courts formally and strictly interpreted (*strictu sensu*) the legal framework, concluding that life safety regulations are only applicable to private beach facilities and that state authorities are *a priori* excluded from liability in such cases.

Under such circumstances, the High Court, in exercising its function, should have taken a clear stance on the applicants' claim that the lower courts' interpretation of the legal framework effectively denied the essence of the right to life, particularly concerning the positive obligations of the state.

Decision-making

The Court decided, unanimously, to accept the application in part.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

The principle of not being tried or punished twice for the same offence (*ne bis in idem*)

KEY WORDS

Ne bis in idem/ criminal acts/ letters rogatory of foreign authorities/ recognition of a foreign penal judgment/ Article 514 of the Code of Criminal Procedure

The foreign court's judgment, once recognized by a decision of an Albanian court, produces legal effects equivalent to a judgment rendered by the Albanian courts themselves.

The application of the *ne bis in idem* principle, appears relevant even in cases concerning the recognition of foreign penal judgments. While recognizing a foreign penal judgment does not constitute issuing a new judgment, and is declarative, confirmatory, and executive in nature, it nevertheless concretizes real penal consequences for the individual. Therefore, if a final judgment regarding the same offence already exists in a State, recognizing a foreign penal judgment for that same offence effectively translates into double jeopardy. This is because the recognition decision subjects the convicted person to the same consequences as a new conviction. In such context, recognizing the foreign penal judgment would lead to an overlap of criminal jurisdictions, thus resulting in double jeopardy and legal uncertainty for the individual.

Ilir Paja (*Application of the Ne Bis in Idem Principle in the process of recognition of a foreign penal Judgment*) - Judgment No. 11, of 13.03.2025

Facts

The applicant was convicted by the Tirana Court of First Instance for Serious Crimes, in 2011, for several crimes committed in Italy. He reportedly completed this sentence in 2017. It also appears that in 2021, the applicant was convicted by the Court of Assizes of Milan - First Section, a decision upheld by the Court of Assizes of Appeal of Milan, Italy, for the same criminal acts for which he was convicted in 2011 by the Albanian courts. Therefore, he was declared internationally wanted and then arrested in Albania. Subsequently, the prosecution filed a request with the court for recognition of the Italian court's decision, which was accepted by the Albanian courts of all three levels of jurisdiction. The decisions of the Albanian courts that recognized the prosecution's request for recognition of the 2021 Italian decision convicting the applicant were challenged by the latter in the Constitutional Court.

Court's Assessment

Principle of not being tried or punished twice for the same offence (Ne-Bis In Idem)

– The Court found that albeit some of the criminal offenses for which the applicant was convicted in 2011 by the Albanian court, as well as by the Italian court's decision in 2021, concern the same criminal acts that occurred on Italian territory, the interpretation by the lower courts that these did not constitute the same criminal offenses merely based on their different legal classification, but without analyzing whether they were the same acts, conduct, and facts that form the basis of the criminal offenses for which the applicant was convicted by both jurisdictions, is a manifestly unreasonable legal interpretation, which was not rectified even by the High Court.

Despite the grounds for appeal raised by the applicant, the High Court upheld the analysis and assessment of the lower courts. It failed to adequately address, in light of Article 34 of the Constitution and in terms of the content and spirit and letter of Articles 7 and 514 of the Code of Criminal Procedure, the verification of the criminal acts for which the applicant was convicted in both instances by final judgments to determine whether the principle of *ne bis in idem* applied.

The Court considers that the High Court did not fulfill its role, which extends beyond a narrow application of the law and aims to ensure justice. It failed to exercise its function of reviewing the lower courts' application and interpretation of the relevant law, namely Article 514 of the Code of Criminal Procedure. This calls into question the respect for the principle of *ne bis in idem* as enshrined in Article 34 of the Constitution.

Decision-making

The Court decided, unanimously, to accept the application in part.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Right to Private Property in a procedural aspect – Right of Access – Standard of Reasoning of the Judicial Decision

KEY WORDS

Interim decision for stay of proceedings / Article 297, letter “a”, of the Code of Civil Procedure/ Bektashi Community/ decision of the Vlorë Regional District Office of the Property Restitution and Compensation Agency / Saranda Immovable Property Registration Office/ injunction/ division of property/ encumbrance on assets

The constitutional complaint decision, albeit formally an interim decision that does not decide on the merits of the case, is considered, within the context of the specific circumstances of the case, to have interfered with the exercise of the constitutional right to private property. Such interference continues until the conclusion of the civil proceedings.

Although the High Court, examined the appeal formally in its chambers and decided not to accept it, it did not provide a final response on the merits of the main claim of the applicants, which concerns the implementation of Article 297, letter “a”, of the Code of Civil Procedure by the Court of Appeal and the consequences arising from this. The Court also failed to consider the fact that the property had been encumbered for almost 11 years, and that the stay of proceedings *de facto* extends such restriction for an indefinite period.

Ksamili Investment Company and Rebani Bocai (Interim Decision for Stay of Proceedings) – Judgment No. 12, of 18.03.2025

Facts

The applicants are owners of two immovable properties located in Ksamili, Saranda, which they acquired through sales and purchase agreements from the Bektashi Community. The Community, in turn, had acquired the properties through a decision of the Vlorë Regional District Office of the Property Restitution and Compensation Agency (AKKP). The Council of Ministers filed a lawsuit contesting such decision, and the court granted an interim measure, ordering the Saranda Immovable Property Registration Office (ZVRPP) to not take any further action regarding these properties.

The applicants initiated several legal proceedings to compel the Saranda Immovable Property Registration Office (ZVRPP) to take actions regarding their property, all of which were rejected.

Upon one of the applicants' lawsuit, the administrative court ordered the Saranda Immovable Property Registration Office (ZVRPP) to divide such property according to the submitted survey plans, a decision that became final.

Subsequently, after their request to lift all encumbrances on their properties was denied, the applicants filed another lawsuit. The Gjirokastrë Administrative Court of First Instance ruled in their favour, ordering the Saranda Immovable Property Registration Office to lift the restriction measure and any other encumbrances placed on their properties, with the exception of a mortgage contract, as well as to issue them with ownership certificates, property record cards, and survey maps.

While this case was pending before the Administrative Court of Appeal, initiated by the defendants' appeal, the trial regarding the Council of Ministers' lawsuit was concluded. The Saranda District Court rejected the lawsuit concerning the Vlorë Regional District Office of the Property Restitution and Compensation Agency decision in favor of the Bektashi Community, also ordering the lifting of the interim measure. The Gjirokastrë Court of Appeal overturned such decision, remanding the case for further proceedings and reinstating the interim measure.

During the review of the applicants' case, the Administrative Court of Appeal, pursuant to Article 297, letter “a”, of the Code of Civil Procedure, decided to stay the proceedings until the conclusion of the civil case filed by the Council of Ministers. The court held that such case could not be resolved before the resolution of the civil dispute between the state and the Bektashi Community, which had given rise to the administrative dispute, since there was no final decision in that case yet. The Administrative College of the High Court subsequently ruled the applicants' special appeal inadmissible.

Consequently, the applicants lodged an individual constitutional complaint with the Constitutional Court.

Court's Assessment

Regarding the violation of the right to property in its procedural aspect – Regarding the violation of the right of access in relation to the standard of reasoning of the judicial decision – Although the applicants' main claim in their special appeal concerned the application of Article 297, letter “a” of the Code of Civil Procedure by the Court of Appeal and its consequences, the High Court failed to examine the merits of the claims, even though they concerned the violation of the right to property. While acknowledging in its decision that the jurisdiction of the ordinary courts is engaged only in matters concerning the application of procedural and substantive law, the High Court did not examine the Court of Appeal's application of the law in this regard.

This approach by the High Court rendered its review on the grounds for the special appeal merely formalistic. By failing to address the merits of the claims raised in the appeal, the court did not review the legality of the Court of Appeal's decision to stay the proceedings. It also failed to consider the fact that the applicants' property had been encumbered for almost 11 years and that the stay of proceedings *de facto* extends such restriction for another indefinite period.

The High Court's actions casts doubts regarding the respect for the right to a fair trial. By failing to pursue justice and consequently violating the applicants' right of access to court in relation to the standard of reasoning, the High Court denied them a final response to their claims.

Decision-making

The Court decided, by majority vote, to accept the application in part (one judge expressed a dissenting opinion).

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Right to a Hearing within a Reasonable Time

KEY WORDS

Dismissal from duty/ serious misconduct/ early retirement pension/ means of subsistence/ length of service for pension purposes

Certain categories of cases, due to their nature involving “personal and vital interests,” require prioritized treatment and expedited handling. The right to a pension, as an essential means of subsistence, falls within the scope of cases demanding immediate resolution to avoid severe consequences for the parties involved and to ensure the effective administration of justice.

Although the primary claim pertains to the right to early retirement, which is not a standard old-age pension, they are inherently similar in that they constitute personal entitlements and means of subsistence. Consequently, such case, by its very nature, should be reviewed with priority, especially considering the applicant’s repeated appeals to the interested entity to take the necessary action.

Dear Muça (*Unreasonable length of proceedings in the Administrative Court of Appeal*) Judgment No. 13, of 23.03.2025

Facts

The applicant worked as a specialist at the Dibër District Police Directorate. On 28.01.2003, he was dismissed from his duty due to repeated serious breaches of work discipline. The applicant contested the dismissal decision. Therefore, the Dibër District Court issued a final decision, annulling the dismissal.

On 22.05.2018, the applicant submitted a request to the General Directorate of State Police (GDSP) for the recognition of his length of service for the purpose of calculating his police service, including the period from 01.02.2003 to 31.12.2004 when his career was interrupted. Following the response stating he needed to meet legal criteria to qualify for early retirement pension, the applicant filed a lawsuit with the Administrative Court of First Instance. The latter rejected such lawsuit, as unfounded in law and evidence, on the grounds that the applicant should address his request to the Regional Directorate of Social Insurance (RDSI). On 07.08.2018, the applicant appealed such decision to the Administrative Court of Appeal. The case was registered on 28.09.2018 and it is still pending.

Subsequently, the applicant filed an application with the Tirana Regional Directorate of Social Insurance for early retirement pension. Meanwhile, he persistently reiterated his request to the General Directorate of State Police (GDSP) and the Ministry of Interior, as well. There seems to be no response to such requests from the relevant institutions. It was only on 8 May 2024, that the GDSP responded, stating that his request could not be resolved through administrative channels, since

his claims were currently under judicial review and no final court decision had been issued.

On 8 November 2023, the applicant filed an application with the High Court, claiming a violation of his right to a hearing within a reasonable time concerning the proceedings before the Administrative Court of Appeal. The Administrative College of the High Court, by its Decision No. 00-2023-5683, dated

05.12. 2023, rejected such application.

Consequently, the applicant lodged an application with the Constitutional Court, claiming a violation of his right to a fair trial within a reasonable time.

Court’s Assessment

Regarding the review of the Case Within a Reasonable Time – The Court analyzed the specific circumstances of the case in light of the criteria established by constitutional jurisprudence for assessing the reasonable time of the length of judicial proceedings.

Concerning the Conduct of the Applicant – There is no indication that the applicant contributed to or caused any delays in the proceedings.

Regarding the Complexity of the Case – The case does not appear to be complex. Regarding the conduct of the authorities – The Court determined that the delay exceeding six years at the Administrative Court of Appeal constitutes a violation of the reasonable time requirement. This delay is attributed, in part, to the court’s conduct, since none of the six assigned rapporteur judges took any procedural steps in the case.

Regarding the importance of what is at stake for the applicant – The Court considered that the primary claim in the individual constitutional complaint pertains to the violation of the right to early retirement. While not a standard old-age pension, early retirement benefits are inherently similar in that they constitute personal entitlements and means of subsistence.

Given the delay exceeding six years in the proceedings, especially in light of the workload of the justice system, the Court finds that this case, by its very nature, should be reviewed with priority.

This is especially pertinent considering the applicant’s repeated appeals to the interested entity, the GDSP, to take the necessary action.

The prolonged judicial proceedings, exceeding six years for a case of such low complexity, pose a considerable risk to the applicant’s interests, as well as the importance of the right to early retirement. Consequently, the applicant’s right to a fair trial, specifically regarding the unreasonable length of the proceedings, has been violated.

Decision-making

The Court decided, unanimously, to accept the application.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Right to be tried by a court established by law

KEY WORDS

Victim/ "Sigma" company/ employer's obligation for safety at work/ decision to dismiss the criminal case/ damage compensation/ reassessment of facts and evidence

It is only when the facts are determined identically by both lower courts, that the High Court, in exercising its control competence regarding the application of law by lower courts, also has the competence to definitively resolve the case through the correct application of the law. Otherwise, if the High Court resolves the case definitively by inherently redefining the facts and evidence of the case, even by confirming those accepted by the court of first instance, this manner of proceeding would imply an expansion of the High Court's jurisdiction to matters of fact as well, which is beyond the strictly legal jurisdiction that the Constitution has defined for it, and therefore also violates the principle of a court established by law.

Elda Kozma and Tea Kozma (*Reassessment of Facts and Evidence by the High Court different from the lower courts*) - Judgment No. 14, of 25.03.2025

Facts

The applicants Elda and Tea Kozma are the legal heirs of the deceased Q.K., who was employed as a specialist at "SIGMA-Vienna Insurance Group" Jsc. insurance company. On July 15, 2011, the father of one of the company's employees, while washing a company car, came into contact with an electrical current while trying to unblock an electric pump, resulting in him being electrocuted, lying on top of the manhole. The citizen Q.K. was leaving the company offices and, in an attempt to help the man, was also electrocuted. Both citizens died. The Tirana Prosecutor's Office, by decision dated December 5, 2012, decided to discontinue the proceedings based on Article 328/b of the Code of Criminal Procedure. Although faced with actions of the employer in violation and disregard of obligations regarding employee safety, in the instant case, the subject of the criminal offense was missing. The applicants sued the insurance company, as the employer of their deceased relative, seeking compensation for pecuniary and non-pecuniary damages in the amount of 20,000,000 ALL (lek). The Court of First Instance rejected such lawsuit. Upon the applicants' appeal, the Court of Appeal overturned the first instance court's decision and accepted the lawsuit. The High Court, put into motion by the insurance company appeal, overturned the Court of Appeal's decision and upheld the decision of the Court of First Instance. The applicants lodged a constitutional complaint with the Court.

Court's Assessment

Violation of the right to be tried by a court established by law –

In support of their claims, the applicants submitted, and the Court of First Instance admitted as evidence, the prosecutor's decision to dismiss the criminal case, some of the documents administered during the criminal proceedings, and the documentation practice of the Central Technical Inspectorate. However, regarding the documents administered during the criminal proceedings, and in particular the witnesses' statements, that court did not consider them in its decision-making, on the grounds that they were not obtained in accordance with the principle of adversarial proceedings. Regarding the prosecutor's decision to discontinue the criminal proceedings, the court held that it had no binding effect on the civil proceedings where the civil consequences of the criminal offense were reviewed. Despite this, the court referred to these documents for some of the facts accepted as proven. On the other hand, the Court of Appeal considered the documents submitted by the applicant as written evidence, some of which had full probative value, and considered them in reaching the final decision, concluding that the facts claimed by the applicants were proven.

Although the lower courts differed on the value and probative force of the evidence submitted by the applicants, i.e., on matters relating to the application of procedural law, the High Court considered the position of the Court of First Instance to be just and confirmed its findings on matters of fact, even expanding on some of these findings. It did not state the reasons why the Court of Appeal's position was incorrect regarding the assessment of the evidence, although the latter was the subject of its review. Without any reasoning, the High Court did not consider the Court of Appeal's findings on the facts of the case and chose to consider those of the Court of First Instance. By acting in such manner, it appears that the High Court, in the instant case, practically redefined the facts of the case and, on such basis, ultimately decided the case by overturning the Court of Appeal's decision, not for misapplication of procedural law but of substantive law.

Decision-making

The Court decided, by majority vote, to accept the application.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Right to be tried within a reasonable time

KEY WORDS

Judge/ magistrate's status/ entitlement to transitional benefits/ supplementary pension/ High Judicial Council (KLGJ)

The reasons for justifying the delay shift the burden of the delay caused by factors beyond the applicant's control into them, thus failing to respect the constitutional standards in this regard. Issues concerning personal and vital interests must be reviewed with priority.

By linking the duration of the proceedings to other circumstances such as lack of complexity, inaction of the court, the justification provided by the High Court for this inaction, as well as the applicant's personal interests (financial benefit from the supplementary pension), it was concluded that the applicant's right to a fair trial within a reasonable time has been violated.

Kliton Spahiu (*Violation of the right to a trial within a reasonable time due to the excessive length of proceedings before the Administrative Court of Appeal*) - Judgment No. 15, of 03.04.2025

Facts

The applicant served as a judge until 2 June 2021, when he was dismissed by decision of the High Judicial Council. After ceasing his judicial functions, the applicant requested entitlement to transitional benefits under the law concerning the magistrate's status and supplementary pensions. Due to the refusal of such request, he filed an individual constitutional complaint with the Administrative Court of First Instance in Tirana, which, on July 18, 2022, partly accepted the application. An appeal was filed against such decision, and the case was registered at the Administrative Court of Appeal on September 28, 2022. Due to reorganization, the case was assigned several times, and despite the applicant's requests for acceleration, no action was taken to expedite the proceedings. The High Court rejected the applicant's request for finding of a violation of the reasonable time limit, arguing that the delay was due to a high caseload, a limited number of judges and support staff, and that the judge rapporteur's inaction did not occur for subjective reasons nor was there any intentional delay in the case.

The applicant lodged an individual constitutional complaint with the Court.

Court's Assessment

On the merits – Violation of the right to a fair trial within a reasonable time

After analyzing the specific circumstances of the case concerning the criteria established by constitutional jurisprudence, the Court assessed that, regarding the criterion of *risks to the applicant* in the judicial process, the merits of the proceedings initiated by the applicant's claim is the entitlement to benefits after the termination of judicial functions. Essentially, this concerns an employment dispute requiring expedited resolution. Therefore, the applicant's case, given its nature, involves *personal* and *vital* interests that must be reviewed with priority by ordinary courts.

In the context of the general situation of the judicial system (human resources, working conditions, and high caseload), the duration of the administrative proceedings (a total of 2 years and 10 months, including 2 years and 6 months at the appeal) does not, *per se*, constitute a sufficient reason to find an excessive length of proceedings. However, by linking the duration of the proceedings to other circumstances – such as the lack of complexity, inaction of the court, the justification provided by the High Court for such inaction, as well as the applicant's personal interest (financial benefit of the supplementary pension) – the Court concluded that the applicant's constitutional right to a fair trial within a reasonable time has been violated.

Decision-making

The Court decided, unanimously, to accept the application.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right to be tried
within a reasonable
time**

KEY WORDS

Judge/ magistrate's status/ reference salary/ unpaid salary differences / High Judicial Council (KLGJ)

The reasons for justifying the delay shift the burden of the delay caused by factors beyond the applicant's control into them, thus failing to respect the constitutional standards in this regard. Issues concerning personal and vital interests must be reviewed with priority.

By linking the duration of the proceedings to other circumstances such as lack of complexity, inaction of the Administrative Court of Appeal, the justification provided by the High Court for this inaction, as well as the applicant's personal interests (financial benefit deriving from salary), it was concluded that the applicant's right to a fair trial within a reasonable time has been violated.

Kliton Spahiu (Violation of the right to a trial within a reasonable time due to the excessive length of proceedings before the Administrative Court of Appeal) - Judgment No. 16, of 03.04.2025

Facts

The applicant served as a judge until 2 June 2021, when he was dismissed by decision of the High Judicial Council. Based on the law regarding the magistrate's status, the applicant filed a lawsuit before the court seeking recognition of the right to receive the reference salary, salary supplement, and unpaid salary differences. The First Instance Administrative Court, Tirana, on 7 July, 2022, partially accepted the application. The applicant filed an appeal against such decision, and the case was registered at the Administrative Court of Appeal on 15 September, 2022. Due to reorganization, the case was assigned several times, and despite the applicant's requests for the proceedings to be expedited, no action was taken.

The High Court rejected the applicant's request for finding of a violation of the reasonable time limit, arguing that the delay was due to a high caseload, a limited number of judges and support staff, and that the judge rapporteur's inaction did not occur for subjective reasons nor was there any intentional delay in the case.

The applicant lodged an individual constitutional complaint with the Court.

Court's Assessment

On the merits – Violation of the right to a fair trial within a reasonable time

After analyzing the specific circumstances of the case concerning the criteria established by constitutional jurisprudence, the Court assessed that, regarding the criterion of *risks to the applicant* in the judicial process, the merits of the proceedings initiated by the applicant's claim is the entitlement to financial benefits deriving from the judge's salary. Essentially, this concerns an employment dispute requiring expedited resolution. Therefore, the applicant's case, given its nature, involves *personal* and *vital* interests that must be reviewed with priority by ordinary courts.

In the context of the general situation of the judicial system (human resources, working conditions, and high caseload), the duration of the administrative proceedings (2 years and 6 months at the appeal) does not, *per se*, constitute a sufficient reason to find an excessive length of proceedings. However, by linking the duration of the proceedings to other circumstances – such as the lack of complexity, inaction of the Administrative Court of Appeal, the justification provided by the High Court for such inaction, as well as the applicant's personal interest (financial benefit deriving from salary pension) – the Court deemed that the applicant's constitutional right to a fair trial within a reasonable time has been violated.

Decision-making

The Court decided, unanimously, to accept the application.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Right to Effective Defense in relation to the Principle of Equality of Arms

KEY WORDS

Electoral process/ vote recount/ secretary of the Commission of Electoral Administration Zone (CEAZ)/ falsification of documents and election results/ summoning of witnesses/ graphological examination

Despite the fact that the applicant, in exercising the right to defense, requested the questioning of several witnesses to prove the fact that they were forced to sign and seal election materials under the threat of representatives of the political parties involved, and also requested a graphological examination to prove that he was not the perpetrator of the criminal offense, the lower courts not only rejected such requests but also failed to provide convincing reasoning in their rulings on this matter.

The courts did not conduct a comprehensive and thorough investigation to accurately determine the facts of the case. Instead, they relied on factual presumptions, thereby placing the applicant in a disadvantageous position relative to the prosecution. This deprived the applicant of the opportunity to present arguments regarding facts, evidence, and legal assessments directly relevant to the case.

Aleksandër Gjonmarkaj (*Right to summon witnesses in criminal proceedings*)- Judgment No. 17, of 10.04.2025

Facts

The applicant, Aleksandër Gjonmarkaj, was the secretary of the Commission Electoral Administration Zone No. 13 during the 2013 parliamentary elections. After the voting concluded, based on complaints from political parties, the Electoral College recounted the votes at several polling stations of the CEAZ No. 13 and identified discrepancies with the results initially announced by that CEAZ. Following the investigation, the Prosecutor's Office filed criminal charges against the members of Electoral College No. 13, including the applicant, accusing them of the criminal offense of "Falsification of documents and election results," under Article 326 of the Criminal Code. On 7 July 2017, the Prosecutor's Office requested the discontinuation of the criminal proceedings against six defendants, members of the CEAZ, and the continuation of the proceedings only against the applicant. The Lezhë District Court found the applicant guilty of the criminal offense under Article 326 of the Criminal Code, imposing a final three-year prison sentence, converted into probation for three years, as well as an additional sentence of disqualification from holding public office for three years. This judgment was upheld by the Shkodër Court of Appeal, while the Criminal College of the High Court rejected the appeal.

The applicant claimed before the Court a violation of the right to an effective defense linked to the principle of equality of arms.

Court's Assessment

Regarding the violation of the right to an effective defense related to the principle of equality of arms – During the proceedings at all three levels of the ordinary judiciary, the applicant claimed that: (i) they were not provided access to the investigative acts of the prosecutor, either during the investigation or during the trial; (ii) the lower courts refused to admit evidence with witnesses and documents requested by him. Regarding the first reason, the Court found that, after the communication of the indictment and the collection of declarations, the applicant was given the opportunity to review the case file; most of the investigative acts were produced by the CEAZ No. 13, where the applicant himself served as secretary, thus he participated in their drafting. According to the minutes of the hearings, during the trial, the applicant had the opportunity to review and debate the evidence, whether testimonies or other evidence.

Regarding the second reason, at the hearing of 23 March 2017, the applicant requested the summoning of several witnesses (OSCE observers and unidentified local witnesses), with the aim of proving psychological violence inflicted upon him. He also requested a graphological examination of the vote count tables to demonstrate that he was not the author of the falsification criminal offence. The Court notes that the first-instance court's decision did not provide the grounds for refusing the request to summon witnesses. Meanwhile, the Court of Appeal, in its reasoning for rejecting such request, assessed that proof of psychological violence could not be established through witnesses, since the applicant had had ample opportunity to file lawsuits with the justice authorities. Regarding the graphological examination, the first-instance court reasoned that the criminal offense of falsification was confirmed by the alteration of the voting results between the result tables; therefore, therefore such act was deemed unnecessary, a position confirmed by the Court of Appeal as well.

The lower courts, in compliance with the principle of adversarial proceedings, should have provided well-reasoned grounds for refusing to admit evidence requested by the applicant, especially since such evidence could have influenced the determination of the facts and circumstances of the case, which are crucial for establishing the elements of the criminal offense. These courts not only failed to conduct an effective investigation into electoral crimes but also did not give the applicant the opportunity to engage in a genuine debate with the prosecution to uncover the truth, thus preventing him from effectively defending himself.

The Criminal College of the High Court, in turn, by dismissing the appeal, did not rectify such situation, notwithstanding the applicant's constitutional claims.

Decision-making

The Court decided, unanimously, to accept the application.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Right to be tried by a tribunal established by law in relation to the right of access to court - Right to notification in relation to the right to be heard, to defend oneself, as well as the principle of adversarial proceedings

KEY WORDS

Low monetary value of the lawsuit/ effective notification/postal worker/ proceedings in absentia/ statute of limitations

Not every procedural irregularity renders judicial proceedings unconstitutional. The failure to notify the applicants of the hearing date pursuant to the applicable legal provisions – and, consequently, the conduct of proceedings without adversarial debate – did not influence the Administrative Court's decision to reject the application as time-barred.

Qerime Hoti and Qamil Hoti (*statute of limitations for challenging an administrative fine*) – Judgment No. 18, of 10.04.2025

Facts

The applicants challenged, before the courts, the actions of the Elbasan Construction and Urban Inspectorate, which imposed a fine on one of them for illegal construction on their property. They also contested enforcement measures taken by the bailiff's office pursuant to a court-issued writ of execution for the fine. After reviewing the case, the Administrative Court of First Instance rejected their claims as time-barred (due to the low monetary value of the case), ruling "in absentia" after the applicants failed to appear at the hearing. The applicants subsequently lodged an individual constitutional complaint with the Court challenging the First Instance Court's decision.

Court's Assessment

Applicants' standing (locus standi) – The applicants have **standing** to challenge the decision of the Administrative Court of First Instance, which is final and not subject to appeal. Their standing is also recognized *ratione temporis*, since the decision was issued, in absentia. Consequently, the four-month statutory time limit for filing a constitutional complaint is calculated from the date they received the reasoned decision.

Right to be tried by a Tribunal Established by Law in Relation to the Right of Access to court – The assessment of the statutory time limit for filing a lawsuit constitutes a procedural prerequisite for its examination on the merits. In the applicants' case, by rejecting their claim as time-barred (due to its submission beyond the legally prescribed time limit), the Administrative Court acted in compliance with its competences, i.e. within its jurisdiction and in the exercise of its competences.

Right to Notification in Relation to the Right to Be Heard, to Defend Oneself, as well as the Principle of Adversarial Proceedings – The Administrative Court supported its conclusion that the applicants were notified of the hearing (*via a telephone notice*) based on a postal worker's note. However, it failed to consider the provisions of Article 22 of Law No. 49/2012, which assigns responsibility for such notifications to judicial officers and stipulates specific safeguards to ensure the security and documentation of notifications. In circumstances where it cannot be confirmed with certainty that the applicants were duly informed of the hearing – and thus whether their absence constituted a voluntary choice – the Administrative Court violated the applicants' right to be notified of the court's hearing. However, given that the court's decision to dismiss the claim as time-barred fell within its jurisdiction, it cannot be stated that the lack of notification and the holding of proceedings "in absentia" placed the applicants at a disadvantage vis-à-vis the opposing party regarding their ability to present arguments on the time limits for filing their lawsuit.

Decision-making

The Court decided, unanimously, to accept the application.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Principle of Legal Certainty – Principle of Legality – Standard of Reasoning of Judicial Decisions in relation to the Right of Access to Court and Effective Remedy – Right to Property

KEY WORDS

Taxpayer/ tax inspector/ inspection report/ act of assessment / Lezhë Regional Tax Directorate/ fine/ administrative appeal/ law repealed by a Constitutional Court decision

Articles 124 and 132 of the Constitution explicitly affirm the binding force of the Constitutional Court's decisions over all constitutional bodies, public authorities, and courts as well. The implementation of the Court's decisions constitutes a constitutional obligation. They hold universally binding legal authority and are final.

The Tirana Administrative Court of First Instance did not provide any reasoning in its decision regarding the binding force of the Constitutional Court's decisions repealing certain provisions of Law No. 9920/2008. Such repeal concerns the concrete actions taken by the tax administration during the relevant period, although such claim was expressly raised in the applicant's lawsuit and was also reflected in the court's decision.

“Ekzon Kalaja Comfort” Ltd. Company (Declaration of absolute nullity of the administrative act)- Judgment No. 19, of 10.04.2025

Facts

The applicant was registered as a taxpayer at the Lezhë Regional Tax Directorate. On 20 July 2016, following the order of the director of this directorate, tax inspectors carried out an inspection at the address where the applicant operated her activity. According to the inspection report, it was found that the applicant did not issue tax receipts to document the turnover from services and goods, and had not updated the change of data. Based on the inspection report and the verifications conducted in the CATS system, the Verification Sector on the ground within the Directorate of Control of the Lezhë Regional Tax Directorate issued an assessment on 26 July 2016, concluding that the applicant had not declared the activity “Bar-restaurant-hotel,” thus imposing a fine on it. Subsequently, the Lezhë Regional Tax Directorate issued the administrative act “Notification of assessment for liabilities,” against which the applicant did not file an administrative appeal with the Tax Appeal Directorate.

By Decision No. 33, dated 8 June 2016, the Constitutional Court repealed Articles 5, 14, 15, 16 (point 4 added to Article 121), 17, points 1 and 2, 18 (point 2 of Article 124), and 20 of Law No. 9920, dated 19 May 2008, “On Tax Procedures in the Republic of Albania,” as incompatible with the Constitution. This decision entered into force after its publication in the Official Gazette No. 108, dated 16 June 2016.

Subsequently, the Albanian Assembly enacted Law No. 112/2016, dated 3 November 2016, “On some Amendments and Additions to Law No. 9920, dated 19 May 2008, ‘On Tax Procedures in the Republic of Albania,’” which, *inter alia*, incorporated the relevant changes related to the provisions repealed by Decision No. 33/2015 of the Court. Law No. 112/2016 was published in the Official Gazette No. 219, dated 15 November 2016, and entered into force on 30 November 2016.

In 2023, the applicant filed a lawsuit before the Tirana Administrative Court of First Instance seeking the declaration of the absolute nullity of the administrative act of the liability assessment notice issued by the Lezhë Regional Tax Directorate, on the grounds that the law upon which the fine was based had been repealed. The Administrative Court of First Instance rejected the applicant's lawsuit. According to the ordering part, the decision is final and therefore appeal shall not be allowed. Notwithstanding, the applicant filed an appeal with the Tirana Administrative Court of Appeal, which rejected it.

The applicant lodged an individual constitutional complaint with the Court.

Court's Assessment

Regarding the legal standing (locus standi) concerning exhaustion of legal remedies – The subject matter of the individual constitutional complaint is the repeal of the decision of the Tirana Administrative Court of First Instance, in which it was noted that the decision was final and could not be appealed. This means that submitting its claim to the Court was a choice made by the applicant itself, supported by the subject matter of its lawsuit for the absolute nullity of the acts. The applicant has no other legal remedy available to safeguard her constitutional rights.

Regarding the claims of violation of the right of access to court related to the standard of reasoning of a judicial decision – In the notification of assessment, which imposed two fines on the applicant – one for failure to issue a tax receipt and another for failure to update data, dated 4 August 2016, there is no legal basis. The act was based on the minutes of the fine issued on 20 July 2016, which relied on the same-day inspection report. The latter was issued in accordance with Article 122, point 1, letter “b”, of Law No. 9920/2008, as amended by Article 17, point 1, of Law No. 99/2015. This law was repealed by the Court by Decision No. 33/2016, while the actions taken by the tax authority against the applicant occurred when the provision was already repealed. The Court of First Instance did not assess the enforceability of the applicant's claims regarding the Court's decision to repeal Article 17, point 1, of Law No. 99/2015. Consequently, the Tirana Administrative Court of First Instance did not provide any reasoning regarding the binding force of the Court's decision concerning the repeal of specific provisions of Law No. 9920/2008, nor did it address the concrete actions carried out by the tax administration during the relevant period.

Decision-making

The Court decided, unanimously, to accept the application.

Right to Private Property – Standard of Reasoning of Judicial Decisions

KEY WORDS

Criminal proceedings/ concession/ urban waste treatment plant/ landfill/ minister/ member of parliament/ abuse of duty/ passive and active corruption/ laundering of proceeds of a criminal offense/ preventive seizure/ apartment/ bank account/ bank deposit/ seizure for equivalence

In order to comply with the constitutional criteria for lawful restrictions and fair trial standards, the prosecution – in its seizure request and ordinary courts – in reviewing such requests, must specify and clarify under which category pursuant to Article 274 of the Code of Criminal Procedure (CCP) and Article 36 of the Criminal Code (CC) each asset subject to seizure falls. This entails distinguishing whether the assets in question constitute – objects or proceeds of the criminal offense (*a direct seizure*), or seizure of assets “*for equivalence*” (i.e., assets directly linked to the criminal offense).

In cases where seizure “*for equivalence*” is applicable, the judge must reasonably justify the impossibility of achieving the same objective through less restrictive interference, both in terms of the scope of assets affected and the very core of the substantive right to private property. The manner in which the courts assessed the seizure request and applied the provisions of Article 36(1)(c) of the Criminal Code (CC) resulted in an arbitrary interference with the applicant’s constitutional right to private property.

Arben Ahmetaj (Preventive Seizure “for Equivalence” of Assets)- Judgment No. 20, of 11.04.2025

Facts

The applicant acquired the status of “person under investigation”, being suspected of having committed the criminal offenses provided for in Articles 257/a (2), 25, 260, and 287(2) of the Criminal Code. In the course of the criminal proceedings, the prosecution filed an application seeking the imposition of a preventive seizure measure (“preventive seizure”) over several of the applicant’s assets, including an apartment and the sums found in his bank accounts and term deposit. The Special Court of First-Instance against Corruption and Organized Crime accepted such application.

The applicant filed an appeal, contesting the decision only in so far as it concerned the aforementioned assets. The Special Court of Appeal against Corruption and Organized Crime upheld the first-instance decision, while the Criminal College of the High Court declared the applicant’s appeal inadmissible.

Subsequently, the applicant lodged an individual constitutional complaint with the Constitutional Court.

Court’s Assessment

Regarding the violation of the right to property in its procedural aspect – A preventive seizure may be ordered not only over items with a direct link to the criminal offense under investigation but also “*for equivalence*” (i.e., over any other assets whose value corresponds to the proceeds of the criminal offense). In order to comply with the constitutional criteria for lawful restrictions and fair trial standards, the prosecution and ordinary courts must specify and clarify under which category pursuant to Article 274 of the Code of Criminal Procedure (CCP) and Article 36 of the Criminal Code (CC) each asset subject to seizure falls. This entails distinguishing whether the assets in question constitute – objects or proceeds of the criminal offense (*a direct seizure*), or seizure of assets “*for equivalence*”, a seizure of assets that are directly linked to the criminal offense.

A seizure “*for equivalence*”, unlike direct seizure, requires the application of additional safeguards due to the absence of a direct link to the criminal offense itself. The imposition of a direct seizure on the actual proceeds or profits of the criminal offense precludes the simultaneous application of a seizure “*for equivalence*” on other assets belonging to the individual under criminal investigation for the same purpose.

The Court finds that the judicial decisions contain contradictions between the criminal facts, the findings of the Special Prosecution Office, and the conclusions regarding the application of Article 36(1)(c) of the Criminal Code – the legal basis invoked for the seizure of the three assets subject to the complaint.

The first contradiction lies in the fact that the domestic courts cast doubt on the very lawfulness of the acquisition of the “apartment” and of the seized funds. By treating these assets as the direct proceeds of the offense, they brought the case within the scope of Article 36 (1)(b) of the Criminal Code, whereas a seizure “*for equivalence*” is applicable only in respect of assets that are not themselves product of the offense or that do not form the subject-matter of the investigation.

The second contradiction concerns the fact that, for the same *quantum* allegedly derived from unlawful activity, the courts imposed a seizure “*for equivalence*” over both immovable assets – the apartment – and the funds, yet failed to examine whether, and to what extent, the value of the seized property corresponded to the proceeds of the offense within the meaning of Article 274 of the Code of Criminal Procedure and Article 36(1) (c) of the Criminal Code.

The prosecution and the ordinary courts failed to verify either the manner or the extent to which the value of the apartment corresponds to the proceeds of the criminal offense. Although the application for a preventive seizure specified the amounts allegedly obtained unlawfully, no assessment was made of the ratio between the value of the **seized** property and the proceeds of the criminal activity. The courts also failed to substantiate why such a restriction of the applicant’s property rights constituted the sole means to achieve the aim pursued, nor did they assess whether alternative measures could have attained the same objective with a less severe impact on the applicant’s constitutional right to private property, as required under the principle of proportionality. The manner in which the courts assessed the request for the imposition of the seizure measure and applied the provisions of Article 36(1)(c) of the Criminal Code resulted in an arbitrary interference with the applicant’s constitutional right to private property.

Decision-making

The Court decided, unanimously, to accept the application in part.

Freedom of expression

KEY WORDS

Journalist's Source of Information/ Search of Residence and Workplace/ Personal Search/

Seizure of Computer Data/ Investigative Secrecy/ Criminal Proceedings/ Justice Collaborator/ Investigative Measure of Last Resort

The journalist's right to protect the confidentiality of their sources and to refuse disclosure is a cornerstone of press freedom. Such right is not merely a privilege that may be granted or revoked depending on the lawfulness of sources; it is inherently intertwined with safeguarding the public's right to information, which constitutes itself a matter of public interest. While such right may be subject to restrictions under constitutional criteria, such restrictions should not impair the very essence of press freedom. A restriction can be regarded as necessary only where no alternative measures exist for achieving the same aim – namely, where identifying the source is the sole or last resort measure, all other domestic legal remedies having been exhausted, and where the legitimate interest in disclosure outweighs the public interest in preserving confidentiality.

Elton Qyno (Violation of freedom of expression in relation to the right to protect a journalist's source of information) – Judgment No. 21, of 22.04.2025

Facts

The applicant, acting in the capacity of a journalist, has published several articles containing confidential investigative data from a criminal proceeding, specifically communications between a justice collaborator and other individuals involved in criminal activities. The Special Prosecution Office has initiated criminal proceedings for the offenses of disclosing confidential documents and data, as well as unlawfully releasing and publishing such information. The applicant was summoned to the prosecution office to disclose the source of the information and was warned against further publishing materials pertaining to the investigation. After refusing to disclose the source, the Special Prosecution Office filed three judicial requests for warrants to conduct personal, residential, and workplace searches. Such requests were accepted by the Special Court of First Instance against Corruption and Organized Crime (*GJKKO*). Additionally, the Special Prosecution Office obtained a seizure order in respect of the applicant's two mobile devices. Upon the enforcement of the judicial orders, various items and computer data were seized. Thus, the applicant challenged the computer-data seizure order and, in a subsequent court filing, sought the return of all seized items.

The applicant lodged an individual constitutional complaint with the Court, challenging the judicial decisions authorizing the search and seizure of items and computer data. He claimed that such orders violated the right to a fair trial, freedom of expression, as well as the right to respect for private life.

Court's Assessment

Locus standi – Exhaustion of Legal Remedies Regarding the Nature of the Decisions Under Review

Where a search results in the seizure of material evidence, constitutional complaints about the search procedure must first be raised by appealing against the seizure order to a higher court. It is only after exhausting such legal remedies that the individual may lodge an individual constitutional complaint. If

no items are seized as material evidence during the search, yet the individual's fundamental rights and freedoms are violated, he may directly submit constitutional claims, challenging the standing of the search procedure to the Court through an individual constitutional complaint. In the instant case, regarding the computer-data seizure order, the applicant had exhausted domestic legal remedies. However, concerning the other seized items, he initiated separate appeal proceedings, acknowledging that he would subsequently lodge another individual constitutional complaint with the Court.

On the merits

Regarding the violation of freedom of expression – The Court deemed that the computer-data seizure order interfered with the applicant's freedom of expression and restricted press freedom as well, particularly in relation to protecting journalistic sources under their professional obligations. Regarding the criteria stipulated in Article 17 of the Constitution, the Court concluded that the first criterion for permissible restrictions – prescribed by law – was satisfied. In the Public Interest Criterion – The Court held that the measures for the disclosure of the applicant's source and his computer-data seizure pursued legitimate aims such as: proper administration of justice, protection of public order and security, as well as the protection of the fundamental rights of others. Such restrictions aimed to prevent the leakage of information covered by investigative secrecy in an ongoing organized crime inquiry, as well as to prevent potential criminal acts against the judicial collaborator, their family members, or other individuals.

(continues on page 19)

INDIVIDUAL CONSTITUTIONAL COMPLAINT

The ordinary courts must distinguish between, on the one hand, prosecution's investigations into a journalist's own alleged criminal conduct and, on the other hand, investigations whose principal objective is to identify the journalist's source when the journalist is not suspected of any offence.

The legislator should therefore address the need to amend legal rules governing the computer-data seizure, ensuring they align with current developments in information technology, the demands of effective investigations, and, above all, the effective protection of fundamental individual freedoms.



Regarding the Proportionality of Interference – The Court found that, concerning the legitimate aim of preventing information leakage and protecting the life and health of the justice collaborator, the prosecution and ordinary courts acted prior to the effect of investigative secrecy order. Consequently, they failed to assess why it was necessary to urgently use the last resort measure – i.e. the seizure of data. Nor did the ordinary courts substantiate why the data needed for the investigation could be obtained only by disclosure of the journalist's source as a last and sole resort measure – or why no less intrusive alternatives were available to attain the evidential purpose of the seizure. Moreover, the applicant himself was not even a suspect or an accused in the criminal proceedings.

The Court found that the prosecution had not shown that it had exhausted other adequate investigative measures to identify the suspected perpetrators of the criminal offences. The investigation had already been under way for almost eighteen months, yet the authorities invoked a twenty-four-hour “urgency” to justify the intrusive measures targeting the applicant's sources. Such contrast demonstrates that the computer-data seizure was not a last resort measure but one of the very first measures taken to disclose the source of the leaked confidential material. Furthermore, the Court held that the applicant was not provided with the necessary procedural safeguards under constitutional and Convention standards to protect freedom of expression and preserve sources of information and other confidential material.

The Court further ordered the destruction of the seized

computer data and other material evidence obtained during the searches of the applicant's residence and workplace.

Regarding the applicant's claims for a violation of private life, the Court deemed it unnecessary to examine such claim separately, since it had already found a violation of the applicant's freedom of expression.

Decision-making

The Court decided, unanimously, to accept the application.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right to be tried
within a reasonable
time**

KEY WORDS

**Disciplinary measure/
dismissal/ termination of
employment contract/
political discrimination/
Commissioner for Protec-
tion from Discrimination**

The High Court's rejection of the request for finding of a violation of the reasonable time requirement – based solely on the provisions that require a lawyer's signature on the appeal – constitutes excessive formalism. This transforms a procedural safeguard into into an obstacle to access to that court.

Within the context of the overall situation of the judicial system, the duration of administrative proceedings (approximately 7 years in the Court of Appeal) provides sufficient grounds for finding of unreasonable time of proceedings. By linking the length of proceedings to other circumstances, such as the lack of complexity and the applicant's important personal interests (namely his health and economic situation), the right to a fair trial within a reasonable time has been violated.

Ilir Lleshi (Violation of the right to a trial within a reasonable time due to the excessive length of proceedings before the Administrative Court of Appeal) - Judgment No. 23, of 23.04.2025

Facts

The applicant served as the Head of Human Resources and Public Relations at the Dibër, Regional Health Directorate (*DRSH*). Following a series of disciplinary measures, *DRSH* terminated his employment contract on grounds of “political reasons”. The applicant filed a lawsuit seeking reinstatement and compensation for unlawful dismissal. The Tirana Administrative Court of First Instance accepted the lawsuit, a decision which was upheld by the court of appeal.

Subsequently, based on a decision by the Commissioner for Protection from Discrimination, which found that the applicant had been discriminated against due to his political beliefs, he initiated proceedings to establish the fact of discrimination and victimization by the Dibër, Regional Health Directorate. The Tirana Administrative Court of First Instance rejected such lawsuit. The applicant appealed against such decision, and the case was registered with the Administrative Court of Appeal on 24 May 2018. Due to court reorganization, the case has been reassigned several times and, notwithstanding the applicant's requests for expedition, no hearing date has yet been fixed.

The applicant subsequently filed an application with the High Court for finding of a violation of the reasonable time requirement. However, such application was rejected due to a missing lawyer's signature and later dismissed since the applicant did not remedy the defect.

Therefore, the applicant lodged an individual constitutional complaint with the Court.

Court's Assessment

Regarding locus standi – The applicant exhausted the available legal remedies by initially filing an application with the High Court. However, the High Court rejected such application on the sole ground that it lacked the lawyer's signature, even though it had been signed personally by the applicant. By adopting such a formalistic approach, the High Court rendered the remedy ineffective. The applicant, thereby met the criterion of exhaustion of domestic remedies.

Regarding the Violation of the Right to a Trial Within a Reasonable Time – Despite approximately seven years have elapsed since the case was registered with the Court of Appeal, no hearing date has yet been arranged. Consequently, the statutory one-year time-limit which the domestic law considers reasonable for the completion of proceedings before the Administrative Court of Appeal has been manifestly exceeded.

Having examined the particular facts of the case in the light

of the criteria established in its jurisprudence, the Court considers it sufficient to confine its analysis to *what is at stake for the applicant* in the court proceedings. The merits of the judicial dispute concern the applicant's claim that he was dismissed on political grounds and thereby discriminated against. Such case involves *vital personal interests* that inherently demand priority review by courts of ordinary jurisdiction. The applicant, within the context of the facts of the case, has demonstrated and proved a potential risk to his interests. The nature and importance of such interests – justify expedited and prioritized proceedings of the case.

Decision-making

The Court decided, unanimously, to accept the application.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Principle of a fair trial
– Principle of legal
certainty**

KEY WORDS

**Early retirement pension/
Military personnel/
Placement in the reserve/
Length of service/ Pension
recalculation/ Minimum
salary/ Regional
Directorate of Social
Insurance (RDSI)**

The High Court, in its capacity as a court of law, should have addressed the applicant's claims regarding the applicable law and the relevant criteria for calculating the early retirement pension for length of service. In addition, the High Court could not be satisfied, merely with providing a limited reasoning – it should have adopted an express position and provide the grounds, both in relation to the applicable law and specifically, in relation to the measure by which the applicant's early retirement pension was limited for the requested period.

Veli Përleka (Courts' Interpretation of the Law on the Calculation of Pension) – Judgment No. 24, of 23.04.2025

Facts

The applicant, a former active officer of the Armed Forces with a length of service of 31 years and 9 months, converted to 47 years and 6 months due to his service in military aviation, was placed in the reserve on 1 September 2006 and therefore, received early retirement pension until 15 November 2006, when he met the conditions for an old-age pension. The applicant filed an application with the court seeking the recalculation of his pension and the payment of arrears, as well as the late payment interest, claiming that the Tirana Regional Directorate of Social Insurance (RDSI) had acted unlawfully. After the Tirana District Court declared that it lacked subject-matter jurisdiction, the case was transferred for adjudication to the Tirana Administrative Court of First Instance. The latter found that the amount of the applicant's early retirement pension should be 50% of the reference salary, plus supplements of 2% for each year of service exceeding 15 years, without being limited by the maximum national old-age pension amount. It also ordered the Regional Directorate of Social Insurance (RDSI) to pay the outstanding difference for the entire period from 01 August 2005 to 30 October 2006.

Both parties appealed such decision. The Administrative Court of Appeal upheld the first-instance court's position regarding the calculation of the applicant's early retirement pension, determining the value of the unpaid difference. Following appeals filed by both parties, the Administrative College of the High Court repealed the court of appeal's decision and remanded the case for re-trial, arguing that the substantive law had been misapplied and that the guidance from the High Court's unifying decision no. 3/2016 should be respected.

In the retrial proceedings, the Administrative Court of Appeal decided to reverse the first-instance decision and to reject the applicant's lawsuit. The Administrative College of the High Court declared the applicant's subsequent appeal inadmissible on the grounds that it did not raise any arguable issues of law. Therefore, the applicant lodged an individual constitutional complaint with the Court.

Court's Assessment

Regarding the violation of the right to a fair trial, in relation to the principle of legal certainty – The Administrative Court of Appeal failed to ensure a fair trial, since it disregarded the statutory provision, according to which a court must review the lawfulness of the contested administrative act on the basis of the legal and factual situation that existed at the time the specific administrative act was issued; furthermore, it failed to calculate the amount of the pension pursuant to the requirements and criteria of the law in force during the relevant period. The High Court failed to provide adequate reasoning regarding the applicant's claims concerning the applicable law and criteria for the amount of the early retirement pension for the period, specifically from 1 August 2005 to 30 October 2006. Consequently, the High Court's decision does not meet the standards of reasoning of the judicial decisions and hence, it violates the principle of legal certainty in relation to the acquired right to an early retirement pension.

Therefore, the Court finds that there has been a violation of the right to an early retirement pension due to a manifestly unreasonable interpretation of the law, and holds that it is the High Court's duty to review the lawfulness of the decision-making of the lower courts. Thus, it repeals only the High Court's decision.

Decision-making

The Court decided, unanimously, to accept the application in part.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Principle of a fair trial
– Principle of legal
certainty**

KEY WORDS

*Early retirement pension/
Military personnel/
Placement in the reserve/
Length of service/ Pension
recalculation/ Minimum
salary/ Regional
Directorate of Social
Insurance (RDSI)*

The High Court, in its capacity as a court of law, should have addressed the applicant's claims regarding the applicable law and the relevant criteria for calculating the early retirement pension for length of service. Regarding the latter, the High Court could not be satisfied, merely with providing a limited reasoning – it should have adopted an express position and provide the grounds, both in relation to the applicable law and specifically, in relation to the measure by which the applicant's early retirement pension was limited for the requested period.

Ismet Isufi (Courts' Interpretation of the Law on the Calculation of Pension) – Judgment No. 25, of 23.04.2025

Facts

The applicant, a former active officer of the Armed Forces with a length of service of 21 years and 10 months, was placed in the reserve on 30 September 1992 and received early retirement pension until he was granted an old-age pension and a supplementary pension. He challenged the amount and the method of calculation of these pensions in two separate judicial proceedings. Regarding the early retirement pension, the applicant applied to the Tirana District Court seeking its recalculation with indexation and the payment of the difference. Due to a lack of subject-matter jurisdiction, the case was transferred to the Administrative Court of First Instance, which partially accepted the lawsuit. It ordered the recalculation of the pension at a rate of 50% of the reference salary plus 2% for each year of service exceeding 15 years, but rejected the claim for periods after 2009, on the grounds that the new Law, no. 10142/2009, was applicable. Both parties appealed such decision. The Administrative Court of Appeal decided to partially reverse the decision, ordering the payment of the difference of 294,694 ALL for the period 2004–2009 and rejected the other claims. Following appeals lodged by the parties, the Administrative College of the High Court repealed the court of appeal's decision and remanded the case for re-trial, arguing that the substantive law had been misapplied and that the High Court's unifying decision no. 3 of 24.11.2016 should be respected. The applicant lodged an application with the Constitutional Court, but the Court decided not to pass the case for review in a plenary session, since the High Court's decision was not considered final for the purposes of constitutional review. The proceedings continued before the Administrative Court of Appeal, registered on 16 June 2017. On 24 May 2021, the applicant filed an application with the High Court claiming a violation of the reasonable time requirement in the adjudication of the dispute by the Administrative Court of Appeal, which was dismissed by the High Court. The applicant lodged another application to the Constitutional Court, which decided not to pass the application to a plenary session since it had been lodged outside the statutory four-month time limit. Regarding the complaint concerning the right to a hearing within a reasonable time, the Constitutional Court rejected it on the grounds that the applicant had not exhausted the effective legal remedies provided by law, as he still had the possibility of filing a new request with the High Court to establish the violation and expedite the proceedings. Upon re-examination of the merits, the Administrative Court of Appeal decided to reverse the judgment of the Tirana Administrative Court of First Instance and to reject the applicant's lawsuit. An appeal filed by the applicant with the High Court was declared inadmissible, since the latter found that it lacked legal grounds.

Regarding the old-age and supplementary pensions, the applicant challenged the decisions of the Regional Directorate of Social Insurance granting these benefits through administrative and judicial channels. The Administrative Court of Appeal changed the start date of the entitlement to the old-age pension from 16 June 2011 to 17 June 2009, ordering the Regional Directorate of Social Insurance to pay the difference for the old-age and supplementary pensions, indexed annually. *Therefore*, the applicant lodged an individual constitutional complaint with the Court concerning the court decisions related to the first judicial proceedings, namely those challenging the early retirement pension.

Court's Assessment

Regarding the violation of the right to a fair trial, in relation to the principle of legal certainty – The Administrative Court of Appeal failed to ensure a fair trial, since it disregarded the statutory provision, according to which a court must review the lawfulness of the contested administrative act on the basis of the legal and factual situation that existed at the time the specific administrative act was issued; furthermore, it failed to calculate the amount of the pension pursuant to the requirements and criteria of the law in force during the relevant period. It does not appear that the High Court addressed the grounds submitted in the appeal on points of law concerning the applicability of the legal criteria, or that it (the High Court) provided sufficient reasoning for the identification of the applicable law and the manner of its interpretation by the court of appeal. Consequently, the High Court's decision does not meet the standards of reasoning of the judicial decisions and hence, it violates the principle of legal certainty in relation to the acquired right to an early retirement pension. Therefore, the Court finds that there has been a violation of the right to an early retirement pension due to an unreasonable interpretation of the law, and holds that it is the High Court's duty to review the lawfulness of the decision-making of the lower courts. Thus, it repeals only the High Court's decision.

Decision-making

The Court decided, unanimously, to accept the application in part.

The right not to be declared guilty on the basis of illegally obtained evidence – Principle of the presumption of innocence – No punishment without law – Standard of reasoning of a judicial decision

KEY WORDS

Retrial/ summary proceedings/ witness/ environmental interception/ fingerprints evidence/ dactyloscopic expert examination

The choice of summary proceedings as a procedural mechanism – directly influences the severity or type of punishment imposed by the court. Consequently, such procedural right directly safeguards the material right of no punishment without law. Both first-instance courts and the High Court failed to interpret and apply procedural criminal norms governing summary proceedings in a manner that the right stipulated in Article 29 of the Constitution is fully effective. In the instant case, the ordinary courts' failure to guarantee the applicant's right to summary proceedings during the criminal trial, inherently resulted in a violation of the effective safeguards against arbitrary punishment within the meaning of the constitutional rights of no punishment without law.

Arjan Çelaj (alias Edison Çelaj) (no punishment without law due to refusal of summary proceedings in the sentencing) – Judgment No. 26, of 10.04.2025

Facts

The applicant, in 2011, was found guilty by the Durrës District Court for the criminal offenses of "Murder under Aggravating Circumstances" and "Illegal Production and Possession of Military Weapons and Ammunition", and sentenced to life imprisonment. Such decision was upheld by the Durrës Court of Appeal. However, the High Court of Albania reversed the decisions of both lower courts and remanded the case for further proceedings to first-instance court.

At the First-Instance, prior to the retrial proceedings, the applicant requested summary proceedings (expedited procedure), but the Durrës District Court rejected such request. Upon the conclusion of the retrial, the court found the applicant guilty and imposed a life sentence.

Therefore, the applicant appealed both the conviction and the rejection of his request for summary proceedings. The Durrës Court of Appeal upheld the first-instance decision, while the High Court's Criminal College declared the appeal inadmissible.

The applicant subsequently lodged an individual constitutional complaint with the Court.

Court's Assessment

Regarding the violation of the right not to be declared guilty on the basis of illegally obtained evidence related to the standard of reasoning of a judicial decision – Concerning the applicant's claim regarding the unlawfulness of environmental interception, the Court assessed that the ordinary courts' interpretation of procedural law was correct, in so far as domestic legislation permits surveillance of individuals where such monitoring may lead to the discovery of a suspect's location or identity. Consequently, the applicant's claim was deemed unfounded.

Regarding the collection, securing, and use of fingerprints evidence for dactyloscopic analysis to identify the perpetrator, the Court found no arbitrariness in the ordinary courts' application of procedural law. Thus, the applicant's claim was considered unfounded.

Regarding the principle of presumption of innocence related to the standard of the reasoning of a judicial decision – The Court deemed the applicant's claim for biased conduct of the First-Instance Court, unfounded. The fact that in the case retrial, the court rendered its reasoned decision 10 minutes after the counsel closing arguments, is considered insufficient to substantiate a violation of the principle of presumption of innocence. Regarding the assessment of evidence in terms of the safeguards for the principle of presumption of innocence, the Court emphasized that the environmental interceptions were evaluated by ordinary courts in conjunction with the other administered evidence, without attributing predetermined weight to the interception or shifting the burden of proof to the applicant. Such evidence was subjected to judicial debate in the light of adversarial principle and the applicant's guilt was established based on the analysis and reasoned evaluation of evidence, beyond any reasonable doubt.

Regarding the principle of no punishment without law in relation to the standard of reasoning – The request for summary proceedings was submitted, and the first-instance court ruled on it before the respondent (the applicant) raised objections during the trial regarding the invalidity of procedural acts or inadmissibility of evidence. In this context, while raising such objections could constitute grounds for revoking the interim decision to proceed with summary proceedings, conversely, raising such objections after the court had already rejected the request for summary proceedings cannot retroactively justify a prior interim decision. By submitting the request for summary proceedings, the respondent (the applicant) waived all claims contesting the validity of procedural acts or the inadmissibility of evidence.

Therefore, the subsequent act of raising such objections – i.e. only after the court rejected the applicant's request for summary proceedings and continued with ordinary trial proceedings – cannot be interpreted as evidence that such a "preventive obstacle" to summary proceedings existed at the time of the interim court's decision. Based on such analysis, the reasoning of the ordinary courts – that summary proceedings could not be applied in the applicant's case since he had raised objections with regard to the validity of procedural acts or inadmissibility of evidence – appears to result from an unreasonable interpretation of domestic legislation.

Decision-making

The Court decided, by majority vote, to accept the application (three judges expressed a concurring opinion and three judges expressed a dissenting opinion).

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Right of Access – Standard of Reasoning of a Judicial Decision – Principle of Presumption of Innocence

KEY WORDS

*murder/ weapon of the
crime/ victim of the
criminal offense/ formal
approach/ guilt beyond
any reasonable doubt/
insufficient reasoning*

In so far as the applicant's main claims in the appeal concerned a violation of the presumption of innocence in respect to the weapon used to commit the criminal offense, the High Court should have addressed such claims – concerning the lower courts assessment of evidence regarding the possession and use of the weapon handed over at the crime scene, some-time after the incident – by the victim of the criminal offense and the person accompanying him, as well as to what extent that evidence could sustain the finding that the applicant's guilt had been proved beyond reasonable doubt for the offences of which he was convicted.

Edmond Mamushi (*Principle of the Presumption of Innocence regarding the lower courts assessment of evidence*) – Judgment No. 27, of 29.04.2025

Facts

The applicant was sentenced to 15 years in prison by the Përmet District Court for the criminal offenses of attempted murder and illegal possession of firearms. Such decision was upheld by the Gjirokastër Court of Appeal, while the High Court ruled the applicant's appeal inadmissible.

The applicant lodged an individual constitutional complaint with the Court, claiming that the High Court violated his right to a fair trial.

Court's Assessment

Regarding the violation of the right of access related to the standard of reasoning of the judicial decision, in relation to the principle of the presumption of innocence – The Court deemed that the High Court should have addressed the applicant's claim regarding the violation of the presumption of innocence and expressed an explicit and reasoned position on that issue. Additionally, the High Court should have responded to the applicant's claim regarding the misapplication of procedural law concerning the lower courts assessment of evidence regarding the possession and use of the weapon handed over at the crime scene by the victim of the criminal offense and the person accompanying him, some-time after the incident, as well as to what extent that evidence could sustain the finding that the applicant's guilt had been proved beyond reasonable doubt for the offences of which he was convicted.

By maintaining a formalistic approach in evaluating the grounds of the appeal in their entirety, without focusing on specific aspects of the proceedings that carry a constitutional nature, the Criminal College failed to substantively address the applicant's claim regarding the violation of the presumption of innocence. The limited reasoning provided in this specific case does not fulfill the constitutional requirement of a reasoned judicial decision, as an essential element of the right to a fair trial.

Decision-making

The Court decided, by majority vote, to accept the application in part (*three judges expressed a dissenting opinion*).

Right to a fair trial

KEY WORDS

Disciplinary measure/ criminal proceedings/ innocence/ nonenforcement of a final court decision/ reinstatement into duty/ loss of status by default/ High Council of Justice/ High Judicial Council/ rejection of the application/ three-year secondment term/ conclusive procedural actions/ transitional re-evaluation process

The ordinary courts' reasoning that the applicant – a judge dismissed from his position as Director of the Property Restitution and Compensation Agency during a three-year secondment – had lost his judicial status by default, was subject to a disciplinary dismissal, and could not be reinstated due to his failure to undergo the transitional re-evaluation process, constitutes an abstract interpretation of the law inconsistent with concrete adjudication. The High Court's reasoning is formalistic, detaching the purpose of the proceedings from the very essence of the individual's constitutional rights. It lacks analysis of factual circumstances and substantive legal principles.

Tunxh Vatnikaj (Reinstatement as a judge following a three-year secondment) - Judgment No. 28, of 30.04.2025

Facts

The applicant was appointed as a judge at the Shkodër District Court in 2000. At his request, pursuant to Article 28 of Law No. 9877, dated 18.02.2008, he was appointed Director-General of the Property Restitution and Compensation Agency (AKKP) by a Council of Ministers' decision for a three-year term, a position he held until 2009. He was later dismissed for disciplinary misconduct and subjected to criminal proceedings for the offense of "Abuse of Duty"

After the criminal proceedings were concluded and he was declared not guilty by the court of appeal's final decision, the applicant filed an application with the High Council of Justice (KLD) for reinstatement to his judicial position. After receiving no response, he submitted a request with the Tirana Administrative Court, which ordered the High Council of Justice (KLD) to review his application. Such decision was upheld by the Administrative Court of Appeal. Moreover, the applicant filed an application with the European Court of Human Rights (ECtHR) for finding of a violation of the right to a fair trial due to the non-enforcement of the final court's decision. Such case was struck from the list after the Albanian state accepted to pay compensation for such non-enforcement.

Following constitutional and legislative reforms in 2016, the applicant filed a request to the High Judicial Council (KLGJ) for reinstatement as a judge, but his request was rejected. The Administrative Court of Appeal dismissed his subsequent appeal, and the High Court rejected his appeal.

Therefore, the applicant lodged an individual constitutional complaint with the Court challenging the High Judicial Council's rejection to reinstate him, as well as the judicial decisions, claiming violations of the right to effective access to court, standard of reasoning of the judicial decisions, as well as the right to earn a livelihood through lawful work. The Court analyzed such claims under the scope of the right to a fair trial.

Court's Assessment

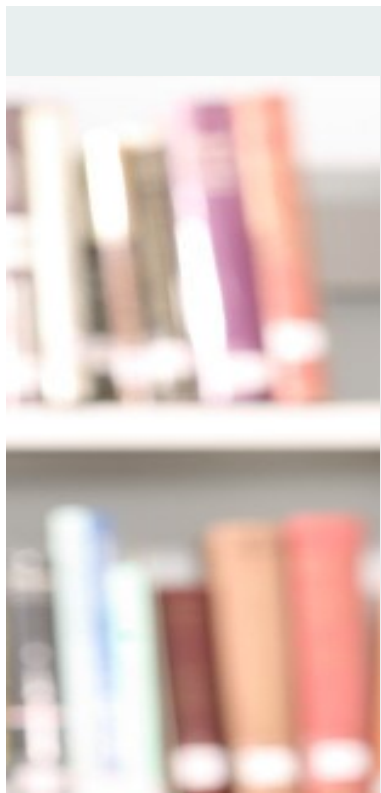
Regarding the violation of the right to a fair trial

The very essence of the case under review pertains to the manner in which the ordinary courts applied the relevant legal framework governing the reinstatement of judges. Thus, the Constitutional Court examined whether the interpretation of the law for resolving the specific dispute was manifestly unreasonable – in the sense of having produced an arbitrary conclusion for the applicant – in terms of safeguarding the rights he sought to protect through the contested judicial proceedings. Therefore, the Court analyzed the arguments upon which the lower courts rejected the applicant's lawsuit.

Firstly, regarding the argument of the ordinary courts and the High Judicial Council (KLGJ) that the applicant's judicial status was lost by default due to his failure to request reinstatement following the three-year secondment period, none of the courts analyzed the substantive legal framework (the law in force) in force. Specifically, they failed to assess whether a reinstatement request could have succeeded under such circumstances, given that the applicant was under criminal investigation during the secondment. In this context, the courts did not examine whether Article 29 of Law No. 9877/2008 – which stipulates the suspension of a judge's duties during criminal proceedings – constituted a legal impediment to submitting a reinstatement request. Furthermore, the High Council of Justice neither formally suspended him through a decision nor reinstated him – thus, creating a legal paradox.

Moreover, the ordinary courts failed to examine the determinative facts regarding the applicant's conduct in expressing his will to retain or terminate his judicial status, the consequences stemming from his actions, or the of the High Judicial Council's conduct at the time, which failed to review his request for a multi-year period.

INDIVIDUAL CONSTITUTIONAL COMPLAINT



Secondly, regarding the argument that the applicant was subjected to a disciplinary dismissal from his position as Director of the Property Restitution and Compensation Agency (AKKP), the courts failed to examine whether such a measure was provided for under the special law .

Thirdly, concerning the ordinary courts' argument that the applicant had not undergone the transitional re-evaluation process, the Court held that the courts failed to comprehensively analyze or interpret the implementation of constitutional and legal provisions governing transitional re-evaluation at the relevant time. Specifically, they disregarded the fact that the applicant lacked an administrative decision on his judicial status, despite having explicitly requested clarification from the competent authorities. Thus, the courts failed to assess the implications of a hypothetical request to transitional re-evaluation bodies in the absence of a decision by the High Council of Justice/High Judicial Council (KLD/KLGJ) regarding his judicial status.

Moreover, the applicant's failure to submit such a request was primarily dictated by the inaction of the competent institutions in defining his status.

Decision-making

The Court decided, unanimously, to accept the application in part.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Enforcement of a decision within a reasonable time

KEY WORDS

Public-interest expropriation/ enforcement of a decision/ bailiff officer/ Council of Ministers/ subordinate units/ mandatory enforcement

In reviewing the application according to the criteria which stipulate the reasonable time, the state authorities' conduct failed to meet the standard of efficiency requirement, thus resulting in unjustified delays in the enforcement of the judicial decision.

Regarding the importance of what is at stake for the applicant, his claims, inherently, pertain to a fair compensation for expropriation, a right specifically safeguarded under Article 41(4) of the Constitution.

Rafet Dokollari (*unreasonable length of the enforcement of a court's final decision*) – Judgment No. 29, of 30.04.2025

Facts

The applicant owned a building of 140 sq. meters and a plot of land of 1,000 sq. meters in the village of Udenisht, Pogradec. The property was expropriated for public interest purposes against a compensation of ALL 18,489,423. Disagreeing with the amount, the applicant filed a lawsuit with the court. By Decision no. 971 (413) of 8 June 2017, the Korçë Administrative Court of First Instance accepted such lawsuit, partially changed the relevant Council of Ministers' decision regarding the amount of compensation and ordered the Council of Ministers to pay the applicant ALL 58,640,000 for the expropriated land and building. Such decision became final as neither party appealed. At the beginning of 2020, the applicant put into motion enforcement proceedings. The private bailiff officer notified the Council of Ministers about the voluntary enforcement and has subsequently imposed a conservative seizure on the Council's bank accounts. The Tirana Treasury Branch informed the private bailiff officer that it could not enforce the court's decision since the Council of Ministers did not have budgetary funds or specific items in the government's financial information system, nor the seven-digit code required for carrying out financial procedures in the treasury system. Subsequently, the private bailiff officer has approached the Council of Ministers and the General Directorate of Treasury several times, requesting the enforcement of the court decision, but such efforts were unsuccessful.

Therefore, the applicant filed an application with the Korçë Administrative Court of First Instance for finding of a violation of the "reasonable-time" requirement for the enforcement of the court's decision. The court rejected such application, holding that enforcement had been hindered by objective circumstances. A further application submitted to the same court for "clarification" of the court's decision was also rejected on the grounds that it was unfounded in law and that in such proceedings the parties in the process could not be altered.

The bailiff officer submitted a request with the court for necessary measures to enforce the court's decision, but the Korçë Administrative Court of First Instance rejected such request. The court reasoned that the bailiff officer had not exhausted available legal remedies, since he had not previously applied the sanctions as stipulated by law.

The enforcement officer subsequently sent several written requests to the Council of Ministers, urging enforcement of the obligation. The Council responded that the obligation would be fulfilled by the Ministry of Infrastructure and Energy (MIE), since the expropriation decision fell under its jurisdiction. On 09 September 2024, the bailiff officer inquired with the Tirana Treasury Branch whether the applicant was included in the MIE's list for the liquidation of obligations, which resulted in a negative response.

After nearly five years of non-enforcement of the final judgment, the applicant filed a constitutional complaint with the Constitutional Court.

Court's Assessment

Regarding ratione personae standing – Even though the obligation was enforced after the individual constitutional complaint had been lodged, the applicant retains victim status, which is due to substantial delay in enforcement, state authorities' failure to recognize the delay as a violation as well as the applicant's absence of compensation for the delay.

Regarding the violation of the right to enforcement of a final decision within a reasonable time – The Court examined the criteria established by its constitutional jurisprudence for assessing the reasonableness of the length of enforcement proceedings.

(continues on page 26)

INDIVIDUAL CONSTITUTIONAL COMPLAINT

The instant case constitutes such a nature that the applicant's interests are placed at significant risk by the delay in enforcing the judicial decision.



Regarding *the complexity of the case* – The Court observes that defining the Council of Ministers as the debtor in budgetary procedures – where it operates as an “*apparatus*” acting through its subordinate units – introduced a degree of complexity to the enforcement of the judicial decision. However, such complexity does not justify the nearly five-year delay in the enforcement of the judicial decision. Consequently, the assessment of additional criteria becomes decisive in determining whether the applicant's constitutional rights were violated.

Regarding *the applicant's conduct* – The Court notes that the applicant acted in accordance with their procedural rights to fulfil his rights. He persistently and continuously demonstrated interest in the decision enforcement, making use of every available procedure, from filing requests for mandatory enforcement and initiating proceedings before the ordinary courts to finally lodging an individual constitutional complaint. Thus, the applicant cannot be held responsible for the delay in enforcement.

Regarding *the authorities' conduct* – The state authorities' conduct failed to meet the standard of efficiency requirement, hence resulting in unjustified delays in the enforcement of the judicial decision.

Regarding *the importance of what is at stake for the applicant* –

The Court notes that the applicant's claims, inherently, pertain to a fair compensation for expropriation, a right specifically safeguarded under Article 41(4) of the Constitution. Accordingly, the instant case constitutes such a nature that the applicant's interests are placed at significant risk by the delay in enforcing the judicial decision.

Decision-making

The Court decided, by majority vote, to accept the application in part (*one judge expressed a dissenting opinion*).