



REPUBLIKA E SHQIPËRISË  
GJYKATA KUSHTETUESE



# 2024

## ANNUAL REPORT



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**GJYKATA KUSHTETUESE**

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# Message of the President of the Constitutional Court, Ms. Holta Zaçaj

The Constitution is for the state, but first and foremost it is for its citizens. Many constitutions, including the Constitution of Albania, begin with the words “*We, the people*”, which means that the Constitution, the laws and the governance built upon them emerge from the citizens and are at their service.

The Constitution represents the fundamental reference and unit of measurement to verify how powers are exercised and to ensure protection and observance of fundamental rights and freedoms. What we need to do is to work to make constitutional justice a reality in order to guarantee a present and future where all citizens are equal before the law, where no one is above the law, but also no one is under the law.

It is now a factual and tangible reality that we turn to the text of the Constitution, its purpose and spirit in order to find clarity of the law. Furthermore, I would like to share with you a reflection that accompanies us in our work: “The Constitution is not a text to be preserved unchanged, but is instead a living instrument, a source of rights and principles that must be read, interpreted and applied continuously in the light of evolving realities”.

The Constitutional Court, through its work, contributes to making our legal system dynamic and that, although founded on sound and strong principles, it must be able to adapt to new realities and challenges and the evolving needs of society. For this reason, our commitment is to guarantee the protection of constitutional justice and ensure that citizens see their rights respected in a state of a rule of law.

The Constitution is, in fact, the greatest safeguard of our freedoms. We should, therefore, work to guarantee constitutional justice for the effective protection of fundamental rights and freedoms, for a future where all citizens are equal before the law, where no one is above the law, but also no one is under the law.

The Constitutional Court, through its work, reminds us every day that our legal system is dynamic and that, although founded on stable and strong principles, it must be able to adapt to new realities and challenges and the evolving needs of society. In this vein, our commitment must remain steadfast in guaranteeing and protecting constitutional justice, as well as in ensuring that every citizen sees his or her rights respected.

Furthermore, I would like to share with you a reflection that constantly accompanies us in our work: “*The Constitution is not a text to be preserved unchanged, but is instead a living instrument, a source of rights and principles that must be read, interpreted and applied continuously in the light of evolving realities*”.

I invite you to use the 2024 Report as an instrument to feel involved in the provision and promotion of constitutional justice and as a source of inspiration to continue defending the fundamental values of our Constitution.

I hope that the findings of the Constitutional Court summarized in this publication contribute to strengthening of the constitutional culture and democracy in the country.

## Summary of achievements during 2024

Year 2024 was a fruitful and transformative year for the Constitutional Court, marked by progress, stability and dedication to preserving and safeguarding the principles of the rule of law and democracy. In fulfilling the Court's role as the guardian of the Constitution, constitutional adjudication has been essential also with regards to increasing and guaranteeing citizens' access to justice, thus contributing to building of their trust in the justice system and institutions in general, and in the Court in particular.

During 2024, the Court proved once again that it is a ***Court of the Citizens***. Constitutional oversight was extended in particular to the substantive rights of the individual and individual complaints have increased by about 16%. With regards to the effectiveness of trial, the Court gave due importance to the need for a fair and expeditious trial, although its staff continues to remain the same in number.

Also, during a year of events accompanied by political tensions, the Court confirmed its irreplaceable role in preserving constitutional order through the final interpretation of constitutional norms, resolution of conflicts of competences, and control of compliance of laws and other normative acts with the Constitution.

The Annual Report provides a detailed analysis of the most important judgments, the challenges encountered during the year, and the measures taken to improve the efficiency of the Court's work. This Report presents a complete overview of the main statistics and results, which illustrate the Court's commitment to guaranteeing not only an efficient but also an independent, contemporary and qualitative system of constitutional justice.

The constitutional amendments of 2016 have already begun to produce their effects by bringing citizens closer to the Court through access to challenge judicial decisions and any other act of public power affecting their fundamental rights and freedoms. We can say without a doubt that individual constitutional complaint is present in the daily work of the Court.

Having in the focus of its work the safeguards, promotion and protection, in particular, of the substantial rights and freedoms of the individual, the Court has changed its approach in several aspects, aiming not only to ensure the citizen's access to the Court through individual constitutional complaints, but also to expand the scope of its constitutional protection.

During 2024, the Court has issued several rulings related to the right to fair trial with regards to length of proceedings in the courts of general jurisdiction. In these

cases, the Court's focus has been on the importance of what the applicant risked by not having his or her case tried within a reasonable time. In a particular case, the Court assessed that the right sought to be protected was a right which, according to the law, could only be realized within a certain timeframe, and it was exactly this timeframe defining the very essence of the right, therefore the failure to give life to the right within that specified period of time made it merely illusory.

During 2024, the Court, for the first time in its practice, also considered allegations of violations of substantive rights autonomously from procedural rights. With the aim of developing its jurisprudence, the Court's assessment of substantive rights was extended into two aspects – namely the substantive and the procedural aspect, considering them as independent from each other.

Even though the Court had already issued judgments determining personal security measures in the past, in 2024 it considered them from the point of view of personal liberty both in the procedural aspect, with regards to the guarantees offered by the right to a fair trial, according to Articles 28 and 42 of the Constitution, and the substantive aspect, with regards to the constitutional conditions and criteria allowing for the restriction of this freedom, based also on the principle of proportionality of the imposed measure and the reasoning of the Courts decisions.

Based on this approach, in property rights cases, the Court considered from the procedural aspect point of view the observance of safeguards for fair trial, according to Article 42 of the Constitution, and in the substantive aspect, the respect for the criteria allowing the restriction, according to Article 41 of the Constitution, thus achieving a comprehensive and coherent treatment of these issues by constitutional justice.

From the perspective of the property law, the Court also included in its jurisdiction **judicial rulings on seizure of property** in the context of criminal proceedings. Although the Court has in the past admitted for review on the merits only decisions ordering confiscation of property, it deemed it necessary to review its approach to include seizure decisions, which, although temporary in nature, interfere with the constitutional right to private property. The Court considered that the individual constitutional complaint aims to serve as an effective remedy within the domestic system, but also that exclusion of judicial seizure decisions from constitutional review would be contrary to the European Convention on Human Rights and the case-law of the European Court of Human Rights, which would eventually lead to denial of the protection of the substantial rights of the individual. Considering as basic criteria the extent of autonomy of these decisions and their consequences on the substantive right to property, in the sense of whether it can be repaired in the merits proceedings, the Court has developed its case-law in this regard as well.

Moreover, in terms of the substantive right to property, the Court also examined **the interim decision to suspend execution of an executive title**, insofar as it considered that it had brought direct and significant consequences on this right, which may continue for an indefinite period until a final judgment is taken.

With regards to other substantive rights of the individual, the Court **examined the substantive right to life** in two cases initiated by relatives of the victims, who raised through the individual constitutional complaint mechanism claims related to actions of competent authorities during criminal prosecution. In procedural terms, the Court verified the investigations conducted to clarify the circumstances of the event and identify its perpetrators, while in substantive terms, it assessed whether the authorities have taken the appropriate actions to guarantee this right.

In addition, the Court also addressed the **issue of non-discrimination** in employment relationships, where it noted that where there are facts from which it can be assumed that there has been a case of discrimination, it is up to the party who has caused the discrimination, in the case it considered the employer, to prove that there has been no violation of this principle. The Court assessed that the shift of the burden of proof from the employee (victim of discrimination) to the employer (perpetrator of discrimination) is related to the vulnerability of the discriminated person, therefore it is sufficient for the discriminated party to present credible facts which prima facie presume the existence of a specific discriminatory circumstance that has led to less favorable treatment or to the infliction of damages.

As for substantive rights, the Court, while exercising its abstract control of legal norms, also examined several cases of high public interest, such as the Law **On determining the tax rate for self-employed persons providing professional services**. It found that the tax rate was incompatible with fundamental rights and freedoms, insofar as, from the combined analysis of the circumstances in which the law was adopted and implemented, it was found to be disproportionate with the need to impose it.

In considering the **Law On Students of Medical Studies**, the Court, after finding that its provisions affect the constitutional rights to education and employment, assessed the interference in relation to the constitutional criteria and considered that the provision of new legal instruments allowing the execution of the employment entry scheme interferes with the constitutional right to accept and choose the job itself, insofar as it places students before the choice of signing the agreement or, conversely, paying the full amount of the cost of studies. The Court, within the framework of the proportionality test, assessed that the violation of constitutional rights is also due to the lack of legal provisions in terms of objective criteria for priority employment; financial treatment in the context of providing the necessary means of subsistence; calculation of the waiting period payment for the



length of the employment obligation.

With regards to fundamental rights of the individual, the Court, for the first time, considered **the right to information on the state of the environment** under Article 56 of the Constitution and the Aarhus Convention, in the **case of the construction of the Skavica hydropower plant**, emphasizing the importance of holding public hearings with the participation of the community of the area, having the status of the affected public, during the public consultation process, and of listening to their opinions.

Exercising its constitutional jurisdiction within the framework of controlling the compliance with constitutional principles and standards, the Court has included a number of acts of a normative nature in its control.

The preliminary control case of the **Migration Protocol with Italy** was one of the most important cases considered by the Court in 2024. In the context of this case the Court developed and interpreted the constitutional concept of territory in both its physical and jurisdictional aspects. In summary, it noted that: The Protocol does not change or set new territorial borders for Albania; the Albanian state continues to exercise its jurisdiction regardless of the jurisdiction of the Italian state in relation to asylum issues; The Protocol does not create new fundamental constitutional rights and freedoms, nor does it introduce additional restrictions on existing ones.

Of particular importance to public opinion during 2024 was the case of reviewing the constitutionality of the **Agreement on the Administration of the Butrint Park**, where both the law approving the Agreement and the Agreement itself were included in the constitutional jurisdiction, despite its non-normative nature, insofar as it is not only formally vested with the power of law approved by the Assembly, but also taking into account the constitutional nature of the claims raised, for which reason they cannot be excluded from this control.

With regards to constitutional jurisdiction, the Court included for the first time in its review the provisions of the **Rules of Procedure of the Assembly not related to parliamentary procedure, but to the determination of disciplinary measures against MPs**. Although it considered that it was found in face of a sui generis atypical act, in determining its jurisdiction, the Court assessed the nature of the contested norms; the absence of another judicial jurisdiction for the review of the Rules that was capable of excluding the constitutional one; the constitutional nature of the rights at stake, and the consequences on the rights deriving from the constitutional representative mandate of the MPs. In balancing the principle of parliamentary autonomy with the principle of representative democracy, the Court considered its review different from the classic one provided for by Article 17 of the Constitution, focusing only on the severity of the restrictive measure. The Court

noted that determination of behaviors and actions of MPs constituting disciplinary violations and leading to the application of disciplinary measures must be done in a clear and specific manner, while the reference, in general, to unspecified actions or behaviors, even though they may not lead to criminal liability, may lead to arbitrariness during their implementation.

The Court followed the same approach in the case of the **constitutional review of the law on the establishment and functioning of parliamentary inquiry committees**, where it reiterated the principle of parliamentary autonomy. Analyzing the constitutional right of the parliamentary minority to establish an inquiry committee also related to the manner of conducting a parliamentary inquiry, the Court analyzed the importance of obtaining evidence as one of the most important aspects of this type of inquiry guaranteeing its effectiveness. Therefore, the decision to reject the evidence requested by the parliamentary minority may render this right and the exercise of the function of the Assembly, as the holder of this right, ineffective and may create a clash of powers that may lead to constitutional disputes.

Of particular importance was the approach regarding the enforcement of the Court's judgment asking the Assembly to refer to it a case on the incompatibility of **the mandate of an MP**, where the emphasis was placed not only on the constitutional obligation to enforce the judgments of this Court, but also on analyzing of the meaning of the principle of the free mandate of the MP when called to vote, which cannot be understood as an absolute freedom, unrestricted by the Constitution and laws, nor can it be extended to issues related to enforcement of judgments of the Constitutional Court.

Another no less important case considered by the Court was the one on the constitutionality of the provisions of the **Electoral Code with regards to guaranteeing preferential voting**. The Court considered the case from the lens of the **right to vote** in terms of the right to elect and to be elected. It noted that placement of candidates by the party in the list of a fixed order or in the list of preferential voting does not violate the right to vote, neither in terms of the right of electoral subjects to be elected and to participate in the political will formation process, nor in terms of the right of citizens to vote.



# Intro

## ABOUT THE COURT DURING 2024

The year 2024 was a dynamic year for the Constitutional Court. The judicial body dealt with a variety of cases related to constitutional conflicts between powers, conflict over competences, constitutionality of legal initiatives, as well as respect for individual freedoms and rights. The number of applications addressed to the Court as well as the number of cases reviewed by it increased significantly. The Court issued 408 rulings, of which 86 were final judgments, 275 decisions of inadmissibility of its Panels and 47 decisions of inadmissibility of the Meeting of Judges. Despite the high workload, the Court paid attention to observing the procedural deadlines of judicial review, aiming first and foremost at the quality of its decision-making.

Throughout the year, the Court has stepped up its efforts to meet its strategic objectives, with the aim of providing a functional constitutional justice, embodying integrity and transparency, and has received positive assessments from the European Commission through the “Rule of Law 2024” report, which mentions, inter alia, its effective role in maintaining institutional checks and balances. The report also highlights the completion of the body of judges of the Constitutional Court according to the constitutional amendments of the justice reform in 2016, and continues with the assessment of the work of the Court, in effectively dealing with a number of important cases and not having any backlog stock since it resumed its operation in December 2022.

## **Taking over of the presidency of the Conference of European Constitutional Courts**

At the 19th Congress of the Conference of European Constitutional Courts (CECC), held in Moldova, 35 Courts present at the Congress voted and elected the Constitutional Court of Albania as the Presiding Court of this Conference for the period of 2024-2027, as well as the organizer of its upcoming 20th Congress in Albania. It is the first time that the Constitutional Court of Albania assumes the presidency of this Conference, of which it has been a full member since 2000. By voting for the Constitutional Court of Albania, the European Courts have appreciated the common principles and values in the field of constitutional justice, as well as the will and full commitment to successfully fulfill the presidency of the Conference for the period 2024-2027.

## **The Electronic Bulletin of the Court**

The Court's periodic bulletin is a new development in the Court's activity in the sphere of professional publications, with the aim of further strengthening access to constitutional justice. Starting from January 2024, the Court has prepared and widely distributed in electronic form to all legal professionals and interest groups the bi-monthly periodic bulletin of its decision-making. The publication brings the Court's judgments and decisions in a concise manner, in an easily understandable language, presenting the facts related to the issues raised by the applicants, the Court's assessment of their claims, as well as the relevant decision-making and vote. Through it, legal practitioners, legal scholars, and every reader, are timely acquainted with the Court's decision-making and its positioning on certain matters. The bulletin is made available in two languages, Albanian and English.

## **Guides to the case-law of the Constitutional Court**

In 2023, the Court produced its first guide to its constitutional case-law, modeled on the guides of the European Court of Human Rights. This guide contains the Court's standards for individual constitutional complaints with a focus on the right to a fair trial, serving as a highly effective tool to facilitate legal research in order to prepare cases of this nature for trial. During 2024, the content and methodology of the guide were presented at a special roundtable with senior representatives of justice institutions, the judicial system, lawyers, academics and legal professionals, as well as representatives of partner international institutions and organizations. In order to make this material widely known and more usable, the Constitutional

Court, in cooperation with the High Judicial Council and the National Chamber of the Bar, and with the support of partners, held a series of meetings in different districts of the country with judges of courts of different instances and lawyers. Also, in cooperation with the Parliament, the Court held a special roundtable on the content of the guide with the participation of legal advisors of both institutions. Participants in all these events showed particular interest in the publication, and highly appreciated its usefulness, considering it a valuable professional tool.

In order to continue its initiative towards further strengthening legal research and the development of constitutional jurisprudence, in June 2024, the Constitutional Court began work on the production of a second guide. This second volume contains the standards and positions held by the Court with regard to the principles and fundamental rights and human freedoms, as well as the separation and balance of powers. Guide II is expected to be finalized in early 2025.

### **Explanatory handbook about the Constitution for children**

Showing special attention to civic education with fundamental human rights and freedoms, and respect for democratic principles and values, respect for the rule of law and institutions, the Court drafted an explanatory handbook for children in basic education, in the eighth and ninth grades, on the content of the Constitution and on the role and functions of the Constitutional Court. This publication, produced for the first time in this format, also coincided with the 26th anniversary of the adoption of the Constitution of our country. With a simple and understandable language for children, this handbook helps children understand the fundamental law of our country, where one finds the essential principles and values of coexistence in the community as well as the principles that guide the governance of the country. The handbook also serves to help children better understand their rights and obligations in society, with the far-sighted aim of being worthy and dignified citizens.

### **Strengthening of the communication of the Constitutional Court with the Media and the Public**

The Constitutional Court has highly invested itself in providing and disseminating accurate and complete information regarding its activity through the media and other means of communication, focusing on maintaining independence, impartiality and institutional transparency, but also guaranteeing respect for the right to information. To this end, the Court has continued a practice that proved successful during the previous year, namely that of organizing press conferences

on issues of high public importance and interest. These conferences have been held on the same day a judgment or decision is issued on a given case, where a concise explanation of the decision is provided, in simpler and more understandable language, and questions have been taken and explanatory answers have been given to media representatives. Throughout 2024, a roundtable discussion was also held with accredited journalists, lecturers in the field of communication, editors, editors-in-chief and opinion leaders of the press and visual media in the country, to exchange opinions in order to increase the efficiency of the Court's activity, as well as to guarantee an easier and more qualitative access of citizens to constitutional justice. For increased transparency in its decision-making, the Court has continued its live broadcast, through the Youtube platform, of all public plenary hearings. The Court also publishes continuous information on its activity on the social networks Facebook (Meta) "Twitter" (X) and "LinkedIn" as well as on its official website on the web, which has been redesigned to be more user-friendly and accessible to every user. The website will be launched in January 2025.

### **Strategic Planning of the Court for the upcoming years**

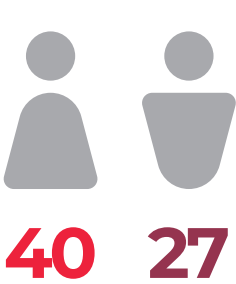
For a strategic, functional and effective administration of the institution, the Constitutional Court approved and immediately implemented its 2024-2026 Action Plan. This plan, consisting of 47 measures, contains the actions to be taken by each sector, together with the respective deadlines and indicators that measure their implementation, in fulfillment of the objectives foreseen by the Long-term Strategic Document of this Court. The Action Plan measures guide the work of each sector of the institution, and are expected to be implemented by the end of 2026, achieving results in four main strategic directions: (1) ensuring a functional system of constitutional justice and an efficient and effective appeal mechanism, (2) strengthening trust in the Court through continuous communication and information of the public and the media, (3) improving the human resources management system, strengthening the integrity, institutional organization and building the capacities of the Court, and (4) effectively planning and coordinating financial resources and physical conditions for the functioning of the Court.



# Organizational Structure of the Constitutional Court

The current organizational structure of the Constitutional Court has been approved by decision no. 17, dated 20.11.2023 of the Meeting of Judges “On an Amendment to the Organizational Structure of the Constitutional Court.” It was subsequently amended by decision no. 9, dated 10.06.2024, and decision no. 18, dated 17.10.2024. The Constitutional Court consists of 87 employees, organized as follows:

|    |                                                                        |    |                                                                        |   |                   |
|----|------------------------------------------------------------------------|----|------------------------------------------------------------------------|---|-------------------|
| 1  | President                                                              | 8  | Judges                                                                 | 1 | Secretary General |
| 5  | Cabinet                                                                | 24 | Legal Service Unit                                                     | 1 | Audit Office      |
| 7  | Judicial and Documentation Directorate                                 | 6  | Directorate of Legal Services, Procurement, and Information Technology |   |                   |
| 5  | Directorate of Public and International Relations                      | 5  | Directorate of Research, Studies, and Publications                     |   |                   |
| 24 | Directorate of Economic Affairs, Human Resources, and Support Services |    |                                                                        |   |                   |



By the end of 2024, the Constitutional Court had 40 female and 27 male employees. All employees have extensive experience in public administration institutions, including within the Constitutional Court itself, reflecting the institutional continuity and commitment to the development and promotion of human resources within the institution.



The allocated budget for 2024 is 305,346,396 ALL (or € 3,111,018) In comparison with 2023 budget, 237,783,262 ALL (or € 2,422,652), there is an increase of +67,563,134 ALL (or € +688,366), +22%.

# Composition of the Constitutional Court

## ■ President of the Constitutional Court



**Holta Zaçaj**  
**LL.M**

Born on 12 January 1976 in Tirana. From 2007 until 2008 she finished the studies and obtained the Scientific Master's Degree on "Securities and Financial Regulation", at Georgetown University in the USA, in the framework of the Fulbright Program. 2003-2013 she was a lecturer at the School of Magistrates at the Initial Training Programme, in Family Law, and in Continuing Training Programme in Family Law and Child Rights. Author and co-author of about 30 studies and publications in the field of human rights, child rights, family law, banking law and securities. Co-author of the Family Code, the Law On the rights and protection of children in Albania, the legal package for the penitentiary treatment of minors in Kosovo.

In January 2023, she was appointed a member of the Constitutional Court and in March of the same year, she was elected President of this Court.

Appointed a member of the Constitutional Court by the Supreme Court.



Born on 06 March 1975 in Tirana. In 1997-2000 she finished her studies at the School of Magistrates, in the first generation of graduates of this school, and was appointed as a judge. Since 2005 she has been continuously engaged in teaching activities, including the Initial and Continuing Program of the School of Magistrates. She is the author of several work manuals on issues of drafting legislation, as well as those of inspection. In November 2019 she was appointed a member of the Constitutional Court by the President of the Republic.



Born on 12 March 1976 in Vlora. In 2012 she received the scientific degree "Doctor of Legal Sciences" at the Faculty of Law of the University of Bari. Since 2007 she has been teaching as a lecturer of Public Law at several universities. She is author of several scientific articles in the field of Constitutional Law. In 2019 she taught at the Initial Training Program at the School of Magistrates. In November 2019 she was appointed a member of the Constitutional Court by the Assembly of Albania.



Born on 17 September 1974 in Tirana. During 2004 - 2011 she worked as a lawyer and legal consultant in several projects of the World Bank, the Italian-Albanian Bank, the Savings Bank during its privatization, the Puglia People's Bank, and the Italian Development Bank. From 2011 onwards she has practiced the profession of notary. She is a member of the National Chamber of Notaries and the Tirana Chamber of Notaries, as well as a former member of the National Chamber of Advocates. In December 2020 she was appointed a member of the Constitutional Court by the President of the Republic.



Born on 06 August 1974 in Shkodra. In 2012 he received the scientific degree "Doctor of Legal Sciences" from the Faculty of Law, University of Tirana. He was elected a member of the High Prosecutorial Council from among the lecturers of the Faculties of Law, a position he held from December 2018 up until March 2022. He is the author of several publications and scientific articles. In March 2022 he was appointed a member of the Constitutional Court by the High Court.



Born on 27 April 1970 in Elbasan. In the period 2007-2018 he served as a judge at the Tirana Court of Appeal, where during the years 2012-2016 he was also a member of the Electoral College at this Court. In the years 2018-2021 he served as a member of the High Judicial Council. During the period December 2021 up until September 2022 he served as a judge at the Tirana Court of Appeal. He has also been engaged as an expert in the Continuing Training Programme at the School of Magistrates. In September 2022 he was appointed a member of the Constitutional Court by the High Court.



Born on 20 March 1970 in Tirana. During the years 2019-2022, he served as the President of the High Prosecutorial Council. Since 2006, he has served as an external lecturer at the School of Magistrates. He is co-author of many studies and commentaries published in the field of human rights, constitutional law, administrative law, the justice system, freedom of expression, the right to collective bargaining, the right to information, private life, etc. In December 2022, he was appointed a member of the Constitutional Court by the President of the Republic.



**Prof. Dr. Marjana  
Semini**

**Member of the  
Constitutional Court**

Born on 13 April 1966 in the city of Berat. In 1993, she received the Scientific Degree “Candidate of Sciences in Law”. In 1994, she received the Scientific Degree “Doctor of Law” and, then in 1999, she earned the Scientific Title “Associate Professor” and in 2009, the Scientific Title “Professor”. External lecturer at the National School of Advocacy, at various Faculties of Law in Albania, as well as scientific leader in doctoral programs and schools in Albania, Kosovo and Macedonia. She is author and co-author of 37 university texts, monographs, commentaries, scientific articles and publications of a legal nature. In December 2022, she was appointed a member of the Constitutional Court by the Assembly of Albania.



# Decision-making

## Selected cases

### Conflict of competences between powers

Conflict of competences between parliamentary minority (1/10th of the MPs of the Assembly) and parliamentary majority because of failure by the Assembly to implement the Constitutional Court judgment on filing an application on the compatibility of the mandate of the MP (Judgment no. 55, of 10 July 2024- case of Olta Xhaçka)

Failure to implement the Court's judgments violates the entire structure of rights and obligations, and constitutes a dangerous precedent. The Assembly's refusal to implement the Court's judgment has led to a constitutional crisis. When put into motion according to Article 70, paragraph 4, of the Constitution, the Assembly cannot put into question the submitted motion and cannot subject it to parliamentary debate, but its decision-making is in the service of legitimizing this body as one of the subjects that can put constitutional jurisdiction into motion. The assessment of the merits of the case belongs exclusively to the Constitutional Court. The principle of the free mandate of the MP is not an absolute freedom of the MP, unrestricted by the Constitution and laws, an element of which is also the mandatory enforcement of the Court's decisions. The Assembly, although the first interpreter of constitutional provisions, cannot intervene in matters on which the Court, which is the authority to make the final interpretation of the Constitution, has expressed its opinion.

#### **THE ASSESSMENT OF THE COURT**

The Court noted that putting into motion of constitutional trial only for the case of verification of incompatibility according to paragraph 3 of Article 70 of the Constitution is considered a control instrument over the legislative power requiring a trial, which falls beyond the powers and capacities of the Assembly. When put into motion, according to Article 70, paragraph 4, of the Constitution, the Assembly cannot put into question the motion presented to it and cannot subject it to parliamentary debate, but its decision-making is in service of legitimizing this body as one of the subjects that can put constitutional jurisdiction into motion. Verification and assessment of the legal and formal criteria of applications of this nature is a matter falling in the remit of work of the Assembly, while assessment of the merits of the case belongs exclusively to this Court. With regards to enforcement of its judgments, the Court has emphasized that the binding nature of

enforcement of its judgments and decisions is guaranteed by the Constitution (Article 132). They have general binding force and are final and, as such, constitute constitutional case-law, consequently, they have the effects of the force of law. The failure to enforce judgments of the Court violates the entire structure of rights and obligations provided for in the Constitution, which in and of itself constitutes a dangerous precedent. With regards to the principle of the free mandate of the MP (Article 70, paragraph 1, of the Constitution), constitutional jurisprudence has emphasized that the MPs mandate is not revoked by the voters or the political party, the MP is not bound by the orders of the electorate and is not obliged to be or remain part of a certain parliamentary group. However, this principle cannot be understood as an absolute freedom of the MP, not limited by the Constitution and the laws, to act in such a way that the Assembly is not able to implement the requirements stemming from the Constitution and to adopt decisions incompatible with it. When the MPs are called to vote, the principle of the free mandate cannot be understood as an absolute freedom of the MP, not limited by the Constitution and the laws, an element of which is also the binding nature of enforcement of the judgments and decisions of the Court. In this understanding, the principle of the free mandate of the MP cannot be extended to issues related to enforcement of Court judgments and decisions. As for the role of the Assembly as the first interpreter of the constitutional norm, this body can intervene only to that extent and only on those issues that the Court has not expressed itself, as the body that makes the final interpretation of the Constitution. If such interpretation by the Court has already been issued, the Assembly can no longer exercise the role of the first interpreter of the constitutional norm. The Court finds that the decision-making of the Assembly to not enforce Judgment 1/2023 cannot be justified by the principle of the non-binding mandate of the MP, because enforcement of Court judgments is not a political issue, in which case the Assembly has room for assessment and the MP enjoys the freedom to choose his or her position through voting in line with his or her free mandate. Regarding the application of 1/5th of the MPs of the Assembly, the Court found that, as long as the interpretation of the constitutional provisions received an answer in its reasoning, this aspect has become moot.



## **FACTS**

Two groups, respectively of 14 and 15 MPs of the Parliamentary Minority (not less than 1/10) addressed the Assembly, in June and July 2022, with two motions, to establish the invalidity and terminate the mandate of MP Olta Xhaçka, given that the company owned by her husband, and consequently, also by the MP in question, has benefited from property rights from state property. The Assembly, with its Decisions no. 83 and no. 84 of 2022, decided not to approve the minority report, but instead to approve the Parliamentary Majority report, according to which the constitutional criteria are not met to set the Court in motion (Article 70, paragraphs 3 and 4, of the Constitution). Consequently, the Assembly did not file a case to the Court. A group of 1/10th of the MPs of the Assembly turned to the Court to resolve the dispute of competence created between it and the Assembly, as a result of Decisions 83 and 84, as well as their declaration as incompatible with the Constitution (first case). At the same time, another group of 28 MPs of the Assembly (1/5), turned to the Court, requesting the annulment of these decisions of the Assembly, based on the same rationale (second case). For the first case, with its Judgment 1/2023, the Court decided to declare the application admissible, resolve the dispute of competence between 1/10th and the Assembly and annul the above-mentioned Decisions 83

and 84. For the second case, the Court discontinued the trial by virtue of Decision 2/2023, noting, in essence, that the application had become moot by its Judgment 1/2023, and that the Court did not have jurisdiction to establish the incompatibility of the MP's mandate under paragraph 2 of Article 70 of the Constitution. The Assembly, through the Council for Legislation and the Council for Mandates, reconsidered Court Judgments 1/2023 and 2/2023. In the Council for Mandates, the majority and minority presented their reports regarding the motion and enforcement of the Court's Judgment no. 1/2023, and requested that the matter be referred to the plenary session for consideration. The Assembly decided not to implement the Court's judgment 1/2023. The applicants (1/10th and 1/5th of the MPs) appealed to the Court.

The applicant, the 1/10th of the MPs of the Assembly, asked the Court to declare Decision no. 41/2024 of the Assembly as incompatible with the Constitution and to resolve the dispute of competences created by this Decision between the Court and the Assembly, while the applicant, 1/5th of the MPs of the Assembly, asked the Court to provide a final interpretation of Articles 70, paragraphs 1 and 4, 73, paragraph 1, and 132, paragraph 1, of the Constitution.

## Control of an international agreement prior to ratification

The nature of matters that are regulated by the Migration Protocol, signed between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania, in connection to the competent authority to issue the power of attorney (Judgment no. 2, of 29 January 2024 – a group of MPs of the Assembly)

The constitutional concept of territoriality contains two aspects, the physical aspect, and the jurisdictional aspect. As far as the physical aspect is concerned, the Protocol provides that the Albanian State shall transfer for use to the Italian state authorities two areas that are an integral part of the Albanian territory and that such areas shall remain Albanian territory, therefore it does not affect, change or set borders. In terms of jurisdiction, exercising of the jurisdiction of the Italian state is determined for the enforcement of the obligations of that state regarding migration and asylum in the framework of guaranteeing the rights of migrants deriving from international law. Due to the position that the Protocol occupies in the hierarchy of legal acts, it does not exclude the jurisdiction of the Albanian state at the constitutional and convention level for the protection of fundamental rights and human freedoms. Given that the Protocol is not included in the category of agreements affecting either territory or human rights, it does not require an authorization for the issuance of full powers of attorney by the President.

### **THE ASSESSMENT OF THE COURT**

The Court, taking into consideration the nature of the claims, examined the Migration Protocol in three aspects: (i) if it constitutes an international agreement concerning the territory of the Albanian state, in the understanding of letter “a” of paragraph 1 of Article 121 of the Constitution; (ii) if it constitutes an international agreement concerning fundamental human rights and freedoms in the understanding of letter “b” of paragraph 1 of Article 121 of the Constitution; and, consequently; (iii) if the authorization given by the Prime Minister for the issuance of the power of attorney for the negotiating group and the signature (of the Protocol) by him fulfill the constitutional requirements for the negotiation and signing of this act. This assessment then provides an answer to whether it violates the fundamental rights and freedoms of foreigners (migrants), guaranteed by the Constitution and the international law binding for implementation to the Republic of Albania. The Court, as regards letter “a” of paragraph 1 of Article 121 of the Constitution, finds that the Protocol on Migration, in the physical aspect of the territory, does not determine or change the territorial integrity of the Republic of Albania, since, in essence, it does not change or set its borders, thus preserving intact all the elements of the territory in the physical aspect; and in the jurisdictional aspect of the territory, it does not change the territorial jurisdiction of the Albanian State in relation to the Constitution, the

ECHR and ratified international agreements; the Albanian State shall continue to exercise its jurisdiction even during the time that the Protocol will be applicable; it allows for the jurisdiction of the Italian authorities to be exercised in a part of the Albanian territory, in addition to the Albanian jurisdiction, exclusively for asylum matters.

The Court considers that the Migration Protocol is a bilateral agreement focusing on the division of duties between the Albanian and Italian authorities related to issues of migrants and subgroup of asylum seekers, aiming to avoid a jurisdictional vacuum and setting responsibilities for their fundamental rights and freedoms, therefore, transfer of jurisdiction to the Italian authorities for migrants and asylum seekers issues was necessary. With regard to letter “b” of paragraph 1 of Article 121 of the Constitution, the Court found that the Protocol on Migration does not create new fundamental constitutional rights and freedoms, nor does it introduce additional restrictions on existing human rights and freedoms, beyond those provided for by the Albanian legal order. The Prime Minister has the authority to grant authorization to issue full powers of attorney for the negotiation and signing by him of the Protocol on Migration, based also on the Treaty of Friendship and Cooperation between the Italian Republic and the Republic of Albania of 1995, which, pursuant to Article 180 of the Constitution, constitutes a framework agreement, which serves as a sufficient basis for the Protocol on Migration to be signed by the Government. The Protocol on Migration, although an international agreement ratified by law by the Assembly, is not included in the category of those international agreements provided for in Article 121, paragraph 1, letters “a” and “b”, of the Constitution, therefore the authorization to issue the full powers for its negotiation and signing belongs to the Government (the Prime Minister).

### **FACTS**

The Protocol On strengthening of Cooperation in the Field of Migration was signed in 2023 between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania. It aimed at managing migratory flows from third countries, where the Albanian party recognizes the Italian party the right to use two areas without compensation for a period of five to ten years. In these areas, the Italian state can establish structures for the reception of migrants and their number cannot exceed 3,000 people. They will be managed by the Italian authorities, in accordance with Italian and European legislation, and disputes that may arise between them and migrants will be subject exclusively to Italian jurisdiction. The applicant addressed the Court asking for it to declare the Protocol as incompatible with the Constitution and to prohibit its ratification by the Assembly.

## Control of the Regulation of the Assembly

The principle of the parliamentary autonomy in approving the Regulation (Rules of Procedure) of the Assembly in relation to the principle of representative democracy in approving measure of a disciplinary nature against MPs (Judgment no. 48, of 19 June 2024 – a group of MPs of the Assembly)

Despite the atypical nature of the Rules of Procedure of the Assembly, as a *sui generis* act, the Court included its oversight in the constitutional jurisdiction, taking into account that: some of the norms of the Rules have the same content or details as the constitutional norms and, consequently, take on a special nature and may also bring consequences at the constitutional level; the constitutional nature of the claims, which relate to the limitation of the rights of the MPs, derive from the constitutional representative mandate; the fact that there is no other judicial jurisdiction defined for overseeing the Rules, which would exclude constitutional jurisdiction. The principle of parliamentary autonomy is not predominant and must be exercised in accordance with the concepts of effective democracy and the rule of law. Furthermore, the obligation of the MP to actually exercise the mandate entrusted to him or her by the voters follows from the principle of representative democracy. The Court's review in this case is not a classic review such as that required by Article 17 of the Constitution, as long as the interest or need for the intervention are presumed aspects in the understanding of the principle of parliamentary autonomy, therefore the Court only looked at the severity of the measure, linked to the principle of representative democracy.

### THE ASSESSMENT OF THE COURT

The Court examined the case with regards to the principle of representative democracy within the meaning of Article 2 of the Constitution. In the specific case, the demarcation of the boundaries between two distinct principles, which enjoy the same constitutional protection, is at issue, on the one hand, that of self-regulatory parliamentary autonomy and, on the other hand, that of representative democracy. Although the Assembly, within its autonomous self-regulatory power, has the right and freedom to choose the means it considers necessary and effective for the fulfillment of the goal of good internal functioning, it also has the obligation to respect the principle of proportionality, which does not allow for exercising of power in an unlimited manner. Furthermore, the principle of representative democracy provides assurances to every MP to exercise, during their parliamentary activity, the rights provided for in Article 70 of the Constitution and Law No. 8550/1999. This right is not guaranteed without any limitation but may be limited due to other principles and values of the constitutional level, such as that of the proper functioning of the Assembly. The Court noted that the Assembly has adopted several amendments and supplements to the provisions of the Rules of Procedure, which provide for the imposition of disciplinary measures

with a duration of 10, 30 or 60 days for violations that may be committed by MPs. In terms of the content of these provisions, the Court assessed that two provisions (letter "a" of paragraph 6 of Rule 65/1 and letter "a" of paragraph 1 of Rule 65/1) provide for disciplinary measures with different durations for the same violation. In this regard, the ambiguity of the content of these two provisions, which provide for different measures, is such that it leads to arbitrariness in its application. The same is true with regards to the content of letter "b" of paragraph 7 of Article 65/1 of the Rules, which provides for the imposition of the disciplinary measure of exclusion from Parliamentary Committees and/or plenary hearings for up to 60 days "when the MP engages in actions/behavior that are suspected of containing elements of a criminal offense, as provided for in the Criminal Code". The Court noted that the determination of the behaviors and actions of an MP amounting to a disciplinary violation must be clear and specific, whereas the reference, in general, to unspecified actions or behaviors creates spaces for arbitrariness during the implementation process.

Also, with regards to letter "c" of paragraph 7 of Rule 65/1 of the Rules of Procedure, the Court noted that the provision of actions and violations leading to its implementation must be defined or definable in a clear and precise manner, leaving no room for a discretionary interpretation or implementation, such that it may disproportionately impair the exercise of the representative mandate. Also, paragraph 9 of Rule 65/1 of the Rules of Procedure, according to which the MP, during the period of application of the disciplinary measure, is prohibited from carrying out any other activity as a Member of the Assembly, even beyond his or her participation in the plenary hearings and in Parliamentary Committees, constitutes a new disciplinary measure. The disciplinary measure of exclusion for up to 30 or 60 days is the most severe measure given to a MP; therefore, any other restriction accompanying this disciplinary measure constitutes a disproportionate restriction on the exercise of the representative mandate, as it is considered to be more severe in terms of its consequences than is necessary to achieve the aimed goal.

### FACTS

By virtue of its Decision No. 126/2023, the Assembly adopted several amendments to its Rules of Procedure regarding disciplinary measures, more specifically extending the disciplinary measure of exclusion from Parliamentary Committees and/or plenary hearings to 30 or 60 days, as well as providing for the violations for which these measures are issued. The applicant applied to the Court for the annulment of these amendments, claiming that they violate Article 83, paragraph 2, of the Constitution vis-à-vis the accelerated procedure used for their approval, as well as the rights of the MPs deriving from their constitutional status, leading to the obstruction of effective exercising of their constitutional mandate, and consequently of the work of the Assembly itself.

## **Abstract control of normative acts**

**The model of indirect management of the cultural property-Butrinti Park in relation to preserving the primary role of the state for its protection and conservation (Judgment no. 34, of 24 April 2024 – a group of MPs of the Assembly)**

The Court included in its jurisdiction both the law approving the agreement and the Management Agreement concluded between the Ministry of Culture and the Butrint Park Management Foundation, annexed to Law No. 50/2022, as long as the agreement, despite its non-normative nature, is formally considered a law approved by the Assembly and taking into account the constitutional nature of the claims. The agreement does not affect the primary role of the state in the protection and conservation of cultural and natural assets located on its territory, an obligation stemming from constitutional provisions and the provisions of the Paris Convention, while the powers granted to the Butrint Management Foundation do not exceed those of an ordinary management. The indirect management model of the Butrint Park does not deprive the state of its ownership and taxes, and the state remains the sole owner of this asset. Furthermore, the state exercises the oversight function since the foundation does not have any privileged status and each of its acts is subject to direct oversight by state bodies according to their relevant fields of competence.

### **THE ASSESSMENT OF THE COURT**

With regards to the claim of infringement of national identity and cultural heritage, related to the principle of the rule of law and the hierarchy of legal acts, the Court also referred to the content of the Paris Convention, which contains provisions applicable in the specific case, as it extends the scope of its application and protection to cultural and natural assets of exceptional value, which gives them a universal importance by including them in the common heritage of humanity. In implementation of the Constitution and the Paris Convention, Law No. 27/2018 has provided for several models of management of cultural assets in public ownership, which can be direct and indirect, and has allowed the management by non-profit legal entities. The Court did not question the nature of the cultural property subject to the Management Agreement (Butrint National Park) and the values that this property has in terms of identity and cultural heritage, as well as its outstanding universal values, nor the obligation of the state to guarantee and protect these outstanding values, both within the meaning of Article 3 of the Constitution, as long as they represent the foundations of the state, and within the framework of international obligations. Furthermore, the Court did not question the indirect management scheme approved by Law No. 27/2018, as long as this model turns out to be permissible under Article 3 of the Constitution and the provisions of the Paris Convention. Based on the way in which this management model and the concept of indirect management have been implemented, the Court focused on verifying the nature

of the rights and obligations of the Butrint Management Foundation under the Management Agreement, the rights, obligations and powers of the state, represented by the Ministry of Culture, as well as on verifying whether the provisions of the Management Agreement have granted the Foundation a different, more privileged status compared to other legal entities, in terms of exemption or not from following legal and administrative procedures or state oversight in the context of the realization and implementation of indirect management. Through this verification, the Court concluded that the state continues to maintain its functions in relation to identification, protection, conservation, presentation and transfer of cultural heritage values. On the one hand, the rights of the Butrint Management Foundation do not exceed those of an ordinary management and, on the other hand, the agreement does not deprive the state of its primary role in terms of identification, protection, conservation, presentation and transfer of cultural heritage values, but instead preserves and guarantees this role, which is exercised through various forms of control of the indirect management activity, as long as the Butrint Management Foundation has not been recognized as having any privileged legal status, subjecting this entity to applicable legal provisions, just like any other legal entity. Although the property subject to the Management Agreement has been transferred into management of the special foundation, the ownership title remains with the state, while the terms of management and use of the property under management are in accordance with their destination and are determined within the limits and purpose of the agreement concluded between the parties. The provisions of the Management Agreement guarantee the exercise of the primary role of the state and support the position that the activity of the Butrint Management Foundation and its powers are related to the function of administering cultural property, without exceeding or changing these powers, as long as the Foundation is not excluded from fulfilling any legal obligation that any other entity, whether state or public, has under the legislation. Furthermore, in the Court's assessment, the Butrint Management Foundation, in view of Article 17 of the Paris Convention, also exercises the role of collecting donations, with the aim of protecting cultural and natural heritage.

### **FACTS**

An Agreement for the Establishment of the Butrint Management Foundation was concluded between the Ministry of Culture and the AADF, and subsequently, a Management Agreement was entered into between the latter and the Ministry of Culture, by which the foundation was granted the exclusive right and obligation to indirectly administer the cultural property, namely the Butrint National Park. Pursuant to Law No. 27/2018, the agreement was approved by the Assembly by virtue of Law No. 50/2022. The applicant addressed the Court with the claim that the acts subject to the application violate several constitutional principles.

## **Abstract control of normative acts**

**The new scheme of employment in the medical profession for the students of Faculty of Medicine after completion of studies (Judgment no. 1, of 25 January 2024 - a group of MPs of the Assembly and a group of students of the Faculty of Medicine)**

The provision of new legal instruments for the execution of the employment entry scheme interferes with the constitutional right to accepting and choosing one's own job, an intervention that does not meet the proportionality criterion with regards to the appropriateness of the measure. The contested measure affects five generations of students in whole or in part, which is not appropriate vis-à-vis the urgency of the legislative intervention with regards to its expected effects. Furthermore, the duration of the employment measure for a five-year period under this scheme is almost equal to the full duration of the study cycle for the six-year integrated programme.

paragraph 1, of the Constitution, the Court found that the contested provisions, in the part related to the deadlines for employment after the completion of studies, bring about a restriction of the constitutional right of students to choose their place of work. In the lens of proportionality of interference, the chosen scheme is more severe than was necessary to achieve the intended goal in relation to the circumstances dictated by it. Forcing students to choose between signing or not signing the agreement, with the consequence that in the event of signing, their diploma is officially transferred to the health institution where they are employed until "employment obligations are settled", has led to a complete denial of the right to choose their workplace, according to the conditions and criteria students were familiarized with and accepted at the moment they began their studies or competed to be enrolled as students of medicine.

### **FACTS**

#### **THE ASSESSMENT OF THE COURT**

With regards to the right to education, according to Article 57, paragraph 1, of the Constitution related to the principle of legal certainty, the Court found that the contested provisions have changed the legal situation of medical students in the following areas: (i) setting them before the choice to sign an employment agreement; (ii) in case of signing of the agreement, the student is not provided with the diploma, which is instead held by the health institution where he or she is employed and is provided with it after "completion of employment obligations"; (iii) in case of failure to sign the agreement, the full cost of studies has to be covered. These amendments constitute a deterioration of the legal situation of medical students, for both categories, the students that are mid-way through their studies and students newly enrolled at the Faculty of Medicine, who were not familiar with this situation and did not accept it at the moment they decided to compete to become eligible students at that Faculty. Deterioration of the legal situation of students, by introducing new obligations and rules, which they did not know of or did not accept before becoming students, is not consistent with the principle of legal certainty. With regards to the right to choose one's own place of work, guaranteed by Article 49,

The Assembly has approved Law No. 60/2023 On the special treatment of students following the integrated second-cycle study program of "General Medicine" in public higher education institutions. This Law provides for the mechanism through which students pursuing studies in public higher education institutions are offered special treatment, which includes employment after completing their studies when they agree to sign an agreement with the ministry responsible for education, the ministry responsible for health and the public higher education institution. According to the agreement, the student must work in the medical profession after completing his or her studies for, respectively, no less than five years, three years and two years in health institutions in the Republic of Albania, implying the official transfer of the diploma from the public institution to the health institution where he or she is employed until the "completion of employment obligations" according to these deadlines. The student who refuses to sign the agreement pays the full cost of the studies. The applicants challenged these legal provisions as incompatible with the Constitution.



## **Abstract control of normative acts**

The right of the public to be informed on the situation of the environment in the instance of the community that is affected by the construction of the Skavica hydropower plant (Judgment no. 3, of 30 January 2024 – application by “Opposition to the Skavica Dam” Association, “For the Protection of Property and the Environment of the Black Drini Basin” Association, and Albanian Helsinki Committee

With regards to the right to information on the state of the environment under Article 56 of the Constitution and the Aarhus Convention, failure to carry out a public consultation process on the law under consideration during its adoption phase, absence of hearing of the opinion of the local community, vested with the status of the affected public, as well as lack of environmental impact assessment of the project and other rights related to it, render this procedure unconstitutional. However, as long as these violations can still be remedied through involvement of the public in activities and information related to the various subsequent stages of the development and implementation of the project, the Court was vocal only in finding a violation of the right to information on the state of the environment and its protection in the procedures for its adoption.

### ***THE ASSESSMENT OF THE COURT***

The Court decided to review only the law, considering the DoCM as an act of an individual character, therefore considering it to fall beyond the remit of constitutional jurisdiction. The Court found that the state bodies had violated the right to be informed about the state of the environment and its protection, although international acts provide for the obligation to inform the public throughout the process. The law approving procedure was carried out without public consultations, without hearing the opinion of the local community having the status of the affected public, and without assessing the impact of the project on the environment and other rights related to it. However, considering that the violation is remediable, the Court did not annul the law, but only expressed its finding of a violation of this right in the procedures for its adoption, ordering public authorities to remedy the violation found by the Court and to guarantee the right to information during the first phase of the law implementation, as well as the obligation to subsequently take into account the results of the environmental protection information process, as far as possible, in accordance with Article 8 of the Aarhus Convention.

Before undertaking initiatives having an impact on the environment and other fundamental rights related to it, the state has the obligation, from the early stages of the project, to inform the public, in particular the affected public, of the steps to be taken and to give them the opportunity to familiarize themselves with the studies conducted and reports drafted, findings regarding the potential effects of the project, measures envisaged to mitigate these effects, decision-making regarding the project and the reasons on which this decision-making was based, as well as to submit comments, information, analyses or opinions that it considers valid.

### ***FACTS***

The Assembly of Albania has adopted Law No. 38/2021 On determining a special procedure for the negotiation and execution of the contract for the design and construction of the Skavica hydroelectric power plant. According to this Law, the contract for the implementation of this project is divided into two phases, where the first phase includes preliminary works that will enable the company to submit a proposal to the Contracting Authority for the second phase of the contract, which consists of the design and construction of the Skavica hydropower plant. In implementation of this law, the Council of Ministers has approved Decision no. 485/2021 On the approval of the first phase of the “Contract for technical services - Skavica hydropower project” between KESH jsc and Bechtel Limited.

The applicants (a group of associations) claimed that the construction of the Skavica HPP violates a number of constitutional rights and freedoms. They addressed the Court challenging the law and the Decision of the Council of Ministers as unconstitutional.

## **Abstract control of normative acts**

**Respectation of the formula determined by ECtHR in the case of Beshiri by the new provisions of the law on property, with regard to the minimal threshold 10% for compensation (Judgment No. 5, of 13 February 2024 - Muslim Community of Albania)**

For the period from the moment of publication until the compensation decision becomes enforceable, the subjects are relieved of the burden of completing the documentation for exercising the right to benefit from financial compensation. For the period from the moment the decision becomes final and enforceable and the state is charged with the obligation to implement it, the subjects benefit from indexation according to bank interest rates until the moment of execution. Indexation according to inflation constitutes the minimum guarantee and, on the other hand, the state is not relieved of the obligation to be responsible for previous delays caused to the subjects. The result of testing the implementation of all variants of the formulas provided by the law according to the limits of the formula provided in the case of Beshiri and others v. Albania, proved that the obligations set by the ECtHR are fulfilled.

### ***THE ASSESSMENT OF THE COURT***

With regards to the claim of violation of the principle of legal certainty in relation to the right to private property and the principle of proportionality, the Court found that the change of the indexation period for purposes of inflation, by replacing the words "receipt of remuneration" with the words "date of publication" was made by law, for a public interest, and did not violate the principle of proportionality. The amendments to Article 7 of the Law do not give rise to a violation of the ECtHR judgment in the case of Beshiri and Others v. Albania and Decision no. 4/2021 of the Court, in relation to respecting the minimum threshold of 10% of the total value of the property, assessed according to the current cadastral entry. The new provisions provide even higher guarantees, as they ensure a remuneration higher than the minimum threshold of 10%, while maintaining 10% as the minimum standard of compensation determined by the ECtHR. Where the

change in the cadastral entry has negatively affected the value of the property, the legislator has guaranteed that, in cases where the value of the property at the time of expropriation is greater than 10% of its current value, the expropriated subject is compensated with the value calculated according to the cadastral entry at the time of expropriation, thus guaranteeing the minimum standard established by the ECtHR.

As regards the claim on the violation of the principle of the hierarchy of legal acts, the Court found that the amendments made to the Decision no. 223/2016 were made by the Council of Ministers acting within the scope recognized to it by the Property Law.

### ***FACTS***

In 2015, the Assembly adopted Law No. 133/2015 On the treatment of property and completion of the property compensation process. The Property Law and its implementing by-laws have been subject to constitutional review and the Court has expressed its opinion on the matter by virtue of Judgement no. 1, of 16 January 2017 and no. 4, of 15 February 2021. In 2022, the Assembly adopted Law no. 77/2022, which brought several amendments to the Property Law, and subsequently, the Council of Ministers adopted its Decision no. 313/2023, bringing several amendments to the Council of Ministers Decision no. 223/2016, which deals with the determination of the rules and procedures for the evaluation and execution of final property compensation decisions and the distribution of the financial and physical fund for property compensation. These acts have been challenged before the Court by the applicant, claiming that they violate constitutional rights and principles.



## Abstract control of normative acts

The new tax obligation for self-employed persons who provide freelance/professional services in relation to the other tax entities and to the time of beginning of its effects (Judgment No. 52, of 27 June 2024 – application by a group of MPs of the Assembly, “The Institute of Authorized Accounting Experts” Association, “The Institute of Approved Accountants” Association, the Chamber of Advocates of Albania)

The new tax rate is applied according to a calendar, which is different for different categories of taxpayers. Article 69, paragraph 1, letter “dh”, second and third sentences, of the law, which establishes a different calendar for the entry into force of the new tax obligation for self-employed persons providing freelance/professional services compared to self-employed persons who carry out genuine commercial activities, interwoven with the new tax rate of 15%, the lack of an appropriate notification period for entities subject to the new tax rate without any form of escalation and without giving the entities the appropriate opportunity to adapt to the new tax rate, violates the principle of proportionality in terms of the necessity/severity of the means selected by the legislator, as well as the principle of legal certainty in terms of legitimate expectations, due to the limited time.

### THE ASSESSMENT OF THE COURT

The Court examined the case in terms of freedom of economic activity related to the principle of legal certainty. It found that the amendment and implementation of a tax scheme for income generated from the exercise of activity of up to 14 million Lek per year constitutes a legal obligation of a financial nature and, as such, they interfere with the constitutional rights and freedoms of taxpayers. In this sense, the Court analyzed whether the intervention was made by law, whether there is a public interest and whether the proportionality between the intervention and the situation that it dictated is fair, that is, necessary, indispensable and appropriate, according to constitutional standards. From the analysis of the data presented by the parties to the process, the Court found that the legislator has decided to apply a 15% tax rate for net taxable income from 0 to 14 million Lek per year for the business category for legal persons and self-employed persons. Furthermore it has chosen to apply this norm to gross income for three categories, which are legal persons, self-employed individuals and entities, escalating it into two different periods. More specifically, for commercial individuals this rate applies after 31 December 2029, since until this date the income tax rate will be 0%, while for the categories of self-employed and entities, this tax rate will apply from 1 January 2024.

Article 69, paragraph 1, letter “dh”, second and third sentences, of the Tax Law, which sets a different calendar for the entry into force of the new tax obligation for the self-employed who provide freelance/professional services compared to the self-employed who carry out genuine commercial activities (for whom the Tax Law provides for the entry into force of the new rate in the fiscal year 2030), intertwined with the size of the new tax rate of 15%, the lack of an appropriate notification period

for the entities on which the new tax rate is imposed (it entered into force about 7 months after the adoption of the Law, while the determination of the type of specific activities, which would be subject to the new tax rate starting from the fiscal year 2024, was approved by Decision of the Council of Ministers only 10 days before the implementation of the effects of the law began), without any gradual introduction and without giving the subjects the appropriate opportunity to adapt to the new tax rate measure, violates the principle of proportionality in terms of the necessity/severity of the means selected by the legislator, as well as the principle of legal certainty in terms of legitimate expectations, due to the limited time. Under these conditions, the Court did not invest itself on the further analysis of the sub-criterion of suitability.

### FACTS

The Assembly has approved Law no. 29/2023 On Income Tax (Tax Law), which, in Article 24, paragraph 2, provides that the net taxable income from business for legal persons and self-employed persons is taxed at the following progressive rates: for the annual tax base of 0 – 14 million Lek, the tax rate is 15%, and for the annual tax base over 14 million Lek, the tax rate is 23%. According to Article 69, paragraph 1, letter “dh”, of the Tax Law, the tax benefits and exemptions provided for in Law No. 8438/1998 continue to apply. Also, for legal persons, self-employed persons and entities, with gross income of up to 14 million Lek per year, the 0% tax rate will be applied until December 31, 2029; the 0% tax rate does not apply to taxpayers who supply freelance/professional services; the analytical list of professional services is determined by Decision of the Council of Ministers in accordance with the applicable regulatory legislation regarding these professional services. The Tax Law entered into force on 18 May 2023, while its effects began on 1 January 2024, with the exception of the provisions of Articles 22, 23 and 24, paragraph 1, which begin to take effect on 1 January 2025, letter “ç” of paragraph 1 of Article 69, which begins to take effect upon the entry into force of the Tax Law, and paragraph 2 of Article 69, which begins to take effect on 1 June 2023. Subsequently, the Council of Ministers approved Decision no. 753/2023, determining the list of services subject to taxation as of 1 January 2024, including economic activities of taxpayers, self-employed individuals and entities providing freelance/professional services, with annual income of up to 14 million Lek, who will pay personal business income tax or corporate income tax, starting from the fiscal year 2024. The applicants challenged these provisions as incompatible with the Constitution.

## Abstract control of normative acts

**The right of the parliamentary minority for parliamentary investigation in relation to the establishment and exercise of functions of the inquiry committee (Judgement no. 54, of 09 July 2024 – a group of MPs of the Assembly)**

Inquiry Committees are an effective means of control operating only within the scope of Assembly's oversight role. Parliamentary Committees are established for specific issues, which are functionally related to the power of the legislator. The subject matter and scope of action of Inquiry Committees must respect constitutional principles, without violating the independence and without hindering the activity of the organs of other powers. The absence in Article 4 of the provision for an "alternative formulation" of the subject matter of investigation creates a legal vacuum that violates the constitutional right of the minority and, consequently, also violates the right of the Assembly for parliamentary investigation. This legal vacuum is also found in the provision of Article 7, due to the lack of provision of full procedural guarantees to safeguard the right of the parliamentary minority to exercise effective parliamentary oversight powers. Since the decision-making of the Inquiry Committee for collection of evidence is an important part of the right to parliamentary investigation, the decision to refuse the evidence requested by the parliamentary minority may render this right and the exercise of the function of the Assembly ineffective. Furthermore, the concept of "related person" in Article 9, paragraphs 1 and 2 of the amending law goes beyond the concept of "family" protected by Article 32 of the Constitution, making this concept ambiguous.

### THE ASSESSMENT OF THE COURT

The Court noted that although the repeal of the amending law in its entirety was requested, the claims mainly relate to Articles 4, 6, 7 and 9 of this Law. With regards to the provision of Article 4 of the amending law, constitutional jurisprudence emphasizes that the right to exercise parliamentary investigations is not unlimited and this limitation is related to the obligation that the subject of the investigation should respect the following constitutional principles and standards: (i) the issue must relate to the legislative function and other functions for which it is authorized to take legal measures; (ii) the object of the investigation must focus on specific issues or subjects; (iii) there must be sufficient

data or indications proving the existence of a matter for which an investigation is necessary, and (iv) when the majority claims that constitutional standards and principles are violated with regards to the subject matter of the investigation, it is obliged to propose alternative formulations, giving the minority the opportunity to reformulate its request. The Court noted that Article 4 reflected only part of the constitutional standards, while it lacks the obligation for the parliamentary majority to propose alternative formulations when it finds that the subject of the investigation puts constitutional standards and principles at risk. The lack of provision for "alternative formulation" creates a legal vacuum that violates the constitutional right of the minority and, consequently, also violates the right of the Assembly for exercising parliamentary investigations.

With regards to Article 7 (paragraphs 4 and 5) of the amending law, the Court noted that if the Law fails to guarantee the right to take evidence in a procedural aspect, it will not be able to guarantee the minority's right to exercise effective parliamentary oversight powers. In order to guarantee such control, the interim decision to refuse evidence must be an exception from the general rule, and, in any case, must be justified, therefore providing the reasons for the refusal. By acting in this way, the legislator has created a legal vacuum, as it has failed to provide in Article 7 of the amending law the full procedural safeguards to guarantee the minority's right to effective parliamentary control. With regards to Article 9 (paragraphs 1/2 and 2/4), the Court found that the content of these provisions does not respect the principle of separation and balance of powers and that of legal certainty. In relation to paragraph 1/2, the provision obliging the Assembly to request permission from the Prosecution Office/Court to summon witnesses limits parliamentary investigation insofar as it leaves the importance and receipt of this evidence to the assessment of the Prosecution Office/Court, which in essence undermines the effectiveness of parliamentary investigation.

This obligation constitutes an interference with the activity of the Assembly. This provision is problematic with regards to its clarity and to the principle of legal certainty, since not only does it not determine the limits to which the Prosecution Office/Court's right to allow the summoning of witnesses extends, but also in terms of the circle of witnesses, it extends its application to cases for which the investigation has not yet begun or for which the circle of witnesses to be summoned has not yet been determined, allowing for abuse when it comes to determining the circle of witnesses to whom this provision applies. Regarding

the provision of paragraph 2/4, examining its content in terms of its compatibility with fundamental human rights, the Court noted that, unlike Article 32 of the Constitution, which guarantees the right not to testify against oneself or one's family, paragraph 2/4 links the witness's right to refuse to testify even in cases involving "persons related to him/her", without defining this concept and without specifying the category of persons included in it. The concept of "related person" goes beyond the concept of "family" that the constitutional norm itself aims to protect, making this provision ambiguous.

With regards to Article 6 of the amending law, the Court found that this provision violates the right to transparency and accountability, since closed-door meetings are held only with majority votes. The Court noted that, unlike the previous amended article, Article 6 has exhaustively provided for the cases or situations for holding closed meetings, defining them through a numbered list. Although the Court finds that the last two letters in the list ("c" and "d") are incomplete and unclear, as they leave room for interpretation during their application case by case by the Inquiry Committee, this is nevertheless not sufficient to render this article unconstitutional, as long as they allow for several ways of interpretation, giving the Court the opportunity to verify, through a conciliatory interpretation, whether there is an interpretation that is

in accordance with the Constitution. In this regard, the Court directs that the definition of "trade secret" must be interpreted in accordance with the legislation in force, and the provision "secret in the interest of the state" must be applied and interpreted by the Inquiry Committee only as any data provided for as classified information under the law, including "investigative secret". The Court found that with this conciliatory interpretation, Article 6 does not violate the principle of transparency and accountability.

### **FACTS**

Several MPs of the Assembly filed several legal initiatives on supplementing and amending Law No. 8891, of 02 May 2002 On the Organization and Functioning of Inquiry Committees of the Assembly, of which only one initiative was approved by Law 106/2023 in the plenary hearing of the Assembly (the amending law).

A group of MPs of the Assembly appealed to the Constitutional Court asking it to repeal the amending law as incompatible with the Constitution, claiming, in essence, that it violates the right to minority oversight under Article 77 of the Constitution.

## Abstract control of normative acts

Unifying the excise tax for the beer product despite the annual produced quantity of the product (Judgment no. 56, of 16 May 2024 - Association of Producers and Traders of Domestic Alcoholic Beverages)

Constitutional review, exceptionally, also includes repealed legal norms, when as part of positive laws they are applied to regulate legal consequences that last in time and are related to the periodic or prescribed execution of civil legal obligations arising from legal relationships created at the time of the repealed law. The Court's review of tax laws starts from the premise that the legislator has a wide scope of assessment of the fiscal system, therefore its jurisdiction does not extend to the general assessment or adequacy of the tax system, specific forms of taxation or categories of entities subject to this system. The contested legal provisions impose an additional obligation for excise duty on beer products, a financial obligation paid by its producers, which constitutes a restriction on the freedom of economic activity. However, this restriction meets the criteria of interference under Article 17 of the Constitution.

### THE ASSESSMENT OF THE COURT

Although Law No. 81/2022 was repealed by Law No. 94/2023, it brought direct consequences for the members of the applicant association in terms of increasing the excise duty rate. The repealed legal norms may be subject to constitutional review only when they, as part of positive laws, must be applied to regulate legal consequences that last in time and are related to the periodic or term execution of civil legal obligations arising from legal relationships created at the time of the repealed law. In this sense, the Court considered that it has jurisdiction to examine the compatibility of Law no. 81/2022 with the Constitution.

With regards to the merits, the Court reviewed the case from the perspective of freedom of economic activity. The amending laws abolished the differentiation of excise duty, by unifying it, which means that an increased obligation for excise duty on beer would be applied to the members of the applicant association, imposing a restriction on the freedom of economic activity. To assess this restriction, the Court analyzed whether the legal intervention met the constitutional criteria under Articles 11 and 17 of the Constitution: (i) the restriction must have been made by law; (ii) it is due to important public reasons/interest; and (iii) it must have respected the principle of proportionality.

The Court found that the first criterion is met since the restriction was made by law. Likewise, the legal amendments serve the public interest, which is made tangible in the increase in revenues of the State Budget and their use for improving the needs of society, as well as avoiding tax evasion. In assessing the proportionality of the intervention, the Court considers the proportionality criterion according to its three sub-criteria, namely need, necessity and appropriateness. The Court found that there was a need for the legal intervention, which is related to the increase in revenues of the State Budget, as well as to the unification of excise duty in order to avoid discrimination between beer producers. As regards the necessity of the intervention, the Court noted the fact that beer production and marketing entities were subjected to preferential treatment for a period of 15 years, in order to give them the opportunity to adapt and consolidate their activity, and that the imposition of a restriction on this preferential treatment, through unification, did not violate the essence of the freedom of economic activity of the applicant's members. The Court found that the means used were necessary to achieve the aim (equality in the fiscal burden). Finally, the Court found that removal of preferential treatment of beer producers also fulfilled the criteria of appropriateness of the intervention, as it will bring about an increase in revenues to the State Budget and a reduction of space for evasion from its payment. In this respect, this measure brings the appropriate effect and achieves the aim for which it was imposed.

### FACTS

The Law On Excise Duties and its amendments until 2021 had established a differentiation of excise duty for beer products depending on the quantity produced. With subsequent legal amendments (Laws No. 81/2022 and No. 94/2023), the Assembly abolished this differentiation, unifying the excise duty, which resulted in the members of the applicant association having to pay an increase in excise duty on beer products. The applicant filed a constitutional application at different times with the Court for the repeal of these amending laws, which, according to the applicant, violated the freedom of economic activity, with regards to proportionality of interference, the right to property, the principle of legal certainty and Article 70 of the SAA.

## **Abstract control of normative acts**

**Increase of the average reference price as part of the methodology applied to determine the taxable amount of immovable property under “buildings” category (Judgement no. 78, of 06 November 2024 - Albanian Constructors’ Association)**

The average reference prices are variable and in the present case have increased, but possible transactions carried out by construction entities before the approval of the construction permit, therefore before the entry into force of the new prices, cannot constitute acquired rights and, as such, cannot be included in the applicant's legitimate expectations. The purpose of the Decision of the Council of Ministers for indexing the tax amount for new constructions compared to existing ones is to differentiate these two categories and the formulation of this provision is clear and understandable. This indexation is directly authorized by the law on local taxes, therefore it does not violate the principle of hierarchy of norms.

### ***THE ASSESSMENT OF THE COURT***

The Court found the claim on the violation of the principle of legal certainty unfounded. It found that the applicant's claim with regards to the retroactive effect and legitimate expectations, in and of itself, does not relate to the average reference prices provided by the contested Decision of the Council of Ministers, but to the methodology for determining the taxable amount of immovable property and local taxes, which have the reference price as a constituent element of their calculation methodology. As regards the claims regarding the average reference price itself, the Court noted that it constitutes a basic element in the business plans of the construction entities themselves, which conclude contracts for the sale and purchase of residential areas at the time of the construction permit. In this sense, possible transactions carried out by the construction entities before the approval of the construction permit, and therefore before the entry into force of the new prices, which (transactions) will be affected by the changes in the reference price, cannot constitute acquired right and, consequently, cannot mount to applicant's legitimate expectations.

With regards the claims for indexation of the price of the surface area of a residential apartment for the first five years after the registration of the use permit with the State Cadastral Agency, the Court assessed that the wording of this provision is clear and understandable and there is no

room for confusion regarding its implementation.

The Court also found the claim on violation of the principle of hierarchy of norms unfounded, since the contested provisions were not issued in accordance with the express authorization for issuing by-laws as provided for in Article 118 of the Constitution. The Court noted that the Law on Taxes authorizes the Council of Ministers to come up with the methodology for determining the taxable amount of immovable property and, consequently, the provision on price indexation for new apartments constitutes a detail of such legal authorization.

### ***FACTS***

Pursuant to Law no. 9632/2006 On Local Taxes, as amended, which also determined the types of taxes and the entities subject to them, the Council of Ministers has approved the Council of Ministers Decision No. 132/2018 On the Methodology for Determining the Taxable Amount of Immovable Property under “Buildings” Category. Annex 1 of the Council Decision provides for the average reference prices per square meter of construction area for the assessment of the taxable amount for housing, according to cities/towns, including prices for the Municipality of Tirana, while Annex 2 provides for the average reference prices per square meter of construction area for the determination of the taxable amount for non-residential buildings and premises. These Annexes have undergone several changes. With Council Decision No. 457/2023, Annexes 1 and 2 of Council Decision No. 132/2018 have been amended. More specifically, Annex 1, determines in paragraph “a.2” the average reference prices for the sale and purchase of buildings used for residential purposes for the Municipality of Tirana, while Annex 2 determines the average reference prices per square meter of construction area for the assessment of the taxable amount for non-residential buildings and premises. Letter “dh” of this Annex provides that the price per square meter of construction area for new constructions registered according to the use permit with the State Cadastral Agency will be indexed with a coefficient of 0.2 (zero point two) times higher than the price of the apartment residential area according to the list set out in Annex 1, for the first 5 years after the registration of the use permit with the State Cadastral Agency.

The Constructors’ Association addressed the Court challenging these provisions as unconstitutional.



## **Abstract control of normative acts**

The rights to vote in the aspect of guaranteeing the preferential voting from the provisions of the Electoral Code which specify the obligation of political parties to submit the list with a fixed order and the list which is subject to preferential voting (Judgment no. 85, of 24 December 2024 – application by “Movement for National Development”, “Nisma Thurje”, “New Democracy Alliance”, “Democratic Movement for Change”, “National Conservative Albania”, “Albanian Christian Democratic Union” and “Ora e Shqipërisë” parties, as well as “Shqipëria bëhet” organization and four MPs of the Assembly)

Article 64 of the Constitution guarantees that no less than two-thirds of the multi-name list shall be subject to preferential voting, i.e. the right of voters to cast a preferential vote for no less than two-thirds of the candidates, but not the degree of its influence on the distribution of mandates, which is left to the discretion of the legislator through delegation. In terms of the right to be elected, the placement of candidates by the party in the list with a fixed order or in the list of preferential voting does not in essence violate the right to be elected or participation in the process of formation of a political will. These provisions do not infringe on the right of citizens to vote, with regards to the right to elect, as they can freely exercise this right for any candidate they prefer, as long as the legislation does not impose prohibitions or criteria that must be met by individuals to exercise the right to vote guaranteed by Article 45 of the Constitution.

### ***THE ASSESSMENT OF THE COURT***

With regards to jurisdiction, the Court considered that the review of constitutionality of the provisions of the Electoral Code cannot be carried out without interpreting the meaning of Article 64 of the Constitution, in order to resolve the constitutional dispute in question. Turning to the request for repealing Article 64 of the Constitution, the Court held that it falls outside constitutional jurisdiction, since the Court does not review the constitutionality of constitutional norms, but only the observance of the procedure in the event of reviewing a law reviewing the Constitution.

The Court reviewed the case from the lens of the right to vote, under Article 45 of the Constitution, with regards to the right to be elected for the applicants from the political parties and with regards to the right to vote for the other applicants, namely organizations and individuals (MPs

of the Assembly), also related to the principle of equality before the law.

Based on the literal interpretation, the Court considered that Article 64 of the Constitution guarantees that no less than two-thirds of the multi-name list shall be subject to preferential voting, i.e. the right of voters to cast a preferential vote for no less than two-thirds of the candidates, but not the degree of its influence on the distribution of mandates, which is left to the discretion of the legislator through delegation. Based on this interpretation, the Court analyzed whether the wording “and” in paragraph 1 of Article 67 of the Electoral Code, in conjunction with Article 163 of this Code, as well as the decimal point in paragraph 2 of Article 67 of the Electoral Code, conflict with Article 64 of the Constitution.

With regards to the right of political parties to be elected, the Court noted that the provision of the wording “and” in paragraph 1 of Article 67 of the Electoral Code, read together with Article 163 thereof, implies that political parties as electoral entities have the obligation to fulfill the requirements disciplining the electoral process, inter alia, that of presenting a multi-name list with two components (the one with a fixed order and the one subject to preferential voting) that will be subject to the voting process. Although the entities have the obligation to present a multi-name list made up of two components, the placement of candidates by the party in the component with a fixed order or in the one subject to preferential voting does not in essence violate the right of the applicants to be elected, nor their participation in the process of the political will formation. The alleged violation of the principle of equality before the law is also unfounded, as the legal provisions have not defined restrictive criteria for new parties or those with smaller electorates than other parties. Instead, all parties are subject to the same candidacy rules as far as the determination of the number of candidates they present to the CEC is concerned.

In the same vein, the Court considered the claim on the provision of the decimal point in paragraph 2 of Article 67 of the Electoral Code to be unfounded since the applicants’



claim relates to the distribution of mandates according to the voting turnout, which the Constitution has delegated to the legislator. Furthermore, the number of candidates of the component of the list subject to preferential voting is equal to the number of mandates for each electoral zone, which exceeds the constitutional provision of two thirds of the candidates participating in the vote.

With regards to the right to vote, for the applicant organizations and individual MPs, the Court considered that the submission to the CEC of the two components of the multi-name list does not limit the right of citizens to vote, since they can freely exercise this right for each of the candidates they prefer. The legislation does not impose any prohibitions and does not define any criteria that must be met by individuals to exercise the right to vote, guaranteed by Article 45 of the Constitution. As regards the alleged violation of the principle of equality before the law, the legal provisions are addressed equally to all voters, guaranteeing the right to vote without distinction on the basis of class or affiliation to certain social groups or on other grounds, criteria or categories influencing the formation of political will in a democratic society. Also, the provision of the decimal point in paragraph 2 of Article 67 of the Electoral Code does not violate Article 64, paragraph 3, first sentence, of the Constitution, which provides for the right of voters to cast a preferential vote for candidates

on multi-name lists, but the claims are related to the distribution of mandates according to the voting turnout, which is not guaranteed at the constitutional level.

### **FACTS**

In 2020, the Assembly approved several amendments to Articles 64 and 68, paragraph 1, of the Constitution, which provide for a proportional electoral system with regional competition and a national threshold, as well as the right of voters to cast a preferential vote for candidates on the multi-name lists. Pursuant to these provisions, amendments to the Electoral Code have also been approved, including in Articles 67 and 163 thereof, which provide for the presentation by a political party or electoral coalition of a list consisting of: a) a multi-name list with a fixed order of candidates; and b) a multi-name list of candidates subject to preferential voting, as well as the distribution of mandates to the winning candidates of the list. The applicants, claiming that these legal provisions are unconstitutional, have addressed the Constitutional Court asking it to review the constitutionality of Articles 67 and 163, paragraphs 2 and 3, of the Electoral Code, and to provide a final interpretation of Article 64 of the Constitution or repeal it altogether.

## Incidental control

**Suspension of executing an imprisonment sentence and placing the defendant on probation in the case when the decision has not taken a final form (Judgment no. 20, of 03 April 2024 - First Instance Court of General Jurisdiction Dibër)**

With regards to the principle of presumption of innocence, a person convicted by a decision of a Court of First Instance is considered innocent until his guilt is proven by a final Court judgment. From the point of view of execution, from the constitutional point of view, an innocent person is equated with a guilty person, for as long as the law obliges them equally to fulfill the obligations arising from a conviction.

innocent, as long as that decision has not become final. Meanwhile, the ruling of the Court of First Instance to sentence him to prison, the execution of which has not been suspended, does not burden the convicted person with the fulfillment of the relevant obligations towards the state, as long as that judgment has not become final. The content of Article 59, paragraph 4, second sentence of the Criminal Code also calls into question the principle of legal certainty, as it creates uncertainty and ambiguity regarding the consequences of an enforceable Court judgment.

### **THE ASSESSMENT OF THE COURT**

The Court examined the case from the perspective of the principle of presumption of innocence related to the right to effective appeal and the principle of legal certainty and decided to repeal Article 59, paragraph 4, second sentence of the Criminal Code. The decision to suspend execution of the prison sentence and place the person found guilty on probation is the competence of the Court, not excluding the Court of First Instance. The provision for an almost immediate execution of such a decision of the Court of First Instance does not seem to take into account that it is subject to appeal and can potentially be overruled by a higher court. The almost immediate execution of the decision of the Court of First Instance to suspend the execution of the prison sentence places the person in the conditions of fulfilling this alternative prison sentence, namely those restrictions on freedoms and rights arising from him being put on probation, despite the fact that in the constitutional sense he continues to be considered

### **FACTS**

Dibër Prosecution Office has filed an application with the Court asking it to revoke the suspension of the decision to an imprisonment sentence issued for citizen D.D., since the latter, according to the referral made by the Probation Service, had failed to fulfill the conditions and obligations during the probation period. The ruling on an imprisonment sentence (suspended) was appealed by citizen D.D. to the Court of Appeal. The referring Court has found that Article 59, paragraph 4, second sentence of the Criminal Code and Articles 22, paragraph 1, letter "b" and 37 of Law No. 79/2022 are in conflict with Article 30 of the Constitution and Article 6, paragraph 2, of the ECHR, consequently it has suspended the trial of the case and has set in motion the incidental trial of the norm.

# Decision-making

## Individual constitutional complaint

### Substantial rights

■ The burden of proof to prove termination of employment relationship due to discrimination for various reasons (Judgment No. 16, of 12 March 2024 – Elisabeta Cara)

In cases where facts exist that reasonably suggest discrimination, it is the employer's responsibility to prove that no violation of this principle has occurred. The burden of proof regarding discriminatory causes in employment relationships initially lies with the employee. However, if the employee presents facts that reasonably support a presumption of discrimination, the burden of proof shifts to the employer. Courts have the duty to verify whether the alleged facts exist and to assess whether the evidence provided by the employer is sufficient to conclude that termination of employment was not based on discriminatory grounds.

#### **THE ASSESSMENT OF THE COURT**

With regards to the *ratione temporis* legitimacy, the Constitutional Court noted that the four-month deadline for filing a constitutional complaint does not include the period during which the court of general jurisdiction reviewed and approved the applicant's claim for free secondary legal aid with the aim of preparing for her constitutional appeal.

With regards to the merits, the Court examined the case in light of the standard of reasoning of judicial decisions related to the principle of non-discrimination and the right to earn a living through lawful work. Although the applicant contested her dismissal on the grounds that her employment was terminated for unjustified reasons related to her political beliefs and social status, the lower courts did not consider these claims, but instead adopted a formalistic approach. Even though these aspects were reflected in the ruling, the Courts merely upheld the employer's argument that the applicant had committed serious misconduct by failing to fulfill her obligations under the Labor Code. Analyzing the case from the Constitutional point of view regarding the burden of proof in employment discrimination cases, the Court ruled that when facts suggest the possibility of discrimination, it is the alleged discriminator, in this case, the employer, who must demonstrate that no violation occurred. The shift in the burden of proof from the employee (the victim of discrimination) to the employer (the alleged discriminator) is justified by the vulnerability of the discriminated party. The employee only needs to present credible facts that *prima facie* indicate a specific discriminatory

circumstance that led to less favorable treatment or harm. The Court emphasized that judges must verify whether the alleged facts exist and assess whether the employer's evidence is sufficient to conclude that the termination of employment was not based on discriminatory motives. The burden of proof in discrimination cases initially rests with the employee, but once they present facts that reasonably support a presumption of discrimination, the burden shifts to the employer. The Court further noted that since "political beliefs" and "social status" are Constitutionally protected grounds against unfair discrimination in employment, the Courts were obligated to examine the applicant's allegations. The judiciary should have provided a reasoned response by analyzing whether the evidence presented by the applicant justified shifting the burden of proof to the employer and whether the employer could prove that there was no causal link between the applicant's social status, political beliefs, and the alleged unfair treatment. The High Court also failed to explicitly address these concerns, despite the fact that the applicant's argument raised a constitutional issue.

#### **FACTS**

The applicant was employed at the Albanian Post until she was subjected to a disciplinary measure of dismissal. Arguing that her employment contract was terminated unlawfully, she filed a lawsuit seeking compensation as provided for in the Labor Code. Her case was dismissed by the Fier District Court, a decision that was upheld by the Vloora Court of Appeals. The High Court later rejected her appeal. Consequently, the applicant turned to the Constitutional Court to challenge the judicial process.

## Substantial rights

The right to life in the procedural aspect relation to the failure to conduct a full and effective investigation from the side of the prosecution in uncovering the circumstances of the happening and finding the perpetrators (Judgment no. 42, of 29 May 2024 - Lumturi Varfi)

The lack of an effective response from the prosecuting authority in identifying, apprehending, and punishing those responsible for committing criminal offenses, which is an essential element in maintaining public trust, upholding the rule of law, and preventing unlawful acts, as well as the lack of response from courts of general jurisdiction regarding effectiveness of investigations in the criminal process, has violated the right to life in its procedural aspect.

### THE ASSESSMENT OF THE COURT

The Court examined the case in light of the procedural aspect of the right to life. It found that due to deficiencies in the investigative actions, particularly in terms of adequacy, speed, and necessary diligence, the perpetrators of the crime were able to evade justice. The failure to identify suspects and gather all necessary evidence in a timely manner severely limited the subsequent ability to fully uncover the circumstances of the crime and its perpetrators. Although the Prosecution Office had access to some information regarding potential suspects and the motives behind the crime, it failed to pursue a clear investigative avenue. Had the investigative actions been swift, comprehensive, and properly oriented, it is likely that the outcome would have been different, thereby preventing the situation of impunity for the perpetrators of these criminal acts. Suspension of investigations for over 20 years failed to provide any effective remedy. Furthermore, the courts of general jurisdiction failed to address the claims regarding the effectiveness of the investigations but merely acknowledged the expiration of the statute of limitations. By doing so, they failed to

uphold the principle of subsidiarity, thereby neglecting their constitutional duty to guarantee and protect the fundamental right to life.

### FACTS

The applicant is the sister of A.V. (the victim), for whom Vlora Prosecutor's Office initiated criminal proceedings for the offense of "kidnapping or hostage-taking of the person". After the victim was later found dead, this offense was merged with the charge of "intentional murder," and the case was transferred to the Fier Prosecutor's Office. Following some investigative actions, the proceedings were discontinued. Upon the appeal of the victim's father, the Deputy General Prosecutor ordered Fieri Prosecutor's Office to conduct additional investigative actions. Further investigations were carried out until the main suspect was found to have died in 1997, leading Fier Prosecutor's Office to terminate the proceedings against the suspected perpetrator and suspend the investigation for identifying other unknown individuals. The investigation remained at this state until September 2017, when it was reopened. Fier Prosecutor's Office, based on Articles 329/a and 328/a(1) (d) of the Criminal Procedure Code (CPC), requested the Court to dismiss the case due to expiration of the statute of limitations, as more than 20 years had passed from the time the crime was committed. Fier District Court rejected this request, ordering the return of the case files and continuation of investigations. However, this decision was overturned by the Court of Appeal, which accepted the prosecutor's request and ordered the dismissal of the case, citing that the maximum 20-year statute of limitations for criminal prosecution had been met before the amendments introduced by Law No. 36/2017. On the applicant's appeal, the High Court upheld the decision of the Court of Appeal. Consequently, the applicant submitted an individual constitutional complaint challenging these decisions before the Constitutional Court.

## **Substantial rights**

**The nature of decisions which determine the preventive seizure measure on immovable property and the restriction criteria of property rights (Judgment no. 18, of 19 March 2024 - "Kosturr Kromi" Ltd Company)**

Despite the interim nature of decisions imposing preventive seizure measures, they interfere with individual constitutional rights, such as the right to property. This interference continues until a potential decision on asset confiscation is issued, and these measures maintain a certain degree of autonomy from the criminal process. The period from the imposition of the measure to the final judgment is relatively long, considering the duration of the investigation phase and the time required to complete the trial on the merits.

property or developing the property), and disposition, the Court did not reach the required number of votes for a ruling. One of the positions held was that the measure exceeded the severity criterion, as it applied to the entire chrome stock and all machinery and equipment owned by the applicant, effectively imposing a total restriction on its economic activity and thereby limiting all aspects of property rights. The opposing view argued that, despite the Courts not explicitly reasoning on the proportionality of the measure, it did not appear to exceed the severity criterion in light of the nature of the alleged criminal offense, especially since the measure had been partially lifted by a judicial decision, allowing the applicant to maintain the mine.

### **THE ASSESSMENT OF THE COURT**

The Court examined the case concerning the substantive right to private property, determining that the applicant's right had been restricted in all its aspects, as the company could not continue its production and commercial activities, effectively halting its entire economic operation. In analyzing this restriction under Article 17 of the Constitution, the Court found that the decisions were issued based on Article 274 of the Criminal Procedure Code (CPC), meaning that the intervention was legally grounded and served a public interest. Regarding the proportionality criterion of the intervention, the Court concluded that the seizure measure was necessary to prevent the sale of chrome and the transfer of profits to third parties until the conclusion of the criminal proceedings. The measure was deemed appropriate and not excessive in light of the purpose of the criminal proceedings against the applicant, considering the alleged criminal offense. However, regarding the severity of the measure, analyzed in relation to the three fundamental aspects of property rights: possession, enjoyment (including acquired benefits from

### **FACTS**

At the end of the preliminary investigations, the prosecutor determined that there were reasonable doubts that the administrator of the requesting company had committed the criminal offense of "fraud" and that the company had engaged in legal actions constituting criminal liability. Based on the prosecutor's request, the Tirana District Court imposed a preventive seizure measure on all chrome stock assets, machinery, and equipment used for chrome extraction, located within the coordinates of the mining permit area, as well as the chrome stockpile at the collection site, in charge of the company. This judgment was upheld by the Tirana Court of Appeals and the High Court. Subsequently, upon the applicant's request, the First Instance Court lifted the preventive seizure measure for some machinery and equipment to allow for the mine maintenance, a decision confirmed by the Court of Appeal as well. At the end of the investigations, upon the Prosecutor's request, the Court decided to send the criminal case to trial and rejected the applicant's request to revoke the seizure measure. The applicant then filed an individual constitutional appeal challenging the rulings imposing the seizure measure on its property.

## Substantial rights

**Criteria of limitation of property rights due to preventive seizure (Judgment no. 29, of 16 April 2024 - Elda Dinaj)**

Seizure orders are deemed final for constitutional review purposes because, although temporary in nature, they interfere with the constitutional right to property, and this intervention continues until a potential decision is issued regarding confiscation of the assets. Even though these orders impose a temporary restriction on the applicant's right to enjoy immovable property, to which real rights have been transferred, the decisions have respected the proportionality of the intervention, as the limitation of the right is proportionate to the circumstances that necessitated the measure.

### **THE ASSESSMENT OF THE COURT**

Seizure orders are considered final for constitutional review purposes because, despite their temporary nature, they interfere with the constitutional right to property, and this interference remains in effect until a potential decision is issued on the confiscation of the assets. The Court reviewed the case in terms of the substantive right to private property. It found that the seizure measure was imposed pursuant to Article 274 of the Criminal Procedure Code (CPC), which allows for asset seizure when there is a risk that the free disposal of an asset related to a criminal offense could worsen or prolong its consequences. Consequently, the intervention in property rights was lawful and served a public interest. With regards to proportionality, the Court determined that the preventive seizure measure: (i) justifies the need for intervention, as it aims to prevent any potential transfer of the assets to ensure the proper conduct of criminal proceedings; (ii) is appropriate, as it remains a temporary measure that reasonably and fairly balances the objectives of the

criminal proceedings with the applicant's interests; (iii) is not excessively harsh relative to the intended objective, as the applicant's restriction from enjoying and possessing her property is weighed against the goal of preventing further commission of criminal offenses. There appears to be a reasonable proportionality relationship between the seizure decision and its intended purpose. Therefore, the limitation on the applicant's right to enjoy and possess her property is proportionate to the circumstances that necessitated the order.

### **FACTS**

The applicant was granted ownership rights over immovable properties, including a villa and a plot of land, for which the First Instance Court of the Special Anti-Corruption and Organized Crime Structure (GJKKO) ordered a preventive seizure. The properties were deemed as hidden assets and material objects of money laundering resulting from a criminal offense under investigation involving a public official. The decision was upheld by the GJKKO Court of Appeals and the Criminal Chamber of the High Court. The applicant filed an individual constitutional appeal against these decisions.



## Substantial rights

Interim Decision on the suspension of the execution of enforceable titles in view of the right to property (Judgment No. 74, of 22 October 2024 – “Tirana Auto” Ltd Company)

The interim decision on the suspension of the execution of enforceable titles is considered, as an exception, a final decision for the purposes of constitutional review because, despite its temporary nature, it caused direct and significant consequences on the applicant's rights. These consequences persisted for an indefinite period until a final judgment was reached, and moreover, their remedy during the main proceedings is impossible, for as long as trial on the merits to which the suspension measure is related has not been identified. The Court of Appeal did not sufficiently elaborate on its functional competence on reviewing the request for suspension and granting of this measure, while the High Court also failed to verify how the Court of Appeal identified, interpreted, and applied the applicable provisions, leaving the applicant's claims in the appeal unanswered.

### THE ASSESSMENT OF THE COURT

The Constitutional Court examined the case in relation to property rights, both in the procedural aspect, concerning guarantees for due legal process under Article 42 of the Constitution, and in the substantive aspect, concerning the criteria justifying its limitation under Article 41 of the Constitution.

In the procedural aspect, the Court assessed the claims regarding the right to be judged by a Court established by law, reasoning of judicial decisions, and the principle of legal certainty. The Court found that the application for suspension of execution was submitted by the debtor directly to the Administrative Court of Appeal, which reviewed the application by asserting that its competence was derived from Article 28 of Law no. 49/2012, while referring to Articles 609 and 610 of the Civil Procedure Code (CPC) with regards to the merits. It appears that the Court of Appeal treated the application as a request for injunctive relief, but ultimately did not order any specific security measure but instead suspended the execution of the enforceable title. The debtor's application seems to have been reviewed by the Court of Appeal as: (i) an application that could be submitted to it for the first time, (ii) regardless of whether it was related to one or multiple legal proceedings, and (iii) regardless of where those proceedings were pending. However, the Court of Appeal failed to properly justify each of these aspects concerning its functional jurisdiction according to procedural law. It ruled on the suspension of the execution of enforceable titles without linking it to any specific legal proceedings

and did not provide sufficient arguments regarding its functional jurisdiction to review the application or impose the suspension measure. The High Court, despite the appeal raising concerns about these aspects of the judicial proceedings and despite of the fact that it can consider issues of competence even with its own initiative (both functional and substantial), ruled on its inadmissibility, failing to exercise its role as a court of law. It dismissed the appeal without verifying how the Court of Appeal identified, interpreted, and applied the relevant legal provisions, failing to provide a reasoned response as to the grounds of appeal. Failure to uphold constitutional guarantees related to the procedural aspects of this right is sufficient to question its substantive aspect under Article 41 of the Constitution.

### FACTS

In accordance with the contract signed with the General Directorate of State Police (GDSP) for leasing certain vehicles, the applicant issued two electronic tax invoices. The debtor failed to fulfill its obligation and upon the applicant's seizure of the Court, the Court issued an execution order for the enforceable titles (electronic tax invoices). The applicant initiated the compulsory enforcement process. After the judicial enforcement officer notified the debtor for voluntary compliance, the GDSP initiated several legal proceedings. It filed a lawsuit challenging the validity of the enforceable title and requested the suspension of its execution. The Administrative Court of First Instance in Tirana rejected the application for suspension and ultimately dismissed the lawsuit. This decision was overturned by the Administrative Court of Appeal, which remanded the case for retrial at the first instance level.

After becoming aware of the enforcement officer's calculation of legal interest penalties, the GDSP challenged it before the Court, again requesting the suspension of execution. This challenge was rejected, and no separate appeal appears to have been filed. However, regarding the merits, the Court annulled the enforcement action related to the calculation of legal interest penalties, and an appeal against this decision was filed.

While the first legal proceeding was pending in the Court of Appeal and the second one had just started in the First Instance Court, the GDSP filed an application with the Administrative Court of Appeal on the suspension of execution, which was granted, ordering the suspension of enforcement actions concerning the execution of the enforceable title. The High Court dismissed the applicant's appeal, leading the applicant to file an individual constitutional complaint challenging these judicial decisions.

## Substantial rights

Restriction of personal freedom and the right to be elected due to failure to take the oath as elected mayor, as a consequence of enforcement of a personal security measure “detention on remand” (Judgment no. 19, of 21 March 2024 - Dhionisios Alfred Beleri)

The right to be elected extends not only to the right to run for office, but also to the right to exercise the public function entrusted by voters. This, in the present case, refers to the exercise of the mandate of the mayor, which is inherently linked to taking the oath at the first meeting of the Municipal Council. Although the imposition of the personal security measure of “arrest in prison” has prevented the applicant from taking the oath as the elected mayor of Himara Municipality, thus restricting his right to be elected, as long as the restriction on personal freedom does not appear to be disproportionate, the interference with the right to be elected also does not seem disproportionate in relation to the circumstances that necessitated it.

### THE ASSESSMENT OF THE COURT

The Court examined the case from the perspective of personal freedom and the right to be elected, assessing it in relation to the principle of proportionality and the reasoning standard of judicial rulings. The Court found that the lower courts, in assessing the security measure against the applicant, had sufficiently reasoned the justifications for restricting his freedom and whether this measure was “sufficient” to achieve its intended purpose, as well as the proportionality of the measure, explaining why the security needs in this case required the imposition of the measure of “arrest in prison” and why an alternative measure was inappropriate. The restriction on the applicant’s personal freedom was imposed for a legitimate purpose, namely to ensure the integrity and proper conduct of the criminal proceedings against him. This measure does not appear to be disproportionate in the context of the case’s circumstances, considering the criminal offense for which he is accused and the procedural rules of the Code of Criminal Procedure. With regards to the restriction of the right to be elected, the court determined that this right extends not only to

the ability to run for office but also to the ability to exercise the public function entrusted by the voters. In this specific case, it includes fulfilling the mandate of the mayor, which is inherently linked to taking the oath at the first meeting of the municipal council. The security measure of “Arrest in Prison” imposed on the applicant has prevented him from taking the oath as the elected mayor of Himarë Municipality, thereby restricting his right to be elected. However, since the restriction on personal freedom was imposed for a legitimate purpose and does not appear to be disproportionate in relation to that purpose, the interference with the right to be elected does not seem disproportionate either, given the circumstances that necessitated it in this specific case.

### FACTS

The applicant ran for mayor of Himara Municipality in the local government elections held on 14 May 2023. Two days before the election day, he was arrested in flagrante delicto on suspicion of active electoral corruption, and the personal security measure “arrest in prison” was imposed on him. This measure was deemed lawful by the First Instance Court of General Jurisdiction of Vlorë. However, the same Court declared itself materially incompetent, and the case was transferred to the jurisdiction of the Special Court of First Instance Against Corruption and Organized Crime (GJKKO), which confirmed the measure. The decision was upheld by the GJKKO Court of Appeal and by the Criminal Chamber of the High Court. Following the local elections, the Zonal Election Administration Commission (ZEAC) declared the applicant the winner, and subsequently, the Central Election Commission (CEC) decided to grant him the mandate of mayor of Himara Municipality. Despite this, the applicant was unable to take the oath due to being under the restrictive measure of “arrest in prison.” Consequently, he filed an individual constitutional complaint with the Court.

## Substantial rights

Provision of the authorization of the Assembly to determine -against a member of parliament -a personal security measure that constitutes a limitation/removal of personal freedom and the assessment of criteria for the limitation of parliamentary activity (Judgment no. 81, of 21 November 2024 – Sali Berisha)

Authorization of the Assembly is necessary only if the restrictive measures imposed on a Member of Parliament constitute a restriction/deprivation of his personal freedom, which is such that it impacts the right to be elected, particularly with regards to exercising parliamentary duties. The security measure of “obligation to appear before the judicial police”, from the perspective of the right to be elected under Article 45 of the Constitution, considering the type of obligation and the frequency of its enforcement, does not affect the legislative functions of the Assembly and does not prevent the applicant from exercising his rights as a Member of Parliament. Similarly, the security measure of prohibition from leaving the country does not impede his parliamentary activities. The lack of an assessment regarding the necessity of restricting the applicant's rights and freedoms in relation to the proper conduct of criminal proceedings constitutes sufficient grounds to establish a violation of the principle of proportionality in imposing the measure of “prohibition from leaving the country,” whereas the security measure “obligation to appear before the judicial police” alone appears to sufficiently meet the requirements for ensuring the proper conduct of the criminal proceedings.

### THE ASSESSMENT OF THE COURT

The Court examined the applicant's claims with regards to: i) the right to be elected with regards to exercising of his parliamentary mandate as protected under Article 45 of the Constitution, in light of the two security measures imposed on him; ii) freedom of movement, protected under Article 38 of the Constitution, concerning the imposition of the security measure “prohibition from leaving the country.” With regards to the right to be elected and freedom of movement, the Court assessed whether there had been a violation of Article 73(2) of the Constitution concerning parliamentary authorization and, subsequently, evaluated other aspects of the judicial process, including: i) the principles of impartiality and judicial independence in light of contested legal provisions; ii) the right to effective defense; iii) the standard of reasoning as a procedural aspect of fundamental rights; iv) the substantive aspect of restricting rights in relation to the principle of proportionality in imposing security measures.

With regards to the parliamentary authorization under Article 73(2) of the Constitution, the Court found that the phrase “or be deprived of liberty in any form” refers solely to personal freedom as protected under Article 27 of the Constitution and applies only when a restrictive measure deprives a Member of Parliament of personal liberty. Parliamentary authorization is required only if the restrictive measures imposed constitute a deprivation

of freedom that affects the MP's right to be elected by impeding his/her exercising of parliamentary duties. The security measure of “obligation to appear before the judicial police,” from the perspective of the right to be elected under Article 45 of the Constitution, considering its nature and enforcement frequency (in this case, once every two weeks), does not interfere with the legislative functions of the Parliament and does not prevent the applicant from exercising his rights as an MP. Similarly, the security measure “prohibition from leaving the country” does not obstruct the applicant's ability to conduct parliamentary activities. Consequently, as this measure does not constitute a deprivation of personal liberty, it does not require parliamentary authorization for its enforcement under Article 73(2) of the Constitution.

The Court rejected the claim regarding violation of judicial impartiality according to the provisions of Law No. 95/2016 concerning periodic monitoring of the telecommunications of judges in special courts and their family members, a process conducted by a unit under the Special Prosecution Office. The Court ruled that this monitoring regime is authorized under Article 135(4) of the Constitution and that judges serving in special courts are aware of this periodic oversight, which requires their prior consent, as well as that of their close family members. The same oversight provisions apply equally to prosecutors of the Special Prosecution Office. Although the law assigns this responsibility to the National Bureau of Investigation (NBI), which operates under the Special Prosecution Office, it provides sufficient guarantees to ensure the independence of special court judges. The existing legal framework regulating the status of magistrates and their associated rights contains additional legal and procedural safeguards to ensure their judicial independence.

With regards to the claim on violation of the right to effective defense, the Court found that the First Instance Court had taken adequate steps to notify the applicant of the decision imposing security measures against him and provided sufficient time for the applicant to prepare his defense, considering the volume of case materials. Additionally, any delay in issuing the reasoning for maintaining the security measures did not impair the applicant's right to effective defense. The Court observed no significant procedural shortcomings that would constitute a violation of this right.

The Court also found the claim regarding inadequate reasoning of judicial decisions to be unfounded. It determined that the lower courts had thoroughly addressed the applicant's arguments with reasoned responses. Although the Criminal Chamber of the High Court used technical terminology that might initially appear complex, its usage did not reach a level that would compromise the clarity of the reasoning. Furthermore, the applicant was represented by legal counsel qualified to interpret such terminology.

With regards to the substantive aspect of the right to be elected and freedom of movement, the Court concluded that the intervention in the applicant's constitutional rights was legally grounded and pursued a legitimate public interest. However, concerning the proportionality

criterion, the Court found that the lower courts failed to provide reasoning regarding the necessity of imposing two security measures for the same proceedings. This lack of reasoning raises doubts about whether the courts assessed the proportionality of the measures in terms of the necessity of restricting the applicant's freedom of movement and right to be elected as an MP, under Articles 228 and following of the CPC, in proportion to the legitimate goal of ensuring the proper conduct of criminal proceedings. This constitutes sufficient grounds to establish a violation of the principle of proportionality in imposing the measure of "prohibition from leaving the country." Based on the same arguments, the Court found that the security measure of "obligation to appear before the judicial police" alone appeared sufficient to meet the requirements for ensuring the proper conduct of the criminal proceedings.

### **FACTS**

The applicant, a politician, former President, and former Prime Minister, currently a Member of Parliament and leader of the main opposition party, has been accused by the Special Prosecution Office as a suspect in the criminal offense of "passive corruption of high state officials or elected officials," in accomplice with citizens J.M. and F.B., as provided for under Articles 260 and 25 of

the Criminal Code. The criminal acts under investigation pertain to his alleged conduct during his tenure as Prime Minister after 2005, involving processes related to property restitution, privatization of state property (specifically the premises of the "Partizani" sports club under the Ministry of Defense and the "Partizani" Multi-Sports Club under the Ministry of Culture), changes in property designation, and development, allegedly favoring citizens J.M., F.B., and XH.B., where the latter and their affiliated company carried out the construction of a residential complex. It is suspected that monetary benefits were illicitly given and received in these transactions, with their illegitimate origin being concealed through financial maneuvers, fragmented transactions, or cash payments. Based on the request of the Special Prosecution Office, the First Instance Court for Corruption and Organized Crime (GJKKO) imposed the personal security measures of "obligation to appear before the judicial police" and "prohibition from leaving the country," as provided for under Articles 234 and 233 of the Criminal Procedure Code (CPC), determining that the general and specific conditions for imposing security measures under Article 228 of the CPC were met. Following the applicant's questioning, the First Instance Court reaffirmed the continuation of these security measures. This decision was upheld by the Appeal Court for Corruption and Organized Crime, and the Criminal Chamber of the High Court dismissed the applicant's appeal. The applicant subsequently filed an individual constitutional complaint with the Constitutional Court.

## Procedural rights

The existence of different standings of the High Court for the implementation of the accelerated trial in the case of the minors, in absence of a unified decision (Judgment no. 4, of 31 January 2024 - Florjan Gega)

From the point of view of the principle of legal security, two differing decisions by the High Court do not constitute a sufficient basis for establishing a legitimate expectation regarding the application of a summary judgment for minors in conflict with the law, particularly for criminal offenses for which a life imprisonment sentence is foreseen, unless there is a unifying or standardizing ruling from the High Court on the matter.

### THE ASSESSMENT OF THE COURT

The Constitutional Court, while assessing the principle of legal security, found that the High Court's Criminal Panel ruling on the rejection of the applicant's application for summary judgment was lawful, noting that Article 403, paragraph 2 of the Criminal Procedure Code (CPC) does not apply when the offense in question entails a life imprisonment sentence. However, in a separate but similar case, under the same legal circumstances, the Criminal Panel of the High Court ruled in favor of allowing summary judgment for another minor accused of the same offense. Regarding legal clarity and accessibility, the Court noted that since there is no specific legal provision addressing the application of summary judgment for minors, the interpretation and implementation of these provisions are left to the Courts. Through their rulings, Courts clarify the legal norms and strive to unify judicial practice, making such legal standards accessible to the public. Given the existence of two conflicting High Court rulings on the application of summary judgment for minors, the applicant could not have formed a legitimate

expectation regarding the outcome of their case. In the absence of a unified or standardized decision on the implementation of this legal provision, the Court rejected the applicant's claim as unfounded.

Furthermore, the Court also dismissed the applicant's claim with regards to the right not to be punished without law, particularly in relation to the principle of proportionality. In reviewing the judicial reasoning standard, the Court concluded that, although Courts of general jurisdiction determined that summary judgment could not be applied in the applicant's case, their interpretation of the law was not arbitrary to the extent that it could be considered a violation of the principle of legality or disproportionate punishment.

### FACTS

The applicant, a minor in conflict with the law, was charged with the criminal offense of "murder under qualifying circumstances", as provided for in Article 79/1(a) of the Criminal Code. The Pre-Trial Judge denied the Defense Counsel's application for summary judgment, reasoning that Article 403/2 of the Criminal Procedure Code prohibits the application of summary proceedings for crimes that carry a life imprisonment sentence, such as the one for which the applicant was charged. Consequently, the case proceeded under ordinary criminal procedure, and the applicant was found guilty and sentenced to 12 years of imprisonment. The Court of Appeals upheld the conviction, rejecting the applicant's claim that the denial of summary judgment was unlawful. The High Court's Criminal Panel dismissed the applicant's appeal, concluding that it did not contain valid legal grounds as required under Article 432/1 of the Criminal Procedure Code.



## Procedural rights

Legal remedies at the disposal of the applicant for correcting the violation of the ordinary courts, in the course of the adjudication of its case, due to failure to reduce the sentence although he was a minor at the time when the criminal offence was committed (Judgment no. 13, of 07 March 2024 – Viktor Ymeraj)

The Constitutional Court reviewed the case concerning the non-application of Article 51 of the Criminal Code and the applicant's right to have the imposed criminal sentence corrected. The Court acknowledged that while the judicial proceedings on the merits of the case, which found the applicant guilty and sentenced him, may appear arbitrary, for as long as it is a question of visible mistakes from the point of view of the law leading to "negation of justice", they do not inherently invalidate the High Court's interpretation of Article 114 of the Criminal Procedure Code (CPC). However, the High Court itself recognized that its decision had stripped the applicant of the right to seek correction of the criminal judgment through the chosen legal remedy. Consequently, it identified an alternative avenue, allowing the applicant to request a retrial or review of the criminal verdict, ensuring that the constitutional principle of legality was upheld and that potential violations of the applicant's rights were properly addressed.

### THE ASSESSMENT OF THE COURT

The Constitutional Court examined the case from the perspective of the principle of legality (the right not to be punished without a law). It found that during the initial trial in 2001, conducted in the applicant's absence, neither his lawyer nor the prosecutor identified that he was a minor at the time of the crime, nor did the Court verify his age for the purpose of applying Article 51 of the Criminal Code. However, when the Court of Appeal later corrected this material mistake, recognizing the applicant's right to a reduced sentence, the applicant withdrew all other legal motions he had used up until that time. When the Prosecution appealed the correction, the High Court overturned the Court of Appeal's ruling without fully addressing the legal misinterpretation in the original conviction decision. While considering the Prosecutor's recourse against the Court of Appeal's ruling on correction of the mistake, the High Court was aware of the progress of the other Court proceedings and implied in its decision-making the existence of a visible mistake in the application of the law in the conviction ruling entered into against the applicant. While the High Court acknowledged that an error had occurred, it did not rule out the possibility of using a different legal remedy, such as a case review or retrial, to correct the sentencing error, as well as the effectiveness of such remedy. Even though the proceedings on the merits of the case declaring the applicant guilty may potentially seem arbitrary, for as long

as it is a question of visible mistakes from the point of view of the law, the Court does not question the High Court's ruling vis-à-vis the manner how it has interpreted Article 114 of the CPC. The High Court having regard to the fact that its decision had stripped the applicant of the right to seek correction of the criminal judgment through the chosen legal remedy, identified an alternative avenue, allowing the applicant to request a retrial or review of the criminal verdict. Referring to the remedy recommended by the High Court, the applicant resorted to the option of reviewing the final conviction ruling issued against him. The Constitutional Court noted that the general jurisdiction courts and the Prosecution must exercise due diligence to ensure correction of potential constitutional violations, particularly regarding the principle of legality. The applicant who has been seeking this correction for eight years, yet has not received a final verdict from the judicial system.

### FACTS

In 2001, the applicant was sentenced to 25 years in prison by the First Instance Court for multiple criminal offenses (judgment on the merits). He was tried in absentia, and his minor age at the time of the offense was never considered. As a result, Article 51 of the Criminal Code, which pertains to mitigating sentences for minors, was not applied. The ruling became final, and the sentence was enforced following the applicant's extradition to Albania. Subsequently, the applicant filed multiple legal motions seeking correction of his sentence reduction rights under Article 51 of the Criminal Code. More specifically he filed the following motions: i) Motion on sentence dismissal, which was rejected by the lower courts and remained pending before the High Court; ii) Motion for a retrial of a final court judgment, which was denied; iii) Motion for correction of a material error, arguing that his 25-year prison sentence had not been reduced as required by Article 51. This motion was initially rejected by the First Instance court, but approved latter by Court of Appeal, which corrected the error and halved the sentence. However, upon appeal by the prosecution, the High Court overturned the Court of Appeal's ruling and reinstated the First Instance Court ruling; iv) Motion on the review of the final criminal judgment and application of Article 51, which was denied by the First Instance Court and was under appeal when the applicant submitted his application to the Constitutional Court. The applicant addressed the Constitutional Court asking it to overrule the third judicial proceedings.



## Procedural rights

The failure of the High Court to take a position in relation to the interpretation of the criminal procedural provisions for ceasing the personal security measure “detention on remand” (Judgment no. 17, of 13 March 2024 – Mimoza Margjeka)

The High Court, although it formally resolved the case, did not substantively assess the grounds of the appeal, merely relying on the fact that the security measure had already been revoked by the conviction decision. Even though the applicant's claims were related to the misinterpretation of the criminal procedural law by the specialized courts, the High Court did not address them, essentially leaving unresolved the consequences affecting personal liberty.

the lower courts' judgments, despite clear claims of legal misinterpretation, the High Court violated the applicant's right to due process of law.

### **FACTS**

The applicant was prosecuted for the criminal offense of passive corruption, and the Special Court Against Corruption and Organized Crime (GJKKO) at the first instance imposed the security measure of “house arrest”, which was upheld by the GJKKO Court of Appeal and the High Court. While the case was still under trial, the applicant requested the revocation of the measure due to exceeding the legal time limit. This request was rejected by the general jurisdiction courts, reasoning that the duration of the “house arrest” measure is longer than that of “pre-trial detention”. The applicant filed an appeal with the High Court. While the appeal was pending review, the GJKKO at first instance found the applicant guilty as charged and revoked the “house arrest” measure. This decision was upheld by the GJKKO Court of Appeal. With regards to the appeal on the revocation of the security measure, the High Court dismissed the appeal, reasoning that the case had become moot since the security measure was no longer in force and the applicant had been convicted by a final judgment. The applicant then filed an individual constitutional complaint, challenging the judicial rulings made during the process of reviewing of her application for the revocation of the security measure.

### **THE ASSESSMENT OF THE COURT**

The Constitutional Court examined the case concerning the right of access in relation to the restriction of personal liberty. It noted that the applicant turned to the High Court to challenge the lower courts' interpretation of the Criminal Procedure Code regarding the duration of the “house arrest” measure and its revocation, presenting arguments with constitutional implications. Although the High Court formally resolved the case by dismissing the appeal, it did not substantively evaluate the grounds raised, particularly whether the lower courts, due to their interpretation of procedural law, had unlawfully restricted the applicant's personal freedom beyond the legal deadlines. The High Court's approach was also inconsistent with the unifying decision on judicial case-law in this matter. By failing to review the legality of

## **Procedural rights**

The interpretation from the High Court of the legal binding provisions in the course of the assessment process of candidate magistrates for their promotion procedures (Judgment no. 24, of 09 April 2024 - Klodiana Veizi)

Even though the applicant's main claim during judicial proceedings concerns the occurrence of "serious procedural violations", which were alleged to have influenced her overall evaluation, the Courts did not assess whether these violations fall within the concept of "serious violations" of a procedural nature. The High Court, in exercising its function as a court of law, had the duty to definitively interpret the legal provisions, particularly in relation to the judicial jurisdiction for overseeing the activities of the High Judicial Council (HJC).

### ***THE ASSESSMENT OF THE COURT***

The Constitutional Court reviewed the case in the context of substantive access to justice related to the standard of judicial reasoning. It found that the applicant's primary claim was based on alleged "serious procedural violations," specifically the failure to adhere to legal and statutory provisions establishing the methods and indicators for the quantitative and qualitative evaluation of a judge's work, which had not been applied during the evaluation conducted by the HJC. The Courts had not assessed whether these alleged violations constituted "serious procedural violations," which would be the sole grounds for challenging the evaluation process.

The High Court, in its role as a court of law, was obliged to define the concept of "serious procedural violations" by providing a definitive interpretation of the legal provisions

and clarifying the scope of judicial jurisdiction in reviewing the HJC's activities, however it failed to reason its ruling in this regard. The approach taken by the Administrative College of the High Court raises concerns regarding the right to due process as guaranteed under Article 42 of the Constitution, particularly regarding substantive access to justice, which should be meaningful and not merely formal.

### ***FACTS***

The applicant applied in the procedures opened by the HJC for promotion to the High Court for several vacancies. Upon conclusion of the procedures, the HJC approved the report on the applicant's ethical and professional evaluation, rating her overall performance as "very good." The applicant appealed to the Administrative Court of Appeal, which dismissed her lawsuit. The Administrative College of the High Court overruled the applicant's appeal on the grounds that the claims raised did not relate to serious procedural violations. The applicant then filed a constitutional complaint, alleging violations of the right to due process in multiple aspects, as well as breaches of the principles of legal certainty and equality before the law.

## Procedural rights

Criteria for assessing the unreasonable length of proceedings in the appellate court in view of the interest of the minor child (Judgment no. 37, of 07 May 2024 - Bardhoke Bicaku)

With regards to the significance of what the applicant is at risk of losing, “personal and vital interests” also include the interests of her minor child with disabilities, which necessitate prioritizing the review of the case, especially when the subject of the dispute involves financial claims.

### THE ASSESSMENT OF THE COURT

In evaluating the claim regarding the failure to adjudicate the case within a reasonable time, the Court found that the applicant was not responsible for the delay in the proceedings. Additionally, the case does not present any complexity, as it concerns the compensation for material and moral damages, as well as necessary expenses resulting from negligent medical treatment. Regarding the conduct of the authorities, the delay in the adjudication of the case was attributed to the high workload of the Court, caused by the implementation of judicial reform. Concerning the significance of what the applicant stands to lose, after conducting an evaluation of medical documentation and necessary examinations, the Superior KMCAP determined that the applicant's daughter no longer qualified for paraplegic status but would receive first-group disability benefits with a caregiver.

In line with European Court of Human Rights (ECtHR) jurisprudence, the Court ruled that the applicant's case, due to its nature, involving “personal and vital interests,” including the interests of her minor child with disabilities, requires priority review, especially when the subject of the dispute involves financial claims. The Court also considered that the applicant claimed to be in a difficult economic situation and acknowledged that ensuring a minor child's right to a healthy quality of life should be a

primary concern for all institutions, particularly decision-making authorities directly affecting their care and well-being. Given that almost three years have passed since the case was registered, the systemic judicial backlog cannot be considered a fundamental justification for the delay of proceedings.

### FACTS

The applicant is the mother of a three-year-old girl diagnosed with “paraplegia,” for which the Medical Commission for Determining Work Ability (KMCAP) granted her the status of a paraplegic. Even upon reassessment by the First-Level KMCAP, the child was maintained under the same status. However, this decision was later overturned by the Superior KMCAP, which revoked the paraplegic status and only recognized the right to receive disability benefits. Disagreeing with this decision, as it worsened her minor daughter's situation, the applicant filed a lawsuit before the Court. The Administrative Court of First Instance dismissed the claim. Following the applicant's appeal, the case was registered at the Administrative Court of Appeal. While awaiting for a hearing date, the applicant submitted a request to expedite the process at the Court of Appeal and subsequently approached the High Court with an application to acknowledge the violation of the reasonable time for adjudicating the case, which was rejected. The applicant then turned to the Constitutional Court with an individual constitutional complaint seeking the annulment of the High Court's decision and recognition of the violation of the reasonable time for adjudication in the Administrative Court of Appeal.

## Procedural rights

**Finding of a violation of reasonable time for reviewing the case related to procedures for election to the Academic Senate of the University with a four-year term (Judgment no. 65, of 02 October 2024 - Agred Tafaj)**

The right being claimed for protection concerns election to the Academic Senate of the University of Tirana, which can only be realized within a specific timeframe, namely, within the four-year period corresponding to the term of the elected Senate. The length of proceedings in the applicant's case was crucial for the recognition and potential exercise of this right. Therefore, the prolonged length of proceedings resulted in a situation where the claimed right, even if judicially recognized, would be rendered meaningless.

### THE ASSESSMENT OF THE COURT

The Constitutional Court examined the claim on a violation of the right to trial within a reasonable time, analyzing the case specific circumstances in light of the criteria established by constitutional jurisprudence. The Court found that the applicant was not responsible for the delay in the Court of Appeal proceedings. With regards to the complexity of the case, the matter was administrative in nature, concerning only partial invalidation of administrative acts related to the evaluation and ranking of two candidates for the Academic Senate, and thus was not particularly complex.

With regards to the conduct of the authorities, the delay of proceedings was linked to the considerable backlog of the Court of Appeal. As to what is at risk for the applicant, the Court noted that membership in the Academic Senate lasts four years, yet more than two years had passed since the First Instance Court's ruling in favor of the applicant's registration as a Senate member. Consequently, a delayed

review of the case prevented the applicant from effectively exercising the right to hold office, rendering the final judgment ineffective.

Given that the realization of the right is tied to a fixed time, this timeframe is determinative of the right itself. For these reasons, the duration of the applicant's case was crucial to recognizing and exercising the right, and the prolonged judicial process rendered the claimed right meaningless, even if ultimately recognized by the courts.

### FACTS

The applicant was registered as a candidate from the student body for the elections to the Academic Senate of the University of Tirana. Following the elections, the applicant was not declared a winner. The Institutional Electoral Commission's decision was upheld by the Appeals Commission. The applicant filed a lawsuit before the Court challenging the administrative decisions issued at the conclusion of the electoral process. The Administrative Court of First Instance in Tirana partially upheld the application, annulling the administrative decisions related to the applicant and two other candidates and ordering the registration and declaration of the applicant as a member of the Academic Senate. Third parties involved in the case filed an appeal against this ruling which was registered in the Administrative Court of Appeals. The applicant submitted an application for an expedited trial and subsequently turned to the High Court, asking it to find a violation of the reasonable time and ensure an expedited review by the Court of Appeal. The High Court dismissed the application. The applicant then filed a constitutional complaint with the Constitutional Court, seeking the annulment of the High Court's ruling, a finding of a violation of reasonable time, and an expedited review of the case by the Court of Appeal.

## **Procedural rights**

**The right to appeal against a decision of the court for imposition of a fine on the legal representative of a party in judicial proceedings (counsel) (Judgment no. 22, of 04 April 2024 - Ahmet Jangulli)**

While the right to appeal is recognized only to the parties involved in the litigation, the fine was imposed on the applicant at his capacity as the legal representative of one of the parties, leaving him with no opportunity to appeal the fine decision. Meanwhile, the challenge of this intermediate decision, along with the final verdict, would have depended on the will of the party he represented. Consequently, the applicant cannot be required to exhaust remedies that do not guarantee effectiveness in protecting the alleged violated right.

denial of his right to a substantive constitutional appeal. However, the Court concluded that the applicant lacked *ratione materiae* legitimacy regarding his claims. The imposition of the fine was a procedural measure applied in accordance with existing legal provisions, aimed at ensuring proper and orderly functioning of the judicial process, specifically to prevent the abuse of procedural rights in the criminal case where the applicant was acting as a legal representative. The applicant failed to demonstrate that the contested decisions established any civil rights or obligations. Given the nature of the fine, its intended purpose, and its amount, it was considered that it did not infringe or interfere with the applicant's constitutional rights.

### ***THE ASSESSMENT OF THE COURT***

With regards to exhaustion of legal remedies, the Constitutional Court, while acknowledging the intermediate nature of the decision imposing the fine, assessed whether the contested decisions could be considered final for the purposes of constitutional adjudication. Although the applicant was not a party to the main proceedings, the fine was imposed on him as a legal representative, directly affecting him. Moreover, the decision was appealed to higher courts, which ruled on the applicant's claims. On the other hand, the right to appeal both the intermediate and final decisions is recognized only for the parties in litigation, whether acting personally or through a chosen representative. Given that the applicant was not a party to the proceedings in which the fine was imposed and was also excluded as a legal representative, he had no means to appeal the final judgment, and, as a consequence, the fine decision as well. This meant that challenging the fine decision would have depended solely on the complainant, A.B. As a result, there was no guarantee that the main proceedings could remedy the consequences of the intermediate decision. Therefore, it was determined that the applicant had no other means to challenge the fine decision, and excluding him from constitutional review would have resulted in

### ***FACTS***

The District Court of Dibër reviewed the prosecutor's request to dismiss the criminal proceedings initiated based on the complaint of citizen A.B. against several municipal and Property Registration Office employees in Bulqizë. During the trial, the applicant was represented by his counsel. The prosecution requested the applicant's exclusion from representation due to a conflict of interest, as he had previously served as a judge in a civil property case where the complainant was a defendant. The Court accepted the prosecutor's request. Subsequently, the applicant submitted a request on behalf of the complainant for the disqualification of the judge who had found the conflict of interest. The Court rejected the application, deeming it inadmissible as it was filed by an unauthorized person, and fined the applicant with 10,000 ALL for abuse of the legal process. The complainant, A.B., through the applicant, filed an appeal, which was dismissed by the Tirana Court of Appeals on the grounds that the intermediate decision could only be appealed along with the final judgment. The applicant then lodged a recourse to the High Court, which ruled against its admission. The applicant subsequently filed a constitutional complaint challenging these rulings.

## Procedural rights

The High Court's fine imposed on a state attorney for filing an abusive recourse as a representative of the party in trial (Judgment no. 72, of 17 October 2024 - Dashamir Alsula)

Even though imposing a fine for abuse of rights in judicial proceedings is a procedural measure aimed at ensuring the proper administration of justice and preventing misuse of rights, courts of general jurisdiction have an increased duty to clearly justify their rulings. In addition to resolving the case, they must explicitly indicate not only the applicable law for imposing the fine, but also the specific factual basis explaining why a particular behavior constitutes an abuse of rights.

### **THE ASSESSMENT OF THE COURT**

The Constitutional Court reviewed the case in light of the reasoning standard for judicial rulings. It found that the High Court failed to explain the lack of merit and abusiveness of the appeal, despite it being formally and substantively correct and well-argued. When imposing such fines, courts of general jurisdiction have an increased duty to clearly indicate not only the applicable law, but also the specific facts that justify why a particular behavior constitutes an abuse of rights. The High Court confined itself only to the interpretation of Article 34, paragraph 1 of the Code of Civil Procedure, without linking its application to the circumstances of the case. Instead, it only noted that the appeal lacked grounds as stipulated in Article 58 of Law No. 49/2012.

While the High Court's reasoning regarding the evaluation of the appeal's grounds was reflected in only four paragraphs, which appear to be formulated in a standard manner, the explanation of when Article 34, paragraph 1 of the Code of Civil Procedure applies

was elaborated in eight paragraphs. These paragraphs provide a detailed explanation of the applicable law, the procedure for imposing and appealing the fine, yet they fail to justify why the specific appeal constituted an abuse of rights, why imposing a fine was necessary, and how this case differed from numerous other cases where the High Court rejected appeals for lack of grounds without imposing fines for abuse of rights. The Court reasoning appears to be merely formal in a graphical and structural sense, making it seem artificial.

### **FACTS**

The applicant serves as a state attorney assigned to the Ministry of Interior, pursuant to the Law On State Advocacy. In a judicial case where the State Police Directorate was the defendant, the applicant signed an recourse on behalf of this party, contesting the decision issued against it. The General State Attorney submitted the appeal to the Administrative Court of Appeal, which then forwarded it to the High Court. The High Court rejected the appeal because it did not contain the grounds as stipulated in Article 58 of Law No. 49/2012 and imposed a fine of 50,000 ALL on the applicant under Article 34, paragraph 1 of the Code of Civil Procedure. The applicant filed an appeal with the High Court for the revocation of the fine, but the Court denied it. Consequently, the applicant turned to the Constitutional Court to challenge the judicial rulings.



## Procedural rights

Interpretation of the res judicata principle by the High Court with regard to the judicial processes which, although with the same subject matter and legal basis, are different in relation to the legal grounds raised (Judgment no. 75, of 28 October 2024 - Avenir Ballvora)

Dissenting opinions of a judgment, as long as they do not affect constitutional rights but serve the transparency of court activities, are not subject to review by the Court under Article 131, paragraph 1, letter "f" of the Constitution. The High Court ruled to dismiss the case based on the principle of res judicata, even though the legal proceedings, despite having the same object and legal basis (the invalidation of the will), differed in terms of the legal grounds for the claims. The High Court did not provide a final resolution to the applicant's claim, as its interpretation of res judicata was not in line with the constitutional reasoning standards.

### **THE ASSESSMENT OF THE COURT**

With regards to the *ratione materiae* legitimacy, the Court noted that the applicant's claims that the dissenting opinion of the judge is not duly notified him, that it was not published in the website of the High Court and that it is contradictory and incoherent, cannot be considered by the Court, in the understanding of Article 131, paragraph 1, letter "f" of the Constitution, because they bring no consequences to the constitutional rights, but instead serve only for transparency of the activity of the courts. On the merits, the Court assessed the claim in the context of the right to access justice and the standard of judicial reasoning. The Court reviewed the two legal proceedings challenging the validity of the will, which the High Court treated as res judicata. The first application (filed by the testator's sister) was based on Articles 360 and ensuing of the Civil Code and challenged the will solely on the grounds that it violated the legal reserve, because the applicant was unable to work and was in charge of the heir. Different from what submitted by the High Court, neither that application nor the additional explanations submitted by the applicant before the court of first

instance, contained any claims that (the house) could not be disposed in favor of the interested subject. That judicial proceeding ended with dismissal of the case on grounds of non-infringement of the legal reserve, while no other ground appears to have been raised in the first instance on the will invalidity.

Although the testator's sister has claimed that the will beneficiary (the interested subject) was not included in the circle of heirs, therefore lacked the capacity to inherit, in retrial proceedings the Court of Appeal ruled that these claims were not raised with the court of first instance, which considered only what was asked by the applicant. The High Court decided not to admit the appeal against the Court of Appeal judgment. Consequently, the claim alleging the will invalidity beyond the circle of heirs is not raised in the application putting that court in motion and that claim has not been finally settled by the court. In the meantime, the individual constitutional appeal procedure is set in motion by the applicant, who asks for the invalidity of the will of the testator, based on Articles 374, 377 and 379 of the CC.

In light of the above, the Court found that although the two legal proceedings have the same object and the same legal basis, they differ in terms of the legal causes of the applications. The first lawsuit was based on the legal cause of infringement of the legal reserve; whereas the second lawsuit was based on the legal cause of ownership by someone beyond the order of heirs, in violation with the law. The High Court's reasoning contained an evident factual error, as it wrongly concluded that the two lawsuits had the same legal grounds. This led to a legal misinterpretation of res judicata, preventing the applicant's claim from being resolved.

Cease of trial led to the lack of a final solution of the applicant's claim on the will invalidity, in the conditions that High Court misapplied the principle of res judicata, causing the applicant's claims to remain unresolved. The court's reasoning contained objectively unjustifiable factual and legal errors, resulting in an incorrect legal interpretation that denied the applicant a fair settlement of the dispute.

### **FACTS**

The original owner of a residential house in Tirana donated the property to an individual (first donation). In 1996, the recipient donated the house to a second individual (second donation), who, in 1998, donated it to the applicant (third donation). The donation acts were sequentially registered, and in 1998, the property was legally registered under the applicant's name. In 2000, the original owner made a will, transferring ownership of the house to the interested party, who registered the property in 2004 based on a testamentary inheritance certificate.

The right to property ownership became the subject of five court proceedings, two of which were related to challenging the validity of the will. More specifically, in 2005, the sister of the testator challenged the will, arguing that it violated the legal reserve, as she was incapable of working. The First Instance Court dismissed the claim, ruling that the legal reserve was not infringed because the plaintiff had not lived with the testator for at least one year before her death. The ruling was upheld by higher courts, reasoning that the plaintiff had not raised any other invalidity claims beyond the legal reserve.

In 2013, the applicant also filed a lawsuit seeking the

nullification of the will and the obligation of the interested subject to pay damages for using the asset, arguing that: (i) the interested party was not a legal heir; (ii) the applicant had actually resided in the house before moving to the U.S.; (iii) the applicant was the heir of the testator's sister; (iv) the will is null and void because the testator was not the legal owner of the house when drafting the will; (v) the will violated the legal reserve of the testator's sister, who was incapacitated to work and depended on her; (vi) the interested subject unlawfully possessed the house and should pay damages for its use. The First Instance Court dismissed the lawsuit, but the Court of Appeal declared the will invalid, while dismissing the claims regarding ownership recognition and payment of damages because of the property use. However, the High Court overturned the appeal decision, ruling to dismiss the case regarding the will validity under the principle of *res judicata*, as the issue had been previously decided in the case filed by the testator's sister. The Court upheld the appeal ruling on dismissing the remaining claims. The applicant filed a constitutional complaint, challenging this judicial process before the Constitutional Court.

# Statistics on the judicial activity of the Constitutional Court

## Applications filed with the Constitutional Court during 2024

During 2024, the Constitutional Court received a total of **520 applications**, of which 427 applications were filed and registered during 2024, and 93 were a backlog carried over from 2023.



The Court has respected all procedural deadlines for the applications, in accordance with the provisions of the Organic Law of the Court, and of the Rules of Procedure of the Constitutional Court.



The average time used by the Court to review cases for final judgments is **eight months** and for inadmissibility decisions is **three months**.

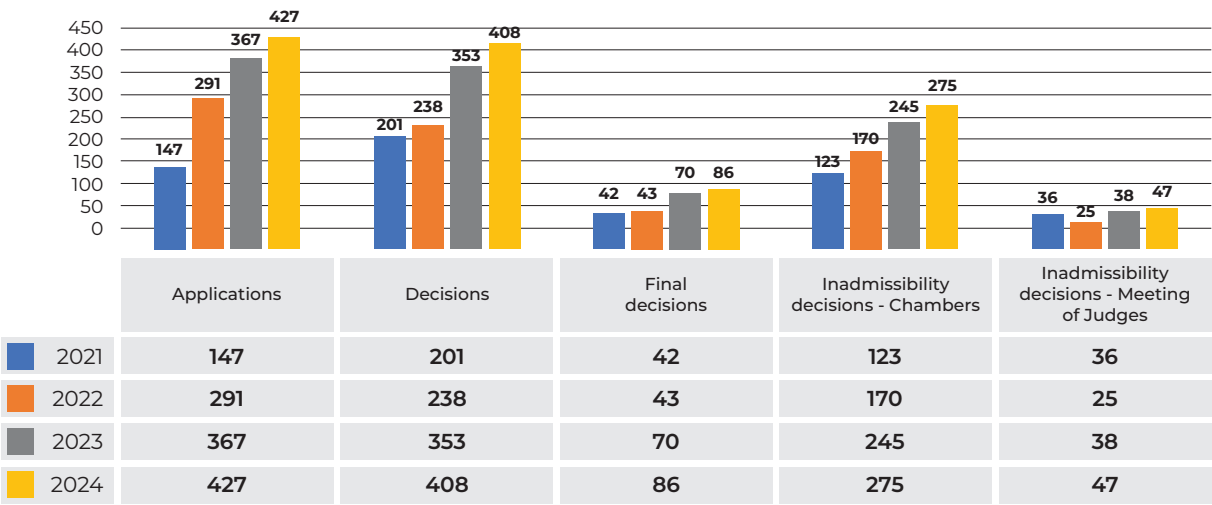


Currently, the Constitutional Court does not have **any backlog of cases**.

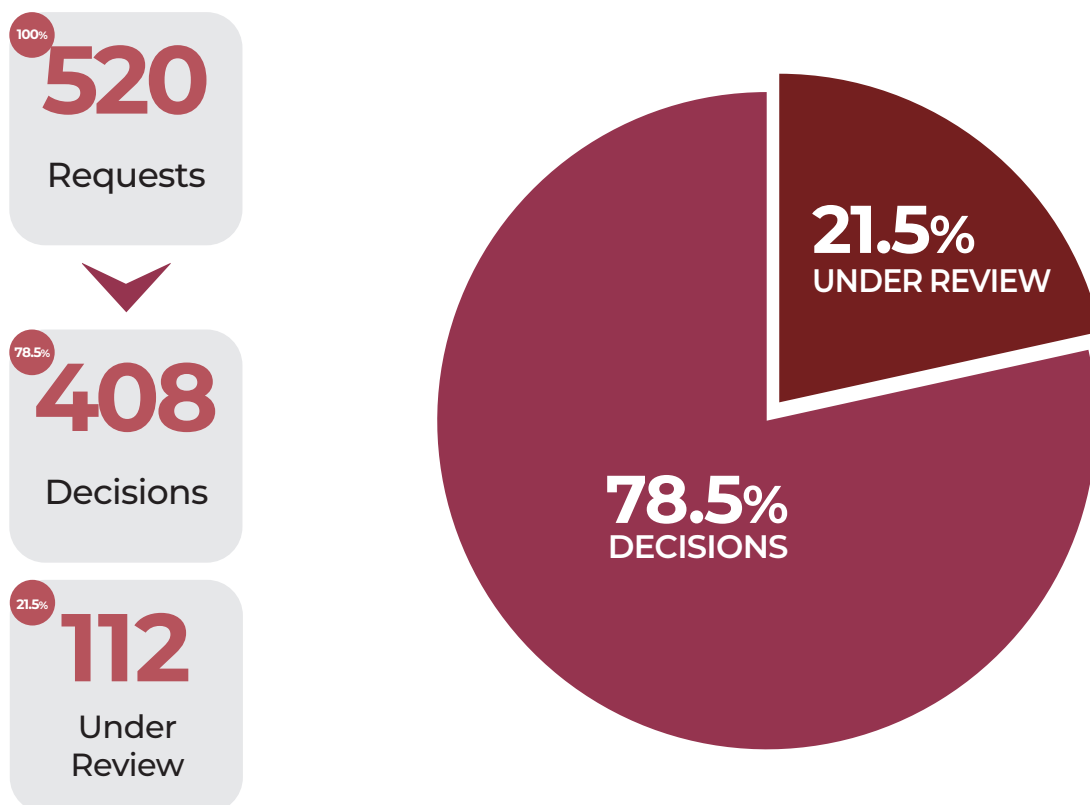


It is worth noting that **no application for delays of proceedings** has been filed with the Constitutional Court.

Comparative table for the period of 2021-2024 in relation to the applications filed with the Constitutional Court, as well as its decision-making

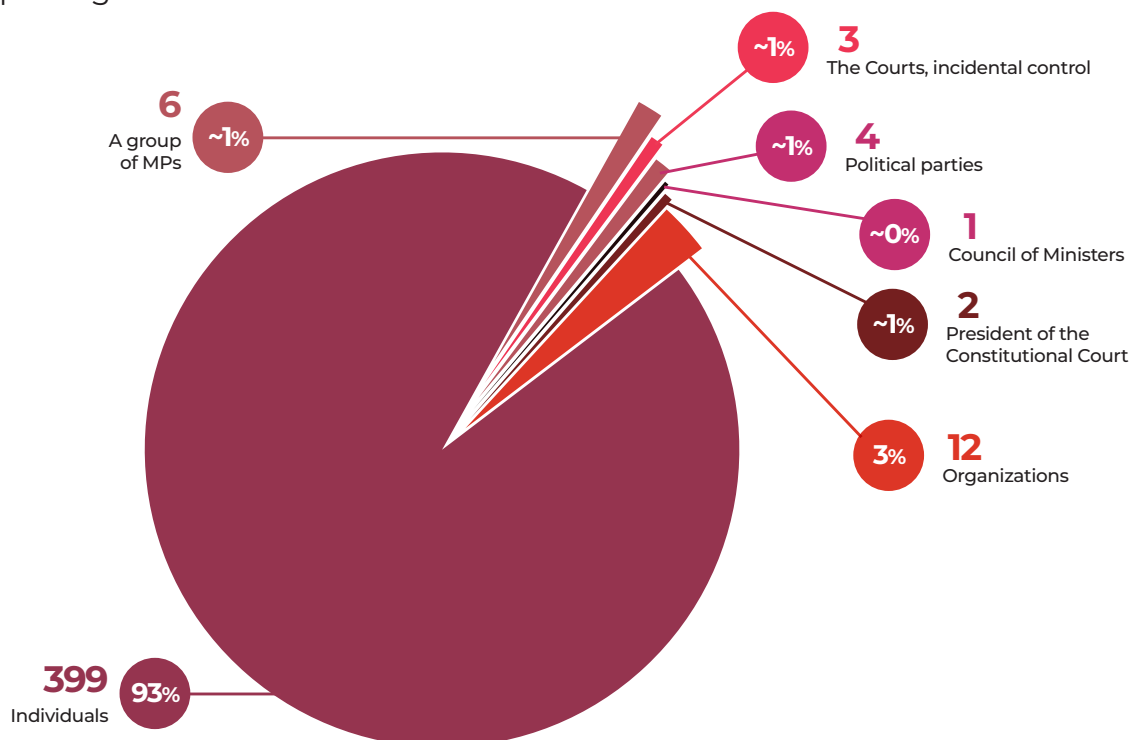


During the year 2024, the Constitutional Court has received 520 requests and has issued 408 decisions

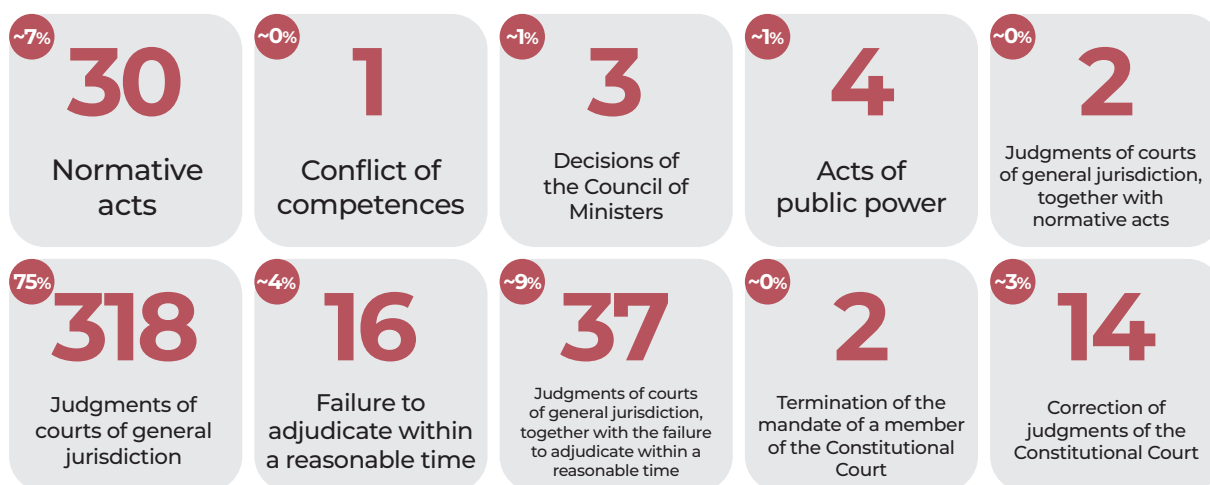


### Applications according to the subjects and the object matter:

Applications **according to subjects** putting the Constitutional Court in motion:



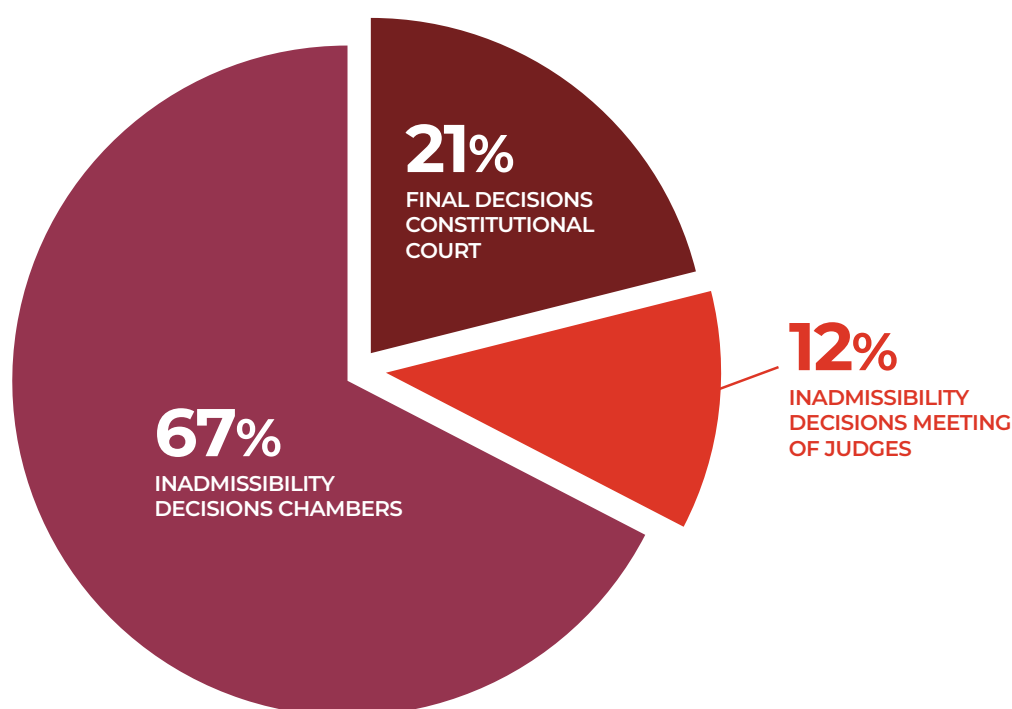
Applications according to **the object matter:**



## Judgments of the Constitutional Court during 2024

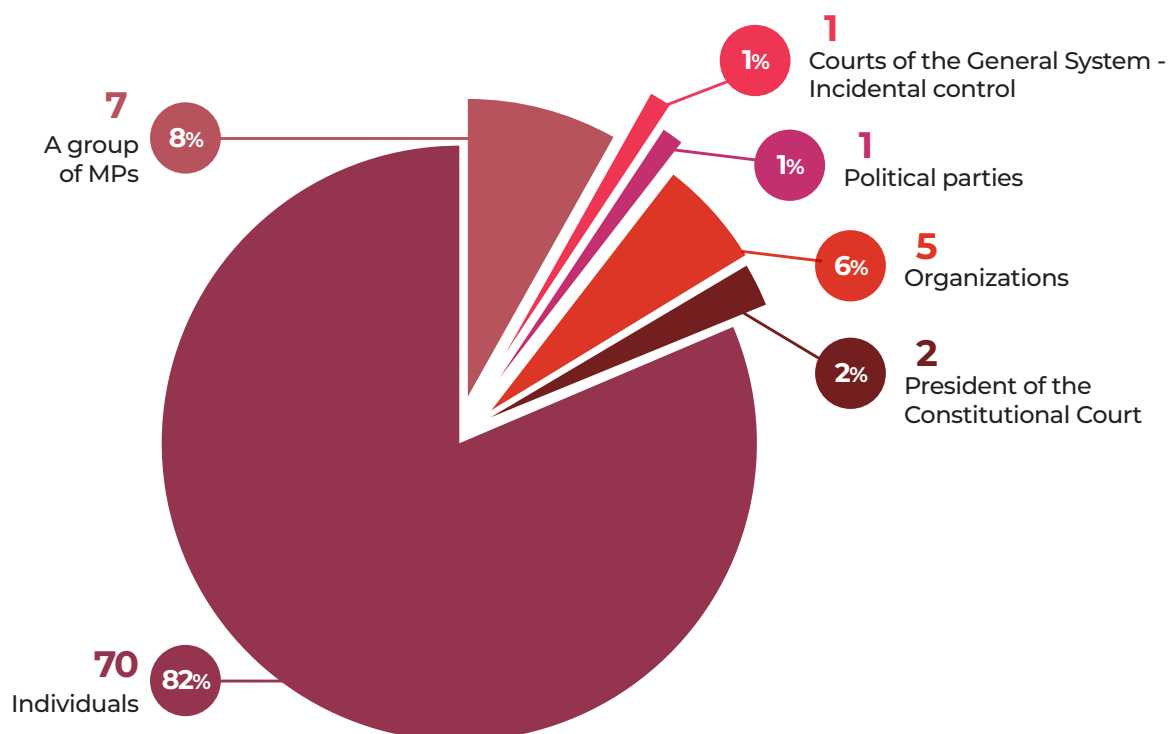
During 2024 the Constitutional Court has rendered 408 decisions, classified as follows:

- 86 Final judgments - Constitutional Court.
- 47 Inadmissibility decisions - Meeting of Judges.
- 275 Inadmissibility decision - Chambers.



## Final Court judgements according to subjects and the object putting the Constitutional Court in motion:

Final Court judgements according **to subjects** putting the Constitutional Court in motion:

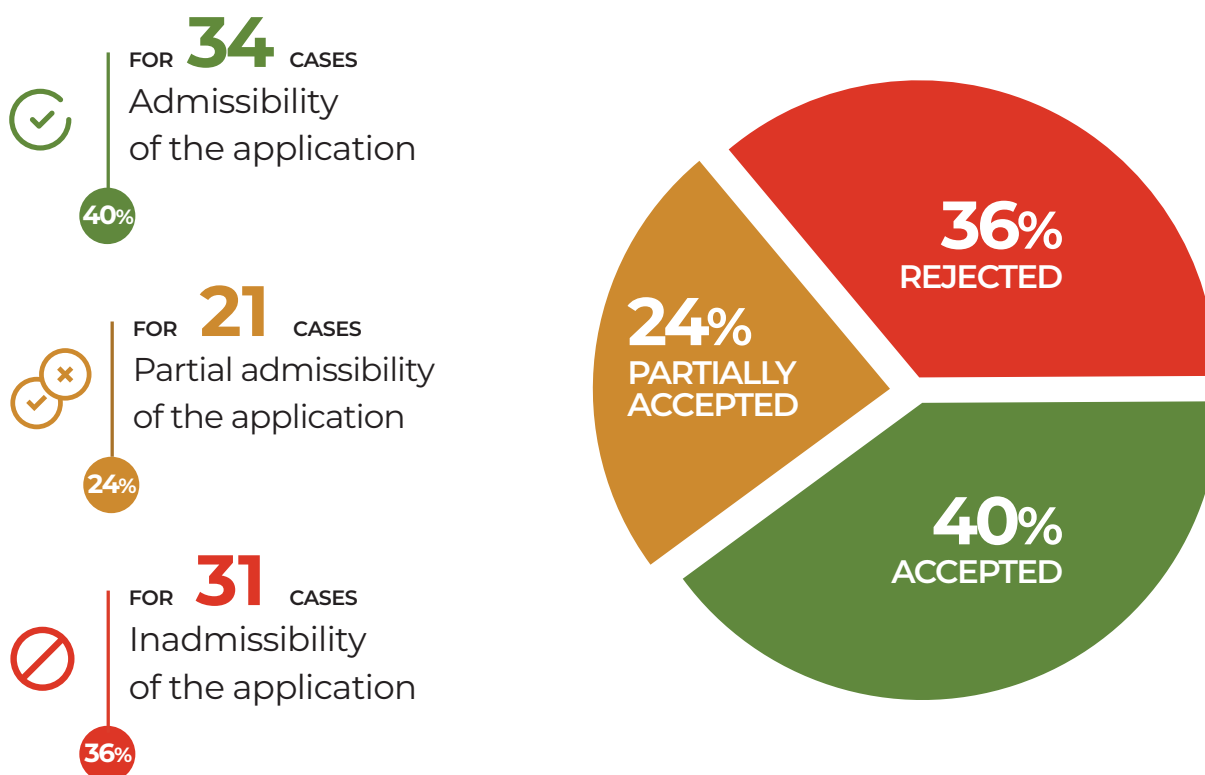


Final Court Judgments according **to subject** matter of the application:

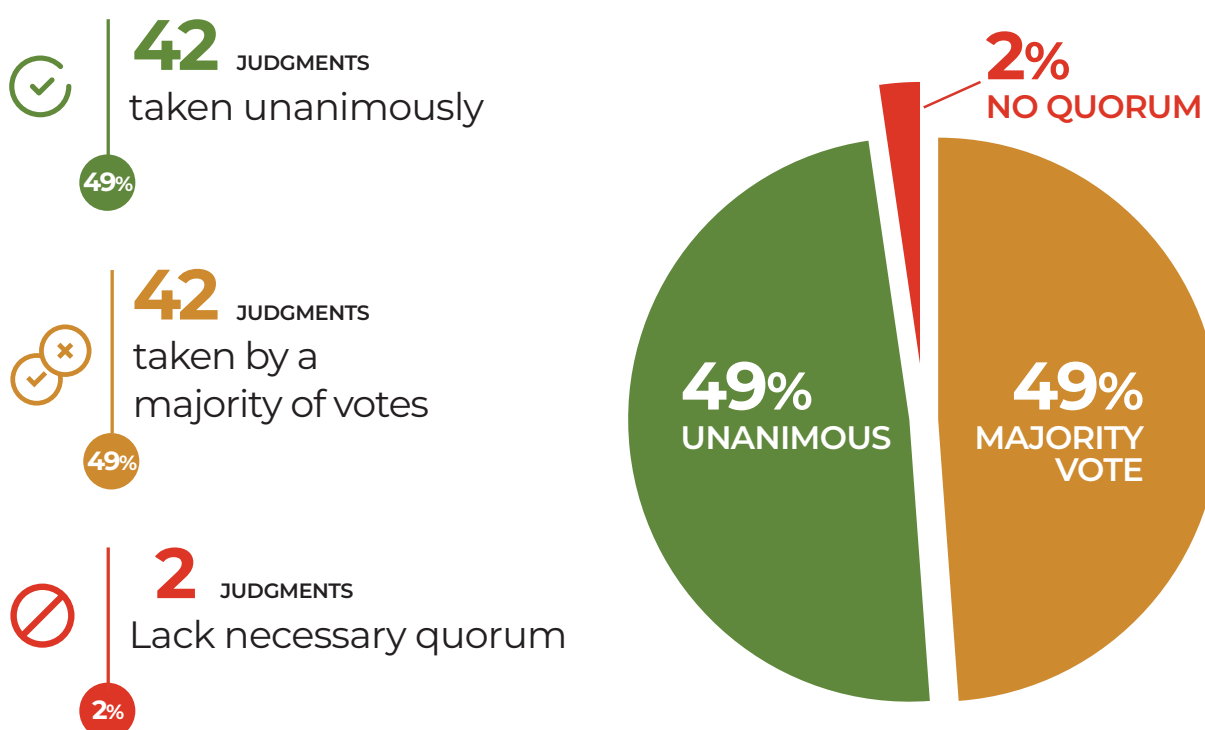




### Final Court Judgments grouped according to the disposition of judgments:

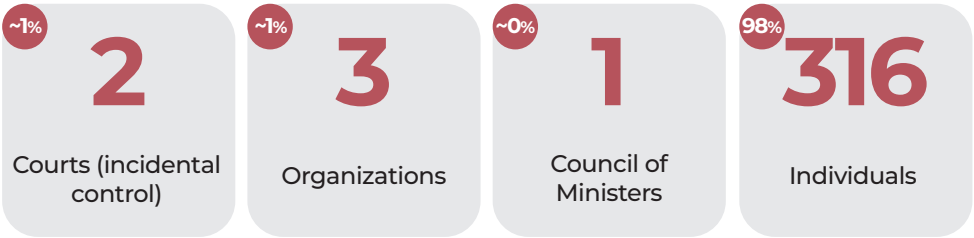


### Final Court Judgments grouped according to the mode of voting:



Inadmissibility decisions according to subjects and the object putting the Constitutional Court in motion:

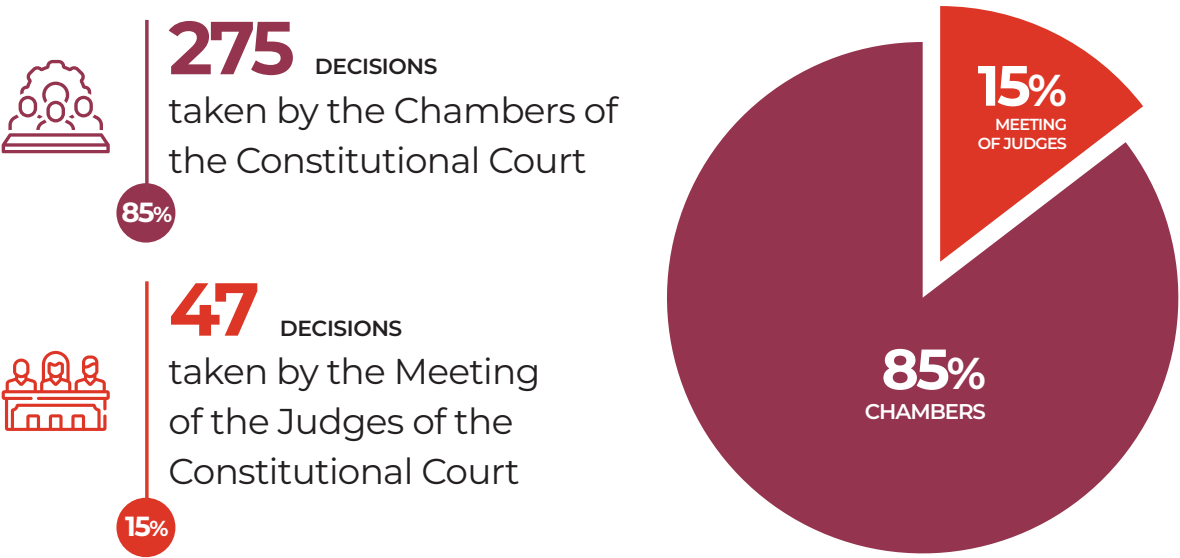
Inadmissibility decisions according **to subjects** putting the Constitutional Court in motion:



Inadmissibility decisions according **to subject** matter of applications:



Inadmissibility decisions rendered during 2024 by the Chambers and the Meeting of Judges:



# Events and international relations

## The Constitutional Court of the Republic of Albania is elected the Presiding Court of the Conference of the European Constitutional Courts for 2024 - 2027



At the 19th Congress of the Conference of European Constitutional Courts (CECC), which took place on 22-24 May 2024 in Chisinau, Moldova, the member courts voted and elected the Constitutional Court of Albania as the Presiding Court of this Conference for the period of from 2024 to 2027, and as the organizer of its upcoming 20th Congress in Albania.

This is the first time that the Constitutional Court of Albania assumes the presidency of the Conference of European Constitutional Courts. By voting for the Constitutional Court of Albania, the member courts have appreciated that the Constitutional Court of Albania not only shares common values and principles with its European counterpart institutions in the field of constitutional justice, but also embodies the will and full commitment to successfully fulfill the important task of presiding over the Conference in the course of the 2024-2027 period.

This presidency is a very significant indicator of the efforts of the Constitutional Court of Albania to properly fulfill its mission and contribute to constitutional justice, to always be an active member of the global community of Constitutional Courts with the aim of promoting advancement of democracy, rule of law, and freedoms and fundamental rights of the individual.

## Messages and remarks by the President of the Constitutional Court, in international events during 2024

Speech by the President of the Constitutional Court, Holta Zaçaj, at the meeting of the Byro of the Association of the Franchophone Constitutional Courts (ACCF), held in Tirana, on 1 – 2 February 2024



### **Message quoted from the speech:**

“Such international events are an excellent opportunity not only to further strengthen bilateral cooperation, but also to raise the dialogue between judges to a higher level, in order to support the goals for which this Association was created – namely the fundamental values and principles of democracy and the rule of law.”



## Speech by the President of the Constitutional Court, Holta Začaj, held in the event organized by the World Jurist Association (WJA), held on 4 March 2024, in Spain



### ■ Message quoted from the speech:

“Only an independent Court, enjoying assurances on the inviolability of the mandate of its members, can be considered a Court that administers constitutional justice, in accordance with constitutional principles.”

“In terms of guaranteeing the principle of the rule of law, the Constitutional Court is key as long as constitutional oversight is one of these mechanisms that help achieve this goal.”

## Speech by the President of the Constitutional Court, Holta Začaj, at the 60th anniversary of the Constitutional Court of North Macedonia, held on 14-15 March 2024 in Skopje



### ■ Message quoted from the speech:

“Freedom of expression and opinion is considered one of the most fundamental cornerstones of a democratic state. It plays a crucial role in guaranteeing transparency and accountability as important elements for the protection of human rights and democracy in every country. Without freedom of expression there can be no pluralism, tolerance and political free will, and without the latter there can be no democratic society. However, it is important to remember that freedom of expression is not unlimited and must be balanced with other rights and interests, such as the protection of human dignity, public safety and the prevention of incitement to hatred or violence, the right to privacy, etc. The responsible enforcement of this right includes respecting the rights of others and avoiding the abuse or irresponsible use of one’s words.”

Speech (video conference) by the President of the Constitutional Court, at the 6th Congress of the Association of the Asian Constitutional Courts and Euqivalent Institutions, held on 17 – 21 Septemver 2024, Bangkok, Kingdom of Tailand



■ **Message quoted from the speech:**

“... the discussions on the theme of this Congress – “The Role of Constitutional Courts and Equivalent Institutions in Strengthening Constitutional Justice for a Sustainable Society” – are a difficult and complex task requiring constant diligence and commitment, because it is an ongoing process, which also requires collective wisdom and serious reflection. I firmly believe that the spirit of open discussions and sharing of common experiences during the proceedings of this Congress will pave the way to valuable lessons on issues and concerns of Constitutional justice, in service of strengthening the rule of law and democracy, protection of fundamental human rights and freedoms, which will make this Congress a very successful event.”



**Speech by the President of the Constitutional Court, Holta Zaçaj, at the Second Annual Conference of the Balkans Constitutional Courts' Forum, held on 23-25 October 2024 in Prishtina, Kosovo**



■ **Message quoted from the speech:**

“While constitutionalism is an expression of the rule of law and constitutional justice is its means of implementation, the essential challenge of our Constitutional Courts is to guarantee effective justice for our citizens through constitutional justice, so that constitutionalism is not decorative, which would be more dangerous than the absence of a constitutional system itself. Therefore, we must implement the Constitution, make it tangible and fight so that the supreme rules it carries are made tangible and do not remain decorative – that is simply a facade.”

**Speech by the President of the Constitutional Court, Holta Zaçaj, at the 7th Congress of the Constitutional Jurisdictions Conference of Africa (CJCA), held on 30 October – 2 November 2024 in Zimbabwe**



■ **Message quoted from the speech:**

“Constitutions, in many parts of the world, protect human dignity as a fundamental principle. This means that the rights to equality, freedom and protection from discrimination are based on respect for human dignity. Constitutional justice ensures that these rights are not just words on paper, but real safeguards that can be claimed and defended in Court. Through constitutional justice, human dignity becomes more than an idea; it becomes a guaranteed right. Human dignity is in fact the rationale and justification for the existence and essence of all human rights. By prioritizing human dignity, we can foster a more just and equitable society, where rights are not only protected, but also actively promoted.”

# Study visits

Visit of the judges of the Constitutional Court of Albania in the Federal Constitutional Court of Germany, Karlsruhe, 14 – 16 January 2024



The judges of the Constitutional Court of Albania paid a study visit to the Federal Constitutional Court of Germany. During this visit, the following topics were discussed in detail: individual constitutional complaints; constitutional review of normative acts; challenges in the communication and relations of Constitutional Courts with the public, as well as the relationship between the European Convention on Human Rights/European Court of Human Rights and national law/national Constitutional Courts.

Visit of the judges of the Constitutional Court of Albania in the United States of America, Washington D.C., 27 – 29 March 2024



During the visit to the United States of America, a delegation of Albanian judges held meetings with the Deputy Assistant Attorney General, Mr. Bruce Swartz, and the Principal Deputy Assistant Secretary of State for European and Eurasian Affairs, Ms. Yuri Kim, who expressed their willingness to continue the support provided by the American State for the successful implementation of the justice reform and building of trust in the Albanian judiciary. The Albanian delegation also held meetings with leaders of the American Bar Association (ABA), as well as with senior Albanian leaders and students at Georgetown University, School of Law.



## Visit of the judges of the Constitutional Court of Albanian in the Constitutional Court of Turkey, Ankara, 9 – 11 September 2024



Judges from the Constitutional Court of Albania paid a study visit to the Constitutional Court of Turkey, which highlight was the excellent cooperation existing between the two Constitutional Courts. During the visit, respective experiences were exchanged regarding issues of abstract and specific constitutional oversight, as well as individual constitutional complaints. Also, in the framework of this visit, the delegation of the Constitutional Court of Albania held meetings at the Court of Cassation and the Council of State of Turkey, where participants discussed about common challenges and specificities of each jurisdiction, the relations of the Constitutional Court with the High Courts in both countries, as well as the definition of the boundaries of ordinary and constitutional jurisdiction.

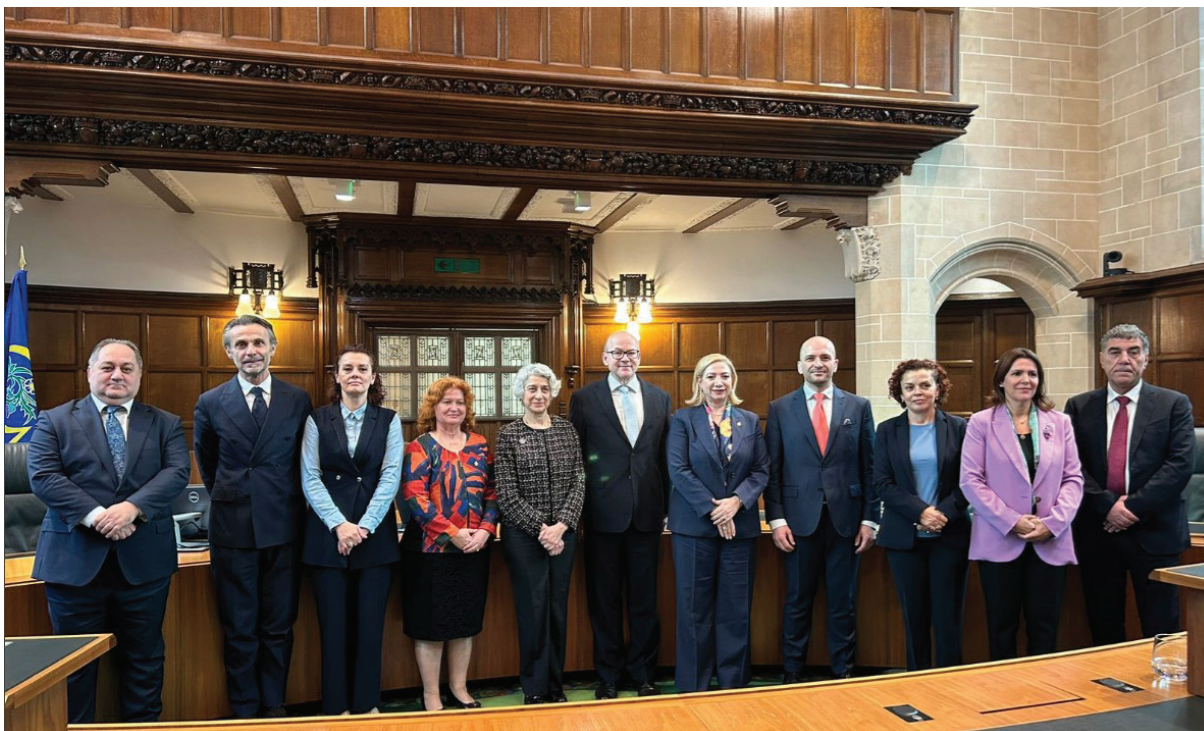
## Visit of a World Jurist Association delegation to Tirana, 5 - 8 October 2024



A delegation of the World Association of Jurists, led by Mr. Javier Cremades, President of the World Jurist Association and World Law Foundation, paid a working visit to Tirana. During the visit, the delegation held meetings with the body of judges of the Constitutional Court, with the President and members of the High Court, as well as with the President and representatives of the National Bar Chamber. The common denominator of the talks during these meetings was the importance of strengthening of the rule of law, protecting and guaranteeing fundamental human rights and freedoms for every democratic country. This common goal is also the cornerstone of the mission of this Association, a mission it has aimed to fulfill since its establishment, back in 1963, as a free and open forum, where judges, lawyers, and law lecturers from all over the world can work together to strengthen the rule of law and justice institutions under the slogan "For a world where law rules, not force".



Visit of the judges of the Constitutional Court of Albania to  
higher courts in United Kingdom, London, 10 – 11 October 2024



The body of judges of the Constitutional Court of Albania paid a study visit to the United Kingdom, during which they met with representatives of the Supreme Court and the Administrative Court of Appeal, as well as with representatives of the High Commercial Court. The visit aimed to expand knowledge on judicial processes and practices in the United Kingdom, on the application of common-law principles and the use of judicial precedent in decision-making.





## Visit of a delegation of the Constitutional Court of Kosovo to the Constitutional Court of Albania, 19 – 21 December 2024



In accordance with the Memorandum of Understanding signed between the Constitutional Court of the Republic of Albania and the Constitutional Court of the Republic of Kosovo, a delegation of the Constitutional Court of Kosovo, headed by the Court President, Ms. Gresa Caka Nimani, and composed of the body of judges, the Secretary General, as well as representatives of the administrative staff, conducted a working visit to Tirana, on 19 – 21 December 2024.

As part of the activities planned on this visit, on 20 December 2024, a working roundtable was organized between representatives of both Courts, with the aim of presenting and discussing the most prominent issues reviewed by each Court during 2024. The roundtable was opened with the welcoming remarks of the President of the Constitutional Court of Albania, Ms. Holta Zaçaj, and remarks of the President of the Constitutional Court of Kosovo, Ms. Gresa Caka Nimani, who appreciated the excellent institutional relations built on the principles of mutual respect, exchange of experiences and advancement of best practices that help in facing common challenges.



# Cooperation Agreements

In implementation of the objectives of the 2024-2026 Institutional Strategy, namely to increase and expand the cooperation of the Constitutional Court with domestic and international institutions (Specific Objective 1.4), during 2024, roundtable discussions were organized with various interest groups and several cooperation agreements were accordingly signed.

## The Constitutional Court of Albania signs a Cooperation Agreement with the Constitutional Court of Spain on 5 March 2024 in Madrid, Spain



This agreement is a commitment to further advance the exceptionally good relations of institutional cooperation existing over the years between the two Courts. The agreement paves the way to the organisation of many activities of common interest, such as sharing information on legal matters, jurisprudence and research materials; study visits of members of both institutions for exchanging their experiences; mutual cooperation on publications; seminars, conferences and other similar events promoting institutional cooperation.

The agreement was signed by the President of the Constitutional Court of Albania, Ms. Holta Zaçaj, and the President of the Constitutional Court of Spain, Mr. Cándido Conde-Pumpido Tourón.

## Rivitalisation of the Cooperation Agreement between the Constitutional Court of Albania and the Constitutional Court of Italy on 25 September 2024 in Rome, Italy



A delegation of the Constitutional Court of Albania, headed by the President of this Court, Ms. Holta Zaçaj, paid a two-day working visit to the Constitutional Court of Italy. During the visit, the delegation was received in an official meeting by the President of the Constitutional Court of Italy, highlighting the very good relations of bilateral cooperation existing between the two Courts, also promoted on



the basis of the Agreement on cooperation and mutual assistance in areas of common interest signed by the two Courts. The parties have also expressed their will and commitment to further strengthening the existing cooperation through the revitalization of the Cooperation Agreement signed in 2009, taking into account the closeness and similarity between our two constitutional and legal systems.

### **The Framework Agreement on Institutional Cooperation between the Constitutional Court of the Republic of Albania and the Albanian Bar Association signed on 19 February 2024 in Tirana**



The agreement aims to promote and support the common interest of both institutions in the development of legal thought, doctrine and scientific publications for the promotion of scientific research and building of capacities of legal practitioners, mainly through holding of joint and periodic scientific activities. These events will be in the form of scientific conferences, trainings, seminars and joint working tables, in the field of Constitutional Law, Human Rights and related rights. The agreement was signed by the President of the Constitutional Court, Ms. Holta Zaçaj, and by the President of the Albanian Bar Association, Mr. Maksim Haxhia.

# Participation in international events

Meeting of the Bureau of the Association of Francophone Constitutional Courts (ACCF) held on 1 – 2 February 2024 in Tirana



The Constitutional Court of the Republic of Albania has been a full member of the Association of Francophone Constitutional Courts (Association des Cours Constitutionnelles Francophones - ACCF) since 2002. In the framework of this accession, the Constitutional Court of Albania, in cooperation with the General Secretariat of the ACCF, organized for the first time in Tirana the meeting of the ACCF Bureau on 1-2 February 2024. Various organizational issues related to the smooth running of the activity of this Association were discussed at the meeting.

International Conference, Riga, Latvia, 29 February – 2 March 2024



The Constitutional Court Judges Marsida Xhaferllari and Fiona Papajorgji attended the International Conference dedicated to the 20th anniversary of Latvia's membership in the European Union, on the topic of "The Role of Constitutional Courts in the Realization of Common Values Uniting Europe".



Event organized by the World Jurist Association (WJA), 4 March 2024, Spain



The President of the Constitutional Court of Albania, Ms. Holta Zaçaj, attended the ceremony organized by the President of the World Jurist Association (WJA), Mr. Javier Cremades, in honor of Judge Anthony Kennedy, former member of the Supreme Court of the United States of America. In the framework of this event, the delegation of the World Jurist Association was also received in an audience by His Majesty King Felipe VI of Spain, who in recognition of the fundamental role of the Spanish Parliamentary Monarchy also received the “World Peace and Freedom Prize”.

International Conference on the 60th anniversary of the Constitutional Court of North Macedonia, 14-15 March 2024, Skopje



The President of the Constitutional Court of the Republic of Albania, Ms. Holta Zaçaj, and the member of this Court, Mr. Genti Ibrahimi, attended the International Conference organized on the occasion of the 60th anniversary of the establishment of the Constitutional Court of North Macedonia on the topic “Constitutional - judicial protection of freedom of thought and freedom of public expression of opinion”.

## XIXth Congress of the Conference of the European Constitutional Courts, Moldova, 21-24 May 2024



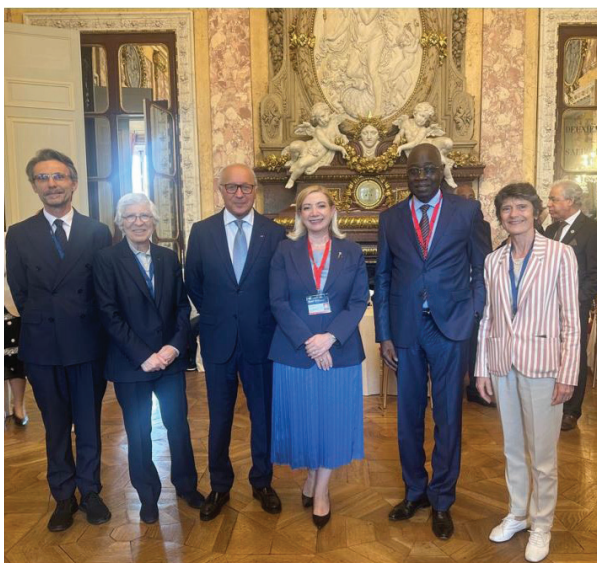
The President of the Constitutional Court of the Republic of Albania, Ms. Holta Zaçaj, and the member of this Court, Mr. Sandër Beci, attended the 19th Congress of the Conference of European Constitutional Courts on the topic “Forms and limitations of judicial constraint: the experience of Constitutional Courts”. At the end of the proceedings of this Congress, the Circle of Presidents – one of the governing bodies of the Conference – approved by a qualified majority of votes the candidacy of the Constitutional Court of Albania to be the presiding Court of this conference for the next three years and the organizing Court of its upcoming 20th Congress in Albania.

## Meeting of the Supreme Courts Network, Forum of the European Court of Human Rights, Strasbourg, 6 - 7 June 2024

Judge of the Constitutional Court of Albania, Ms. Elsa Toska, at her capacity as the representative of this court in the Supreme Courts Network (SCN) – a communication platform between national courts and the European Court of Human Rights, attended the 7th Forum of this Network on the topic “National courts and the challenges of resolving judicial conflicts on climate change”.



- Conference of the Presidents of the Constitutional Courts member of ACCF, 13 – 15 June 2024, Paris



The President of the Constitutional Court of Albania, Ms. Holta Zaçaj, and one of the judges of this Court, Mr. Gent Ibrahimimi, attended the 10th Conference of Presidents of Constitutional Courts member of the Association of Francophone Constitutional Courts (ACCF) on the topic “Constitutional Protection of Freedom of Expression”. The two-day conference took place at the headquarters of the French Constitutional Council and under the special patronage of the President of this Council, Mr. Laurent Fabius.

- Second Annual Conference of the Balkan Constitutional Courts Forum, Kosovo, 23 – 25 October 2024



The President of the Constitutional Court of the Republic of Albania, Ms. Holta Zaçaj, and one of the judges of this Court, Ms. Marsida Xhaferllari, attended the second annual Conference of the Balkan Constitutional Courts Forum on the topic “Evolutions in Contemporary Constitutional Justice: The Example of the Balkan Region”. The signing in October 2023 of the Memorandum for the establishment of this Forum aimed to promote cooperation and develop dialogue between the Constitutional Courts of the countries of the region, serving as a platform for the regular exchange of information and best practices in the field of constitutional justice.



## 7th Congress of the Conference of Constitutional Jurisdictions of Africa (CJCA), Zimbabwe, 30 October – 2 November 2024



The President of the Constitutional Court of Albania, Ms. Holta Zaçaj, at her capacity as the President of the Conference of European Constitutional Courts (CECC), attended the 7th Congress of the Conference of Constitutional Jurisdictions of Africa (CJCA) focused on the topic of “Human dignity as a fundamental principle and value: a source of Constitutional interpretation, protection and implementation of fundamental human rights”. The Congress, organised in Victoria Falls, brought together African Constitutional Courts and Councils, CJCA member and observer High Courts, the Austrian Constitutional Court and the Albanian Constitutional Court as special guests, as well as representatives from UNDP, the World Conference on Constitutional Justice, the European Commission for Democracy through Law of the Council of Europe (Venice Commission), and regional groups operating in the field of constitutional justice.

## Council on Constitutional Justice, Armenia, 14 – 15 November 2024



One of the Judges of the Constitutional Court of Albania, Ms. Marjana Semini, as well as the Legal Advisor and Liaison Officer of the Venice Commission Forum, Ms. Ela Elezi, attended the 21st meeting of the Joint Council on Constitutional Justice, which was preceded by a high-level international conference on “Implementation of Constitutional Court Judgments”. The events were organized in cooperation with the Venice Commission, the Constitutional Court of Armenia and the Department for the Implementation of Human Rights, Justice and Legal Cooperation Standards of the General Department of Human Rights and the Rule of Law of the Council of Europe.

## Solemn ceremony on the 60th anniversary of the establishment of the Constitutional Court of Montenegro, Podgorica, 4 November 2024

Judges of the Constitutional Court of Albania, Mr. Sandër Beci and Mr. Gent Ibrahimi, attended the festive activities held in the context of the 60th anniversary of the establishment of the Constitutional Court of Montenegro, organized in cooperation with the AIRE Center and the British Embassy in Podgorica.

## 12th School for Training and Human Resource Development, 30 September – 03 October 2024, Ankara



Representatives of the Constitutional Court of Albania attended the 12th Summer School program, organized by the Center for Training and Human Resources Development of the Association of Asian Constitutional Courts and Equivalent Institutions. The theme of this year's program was "Use of Information Technology and Artificial Intelligence in the Judicial System".



## Event of the Constitutional Court of Albania on the Code of Ethics for the employees of the Constitutional Court



On 8 November 2024, the Constitutional Court of Albania organized in Pristina, Kosovo, an event on the topic of “Discussion of the draft Code of Ethics for the employees of the Administration and Legal Service Unit of the Constitutional Court of the Republic of Albania.” This event was attended by the Cabinet of the President of the Court, the Secretary General, the advisors of the Legal Service Unit, the employees of the administration of the Constitutional Court, as well as representatives of the Constitutional Court of Kosovo, who shared their experience in the process of drafting this Code, also helping with their valuable insights and contributions.

# Events organised in Albania

In order to implement the Action Plan of the Constitutional Court for the period of 2024-2026, to strengthen trust in this Court through continuous communication and information of the public and the media, as well as the promotion of its activity (Strategic Objective 2), during 2024, joint round tables were organized with the entities that set the Constitutional Court in motion, as well as other actors operating in the field of human rights.

## Presentation of the Guide to the case-law of the Constitutional Court of Albania regarding individual constitutional appeals, 21 February 2024



The Constitutional Court of Albania, in cooperation with the OSCE Presence in Albania, organized an event to present a Guide to the Case-Law of the Constitutional Court on Individual Constitutional Appeals (1998-2023). The event was attended by senior representatives of justice institutions, the judicial system, lawyers, academics, and legal professionals, as well as representatives of partner international institutions and organizations.

In her speech, President Zaçaj stated that "Drafting of a guide of the constitutional case-law was a necessity and an instrument that the Albanian constitutional justice was missing. The guide is a testament to our national wealth of constitutional legal thought enshrined in the judgments and decisions of the Court. Many of such judgments have indisputable historical value and many others constitute cornerstones in Albanian law, contributing significantly to its development."

Ms. Clarisse Pasztory, Acting Head of the OSCE Presence in Albania, after noting the importance of the Guide, emphasized the support of the OSCE Presence for the Constitutional Court, as well as the commitment to the continuity of this support.



## Presentation of the Constitutional Court Guide with judges of Courts of various instances in the country



In the framework of the project “Increasing transparency and access to constitutional justice”, supported by the Swiss Confederation through the Embassy of Switzerland in Albania, the Constitutional Court of Albania, in cooperation with the High Judicial Council, organized a series of roundtable discussions with judges of courts of various instances on the presentation of the first guide to the Court’s case-law, entitled Guide to the Case-Law of the Constitutional Court on Individual Constitutional Appeals (1998-2023).

The organization of these roundtables aimed at exchanging opinions between practitioners, in order to ensure a further improvement of the guide in the future, with the ultimate goal of making it even more usable and useful. Judges from the Court of Appeal of general jurisdiction, the Court of First Instance of Tirana, the Administrative Court of Appeal, the Administrative Court of First Instance of Tirana and the Court of First Instance of Lushnje, as well as judges from various courts of first instance attended the roundtables.

During discussions with the judges, President Zaçaj stated that the Guide is an important instrument not only for legal scholars, but it is helpful to almost all actors of the justice system, and especially to judges, who, within the framework of the principle of subsidiarity, also deal with claims of a constitutional nature during trials. She also added that, by aiming to improve the quality of individual constitutional complaints, the Guide contributes to increased access of citizens to the Court and better protection of their fundamental rights and freedoms.

## Roundtable between the Constitutional Court and media representatives, 24 May 2024



In the framework of the project “Increasing transparency and access to constitutional justice”, supported by the Swiss Confederation through the Embassy of Switzerland in Albania, the Constitutional Court of Albania organized a roundtable discussion with journalists accredited to this Court, lecturers in the field of communication, editors, editors-in-chief and opinion writers of the press and visual media in the country. Participants in this event asked questions and held discussions on issues related to the relations between the Court and the media, highlighting various problems identified, and provided some valuable and interesting insights in finding mechanisms for improving, coordinating, and maintaining the positive relations of the Constitutional Court with the public in general and with the media in particular.

## Training on “Ethical Communication and Communication with the Public and Media”, 31 May 2024



In the framework of the project “Increasing transparency and access to constitutional justice”, the Constitutional Court of the Republic of Albania, in cooperation with the Swiss Development Agency organized a training on “Ethical communication and communication with the public and the media”, attended by the staff of the Legal Service Unit and the administrative staff of the Constitutional Court. During the 2-day training, the aim of which was to master ethical and public communication, the communication expert Ms. Arlinda Causholli, made a short presentation on understanding the role of ethics in public communication, bringing also concrete examples of real-world ethical and unethical communication in the judiciary, followed-up by the development of active listening skills, strategies for asking ethical and effective questions, as well as techniques for handling and resolving conflicts in an ethical manner.

## Roundtable on the right to information and transparency in communication with the media and public



On 14 and 15 November 2024, the Constitutional Court of Albania, organized a two-day working roundtable on “The right to information and transparency in communication with the media and the public”, in the context of the project “Increasing transparency and access to constitutional justice”, supported by the Swiss Confederation through the Embassy of Switzerland in Albania. The roundtable was moderated by Ms. Dagmar Hovestädt, a German expert with experience in the field of communication and media. The roundtable was attended by the body of judges, the cabinet of the President of the Court, representatives of the Legal Service Unit and the administration of the Constitutional Court.

President Zaçaj emphasized in her remarks the importance of transparency and public information for the Constitutional Court, with the aim not only of improving the reputation and credibility of this





institution, but also of making its decisions understandable to the general public. Ms. Hovestädt shared with the participants some of the best models used by European and world Constitutional Courts related to the efficient use of social networks, as an opportunity technology offers to inform citizens about the judgements and activities of the Courts, in order to increase transparency and ensure a simpler approach to the information provided by them.

## Roundtable on the implementation of the measures of Strategic Plan undertaken during 2024, 6 December 2024



The Constitutional Court of Albania, with the support of the OSCE Presence in Albania, held a working roundtable on the implementation of measures taken during 2024 to effectively fulfill the strategic objectives of the Court.

The roundtable opened with the welcoming remarks of the President of the Constitutional Court, Ms. Holta Zaçaj, and the Head of the Rule of Law and Human Rights Department of the OSCE Presence, Mr. Mauro Puzzo.

This roundtable, which was attended by the Secretary General of the Constitutional Court, representatives of the Cabinet of the President, the Legal Service Unit, as well as the heads of the relevant structures of this Court, discussed the effective implementation of the strategic planning of the Constitutional Court during 2024, and made specific proposals to increase the effectiveness of the implementation of this plan for the period ahead.

## ■ The Constitutional Court and Children



In celebration of the 26th anniversary of the adoption of the Constitution, the Constitutional Court aimed to convey an important message of coexistence to younger generations. To promote understanding and respect among each other, the Court hosted a group of eighth and ninth-grade students from two 9-year schools in the capital: “Edith Durham” and “Emin Duraku.”

During their visit, the students explored the Court's premises and engaged with the booklet “My Constitution.” This publication was specifically designed for young people and explains, in simple language, the significance of the Constitution as the fundamental law of our country. It highlights essential societal principles, the coexistence of our people, and the rights of children, including the right to education, protection from mistreatment or abuse, and freedom from exploitation for labor.

In her speech to the children, Mrs. Zaçaj stated:

*“Coexistence, understanding, and respect for one another, despite our differences, are essential. It is the responsibility of both adults and children to preserve our beautiful language, customs, traditions, and the heritage of our ancestors. Together, we must uphold the values of society beautifully expressed in the Constitution. While this may be a challenging task, it can only be achieved if each of us contributes to respecting these values. Each one of us has an important role in making Albania a better place!”*











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