

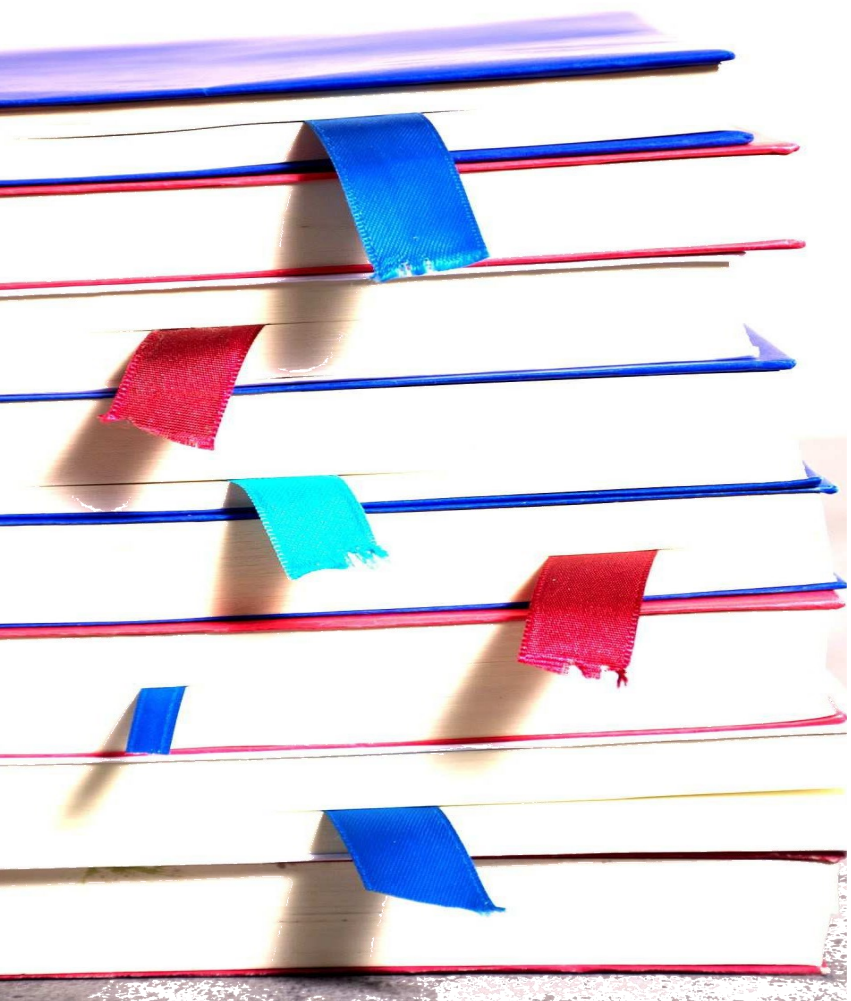


REPUBLIC OF ALBANIA

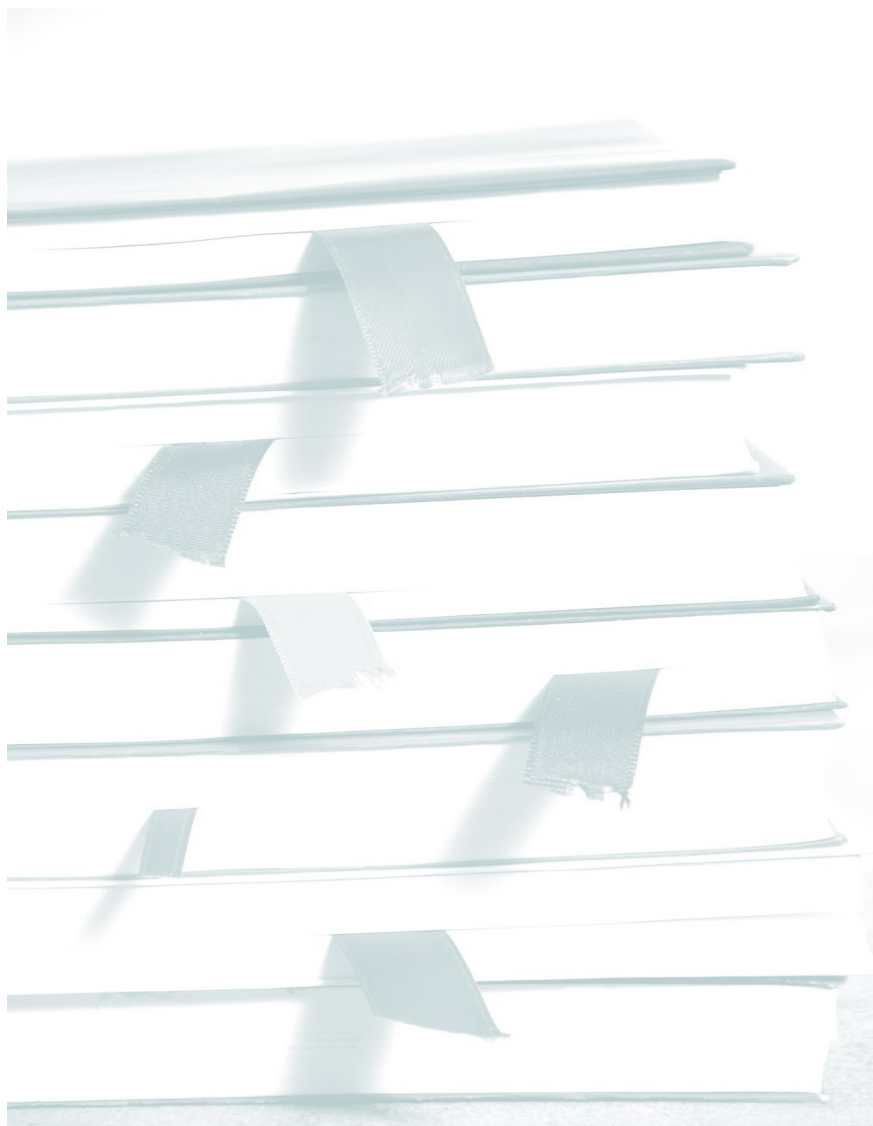
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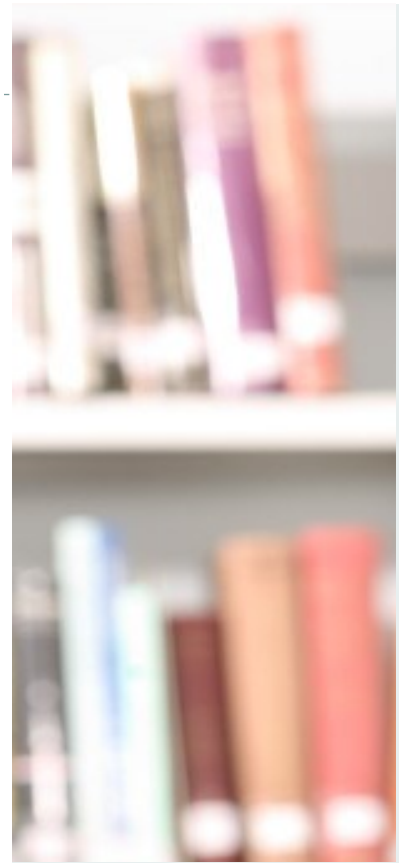
Periodical Newsletter *of the Constitutional Court*

Decisions November-December 2024



Periodical Bulletin of Decisions
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INTRODUCTION

In the framework of continuous communication with the public and the media, in order to guarantee transparency, as well as to enhance access to the Constitutional Court, as one of the most significant and essential principles of administration of justice, the Court publishes for the first time a Periodical Newsletter of its judgments. This newsletter presents a summary of cases and respective judgments, decided between November and December 2024.

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

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

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Principle of Legal Certainty, retroactivity and legitimate expectations - Principle of hierarchy of norms

KEY WORDS

Methodology/ average reference prices/ immovable property/ indexation/ taxable value

Average reference prices are subject to change, and in the present case, they have increased. Transactions conducted by construction entities prior to the approval of the construction permit, and therefore before the new prices came into effect do not constitute an acquired right.

The reference price is just a component of the calculation methodology for determining the taxable value of immovable property and local taxes.

Indexing the tax value for new constructions, as opposed to existing ones, is done to differentiate between the two categories. The wording of such legal provision is clear and comprehensive. The authority for this indexing comes directly from the legislation on local taxes.

Association of Albanian Constructors (Council of Ministers' Decision on Average Reference Prices) – Judgment No. 78, of 06.11.2024

Facts

The Council of Ministers has approved amendments to its decision regarding the methodology for determining the taxable value of immovable property “buildings,” specifically in annexes I and II. According to annex I, the average reference prices for the sale of buildings used for residential purposes in the Municipality of Tirana have changed. Annex II introduces an indexation of the price per square meter of residential apartments for the first 5 years after the registration of the utilization permit in the State Cadastre Agency.

Court's Assessment

Principle of Legal Certainty - The Court found that the applicant's claim regarding retroactivity and legitimate expectations does not inherently concern the average reference prices stipulated in the contested decision of the Council of Ministers. Instead, it pertains to the methodology for determining the taxable value of immovable property and local taxes, for which the reference price serves as a component of their calculation methodology. Regarding the claims concerning the average reference price itself, the Court established that it constitutes a fundamental element in the business plans of the construction entities themselves. These entities enter into sales and purchase agreement for residential areas upon obtaining construction permits. In this regard, any transactions conducted by the construction entities prior to the approval of the construction permit, and therefore before the new prices came into effect, which (transactions) would be affected by the changes in the reference price, cannot constitute an acquired right for them. Consequently, they cannot be included in the applicant's legitimate expectations.

Concerning the claims regarding the indexation of the price per square meter of residential apartments for the first 5 years after the registration of the utilization permit in the State Cadastre Agency, the Court deemed the wording of such provision clear and comprehensive, thus avoiding ambiguity regarding its implementation.

Furthermore, the Court held that the tax law has authorized the Council of Ministers to determine the methodology for calculating the taxable value of immovable property. Consequently, the provision for indexing prices for new apartments constitutes a specification of this legal authorization. Therefore, the principle of hierarchy of norms has not been violated, since such provision has been issued in accordance with Article 118 of the Constitution.

Decision-making

The Court, unanimously, decided to reject the application.

The right to vote (the right to be elected and the right to elect) related to the principle of equality before the law

KEY WORDS

Preferential Voting/ multi-member list/ candidate/ election/ Electoral Code/ constitutional interpretation/ distribution of mandates

The inclusion of the conjunction “and” in Article 67 (point 1) of the Electoral Code in connection with its Article 163 does not violate Article 64 of the Constitution since the latter guarantees, at the constitutional level, preferential voting for at least two-thirds of the multi-member list, but does not determine the extent of its impact on the distribution of mandates. In this regard, it is fundamentally the political party that competes, even though candidates in both components of the multi-member list are also subject to voting. Such provision does not violate the principle of equality before the law among political parties, since the contested provisions do not impose restrictive criteria on new parties. Furthermore, the inclusion of the decimal comma does not undermine the standard set forth in Article 64 of the Constitution.

Political Parties “Movement for National Development”, “Hashtag Initiative”, “New Democracy Alliance”, “Democratic Movement for Change”, “Albanian National Conservative”, “Albanian Demo-Christian Union”, “Euro-Atlantic Democrats”, “Shqipëria Bëhet Organization”, Lulzim Basha, Orjola Pampuri, Merita Bakiu dhe Gëzim Ademaj (*Electoral Code*) - Judgment No. 85, of 24.12.2024

Facts

In 2020, the Albanian Parliament has approved some amendments to Articles 64 and 68 (point 1) of the Constitution. These amendments introduced a proportional electoral system with regional competition and a national threshold. They also granted voters the right to cast preferential voting for candidates within multi-member lists. Subsequently, the Electoral Code was also amended, including *inter alia* amendments to its Articles 67 and 163. These changes stipulated that political parties or coalitions must present lists comprising: a) A multi-member list with a fixed order of candidates; and b) A multi-member list of candidates subject to preferential voting. The amendments also established the method for the distribution of mandates to winning candidates. The applicants lodged an application with the Constitutional Court seeking the abrogation of the Constitutional amendments as well as a final interpretation of Article 64 of the Constitution or its abrogation.

Court’s Assessment

Jurisdiction

The review of the constitutionality of the Electoral Code’s provisions cannot be done without interpreting the meaning of Article 64 of the Constitution, in order to resolve the constitutional dispute. Regarding the request for the abrogation of Article 64 of the Constitution, it falls outside the constitutional jurisdiction, since the Court does not review the constitutionality of constitutional norms, but only the compliance with the procedure in case of review of a constitutional amendment law.

Legal standing (*locus standi*)

Political parties are entitled to bring a claim regarding a violation of the right to vote, related to the right to be elected, while organizations and individuals are entitled to bring a claim regarding the right to elect, related to the principle of equality before the law.

Regarding the violation of the right to vote (the right to be elected and the right to vote) related to the principle of equality before the law

Regarding political parties related to the right to be elected

- Regarding the inclusion of the conjunction “and” in Article 67 (point 1) of the Electoral Code in connection with its Article 163

The Court initially focused on the interpretation of Article 64, which guarantees preferential voting for at least two-thirds of a multi-member list. This ensures the right of voters to cast a preferential voting for at least two-thirds of the candidates; however, it does not determine the extent of its impact on the distribution of mandates, which is left to the legislator’s discretion through delegation. The inclusion of conjunction “and” in Article 67 (point 1), read in conjunction with Article 163 of the Electoral Code, implies that political parties, as electoral subjects, have the obligation to meet the requirements that govern the electoral process, *including inter alia*, the obligation to submit a multi-member list with two components (one with a fixed order and one subject to preferential voting) that will undergo the voting process.

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REVIEW OF NORMATIVE ACTS

The inclusion of conjunction “and” in Article 67 (point 1) of the Electoral Code does not hinder voters’ right to express their opinions nor the principle of equality before the law. For the same reasons, the inclusion of the decimal comma in point 2 of Article 67 of the Electoral Code does not violate the provisions of Article 64 of the Constitution.

Although the subjects are required to submit a multi-member list with two components, the placement of candidates by the party in either the component with a fixed order or the one subject to preferential voting does not inherently violate the applicants’ right to be elected nor their participation in the process of forming the political will. Furthermore, the claim regarding the violation of the principle of equality before the law is unfounded, since legal provisions do not impose restrictive criteria on new parties or those with smaller electorates compared to other parties, which are subject to the same rules for candidacy concerning the determination of candidate numbers submitted to the Central Election Commission.

Regarding the inclusion of the decimal comma in Article 67 (point 2) of the Electoral Code

The applicants’ claims regarding such provision also relate to the distribution of mandates based on voting results, a matter that the Constitution has delegated to the legislator. Furthermore, the number of candidates in the component of the list subject to preferential voting equals the number of mandates per electoral zone, thus exceeding the two-thirds constitutional requirement.

Regarding organizations and individuals claims in relation to the right to elect

Regarding the inclusion of the conjunction “and” in Article 67 (point 1) of the Electoral Code in connection with its Article 163

The Court assessed that the submission of two components of the multi-member list to the Central Election Commission does not restrict citizens’ right to vote, since they can freely exercise such right for preferred candidates. The legislation does not impose any prohibitions or criteria on individuals exercising their right to vote, which is guaranteed by Article 45 of the Constitution. Regarding individuals’ claims of a violation of the principle of equality before the law, the legal provisions apply equally to all voters, thus ensuring that everyone has the opportunity to exercise their right to vote without discrimination based on background, social group, or any other basis, criteria, or categories that could influence the formation of political will in a democratic society.

Regarding the inclusion of the decimal comma in Article 67 (point 2) of the Electoral Code

This provision does not violate Article 64, paragraph 3, first sentence, of the Constitution, which guarantees voters the right to cast preferential votes for candidates on multi-member lists. However, the claims pertain to the distribution of mandates based on the voting results, which is not guaranteed at constitutional level.

Decision-making

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

INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right to be heard/
Standard of reason-
ing of a judicial deci-
sion**

KEY WORDS

***Employment relationship/
dismissal from civil ser-
vice/ discrimination due
to unjustified dismissal***

The inclusion in the High Court's decision of the grounds for the appeal and its subsequent recourse constitutes a key element of the standard of reasoning of a judicial decision, since it demonstrates to the parties that they have been heard and that their case has been considered by this court.

Sose Buçpapaj (*Dismissal from Work*)- Judgment No. 77, of 05.11.2024

Facts

The applicant was dismissed from work based on complaints from several economic operators against her. Initially, she contested her dismissal through administrative procedures and later in court, claiming a violation of her right to be heard during the administrative procedures. The lower courts rejected her lawsuit, while the High Court dismissed her appeal.

Court's Assessment

The claims regarding the violation of the right to be heard are unfounded, since during the administrative procedure, the applicant was given the opportunity to be informed of the facts that led to her administrative liability and to present arguments and evidence in support of her claims, thus ensuring her right to be heard throughout the proceedings. Additionally, the applicant raised such claims during the court's proceedings. The first-instance trial was conducted in the presence of the applicant and her defense lawyer, while the court of appeal and the High Court acted upon the applicant's appeal and recourse. The ordinary courts analyzed and assessed the applicant's claims regarding the violation of the right to be heard in light of the provisions of substantive and procedural law, providing reasoned decisions.

The claims regarding the violation of the standard of reasoning of the judicial decision are well-founded, since the inclusion in the decision of the grounds for the appeal and its subsequent recourse constitutes a key element of the standard of reasoning of a judicial decision. Thus, it demonstrates to the parties that they have been heard and that their case has been considered by the High Court.

Decision-making

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

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Standard of reasoning of a judicial decision – Principle of presumption of innocence – Right to Private Property

KEY WORDS

Preventive seizure/ lease agreement/ granting a concession/ tourist port/ public-private partnership/ public official/ state property/ national security/ Deployment and Settlement Plan

In reviewing the claim under the criterion of proportionality of the interference, specifically regarding the severity of the seizure measure, the Court did not reach a majority vote required for a decision. One view held that the seizure measure does not exceed the severity criterion, since it appears to be a reasonable relationship of proportionality between the seizure decision and the pursued objective. Conversely, the dissenting view argued that the seizure measure exceeds the severity criterion, since an excessive burden has been placed on the applicant.

Marina Bay Saranda” ltd. Company (Court Decisions regarding the imposition of a seizure Order on Immovable Property) - Judgment No. 79, of 12.11.2024

Facts

The Special Prosecution Office (SPAK), based on a criminal complaint, initiated criminal proceedings for the offense of “Abuse of Duty,” as provided for in Article 248 of the Criminal Code. Initially, the investigation focused on the actions or inactions of public officials, suspected of violating the law and failing to properly fulfill their duties regarding the lease of property No. 696 called “Support Base”- (*Baza Ndihmuese*) in Limion, Saranda, which is administered by the Ministry of Defense and part of the Deployment and Settlement Plan. Subsequently, the investigation expanded to include the actions or inactions of public officials regarding the concession/public-private partnership of the “Marina Limion” tourist port and services in Saranda, which included the aforementioned property, in favor of the applicant. Special Court of First Instance against Corruption and Organized Crimes accepted Special Prosecution Office’s request, a decision upheld by the Special Court of Appeal against Corruption and Organized Crimes. The applicant filed an appeal with the High Court, which ruled it inadmissible. Therefore, the applicant filed an individual constitutional complaint with the Constitutional Court (*the Court*), claiming a violation of the standard of reasoning of the judicial decision, the presumption of innocence, and the right to private property. Considering that the applicant’s claims, in essence, concerned the right to property, a right that cannot be recovered during the proceedings of the merits of the case, and also considering the claims regarding violations of the right to a fair process in the judicial proceedings, which were claimed to have violated the substantive right to property, as well as the presumption of innocence, which essentially relate to the reasoning of the decisions, the Court decided to examine the case further in terms of such right. Meanwhile, the aspects related to the right to a fair trial, under Article 42 of the Constitution, shall be treated as procedural aspects of the right to property guaranteed by Article 41 of the Constitution.

Court’s Assessment

Regarding the violation of the right to property - Regarding the interference of the seizure decision with the right to property, the Court considered that the interference was lawful and that the seizure served the public interest, including the protection of national security. This interest is linked to the military readiness and operational capability of the Naval Forces, considering that the property in question is part of the Deployment and Settlement Plan of the Naval Forces Command’s property.

Regarding the criterion of proportionality of the interference, meaning that the relationship between the seizure and the pursued objective must be reasonable, the Court held that: Considering *the necessity of the interference*, given that the case at hand involves public property and the unrestricted disposal of such property could potentially increase the risk to the military readiness and operational capability of the Naval Forces Command, thereby posing a continuous threat to the national security interests of the Republic of Albania, the imposition of the preventive seizure measure is deemed necessary. Since such measure is capable of preventing harm to the national interests of the Albanian state until the conclusion of the criminal proceedings against certain officials, in the context of which such measure was taken.

Regarding the *appropriateness of the measure*, the Court found such measure to be suitable and not exceeding what is strictly necessary. In this regard, the courts have reasoned that the justification for such measure stems from the unlawful actions undertaken by certain state officials during the lease procedure for property No. 696, at the end of which the lease agreement between the applicant and the Ministry of Finance and Economy was concluded and approved. Such actions, were deemed to constitute elements of the criminal offense stipulated in Article 248 of the Criminal Code. Furthermore, the Court determined that in the present case the public interest of national security prevails over individual interests.

Regarding *the severity of the seizure measure*, the judges’ opinions diverged. One view held that the seizure measure does not exceed the severity criterion, since it appears to be a reasonable relationship of proportionality between the seizure decision and the pursued objective. Therefore, the restriction on the applicant’s right is in direct proportion to the situation that dictated it. Conversely, the dissenting view argued that the seizure measure exceeds the severity criterion, since an excessive burden has been placed on the applicant, insofar as its activity appears to have been based on legal procedures and other by-laws enacted by public authorities. Consequently, this has created legitimate expectations for the applicant regarding the enjoyment of rights and interests arising from this contractual relationship and related to the exercise of the economic activity in question.

Decision-making

The Court decided to reject the application pursuant to Article 73, point 4, of Law No. 8577/2000, due to the failure to form the majority of 5 judges required by Article 133, point 2, of the Constitution.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

The right of access to a court established by law – The right to be tried within a reasonable time – Finding of a violation of reasonable time and acceleration of proceedings – The right to rehabilitation and/or compensation

KEY WORDS

Reasonable time/ violation of reasonable time/ excessive length of proceedings

In the reviewing of the request under the criteria that determine the reasonable duration of proceedings, regarding the importance of what is at stake for the applicant, the Court did not reach a majority vote for a decision.

One view was that the length of the proceedings in the High Court had rendered the applicant's claims, even if recognized judicially, effectively worthless.

Conversely, the other view was that there was no evidence that the applicant had suffered pecuniary damage as a result of the actions of the defendant.

“Private Bailiff Office ARB” ltd. Company (Violation of Right to Trial within a Reasonable Time due to excessive length of proceedings in the High Court) - Judgment No. 80, of 21.11.2024

Facts

The applicant entered into a service agreement for the execution of an enforcement order. Claiming that a second-level bank failed to comply with its orders to debit the debtor's account at that bank, thereby obstructing the enforcement of the order, the applicant filed a lawsuit in 2014 seeking compensation for pecuniary and non-pecuniary damages suffered due to the bank's inaction, as well as for lost profits and applicable legal interest. The lawsuit was rejected by the Tirana District Court, a decision that was upheld by the Tirana Court of Appeal. Therefore, the applicant filed an appeal with the High Court, since the appeal was not being reviewed, the applicant filed a motion with the High Court seeking a finding of a violation of the right to a trial within a reasonable time and acceleration of proceedings. Claiming that the High Court was delaying both the hearing of the civil case and the review of its motion for a finding of a violation of the reasonable time, the applicant lodged an application with the Constitutional Court (*the Court*), which rejected such application. Following this decision, the High Court also rejected the applicant's motion for a finding of a violation of the right to a trial within a reasonable time. Seeking to repeal this latest decision, the applicant lodged another application with the Court, whose Panel of Judges decided not to pass the case for a plenary hearing. Subsequently, the applicant filed a new motion with the High Court seeking a finding of a violation of the reasonable time and acceleration of proceedings. While the motion was being considered by that court, the applicant lodged an application with the Court for a third time.

Court's Assessment

Regarding the Right to a Trial within a Reasonable Time –

The applicant claimed that the High Court had significantly exceeded the reasonable time for hearing its case, since the appeal had been registered in 2016 and had not yet been heard. As a result of this delay, the applicant's economic interests, as well as its personal and psychosocial well-being and that of its sole shareholder, are substantially at risk, given that the personal preliminary measure of house arrest imposed on its shareholder is leading the applicant towards bankruptcy.

The Court analyzed the specific circumstances of the case in relation to the criteria established by constitutional jurisprudence concerning: (i) the applicant's conduct; (ii) the case complexity; (iii) the authorities' conduct; (iv) the importance of what is at stake for the applicant.

Regarding the applicant's conduct, it has not been found that she caused or contributed to delays in the adjudication of the case. As for the complexity of the case, it does not manifest in the same manner at every stage of the proceedings, but rather depends on the stage at which it is being reviewed and the level of court in which the finding of unreasonable length of proceedings is sought. In the present case, the proceedings at first instance were not considered to present the same elements of complexity as at other levels of jurisdiction.

As far as the authorities' conduct is concerned, the length of the proceedings in the applicant's case is related to the high workload due to the implementation of judicial reform.

Furthermore, the Court found that procedural aspects of the review of the applicant's civil case also contributed to the length of the proceedings.

Regarding the importance of what is at stake for the applicant, the judges' opinions diverged. One view was that the length of the proceedings in the High Court had rendered the applicant's claims, even if recognized judicially, effectively worthless. Conversely, the other view was that there was no evidence that the applicant had suffered pecuniary damage as a result of the actions of the defendant. In this regard, even though there is an unreasonable length of proceedings, considering the circumstances of the case, its complexity, the insignificant risk to the applicant's interest, the high number of pending cases in the High Court, and the fact that the High Court has taken concrete actions to put the applicant's civil proceedings in motion, there is no violation of the right to a fair trial due to the failure to hear the case within a reasonable time.

Decision-making

The Court decided to reject the application pursuant to Article 73, point 4, of Law No. 8577/2000, due to the failure to form the majority of 5 judges required by Article 133, point 2, of the Constitution.

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Violation of the Right to be Elected and Freedom of Movement – Violation of the Principles of Impartiality and Independence due to Legal Provisions – Right to Effective Defense – Standard of Reasoning as Procedural Aspects of the Aforementioned Substantive Rights – Principle of Proportionality in the Imposition of Security Measures on the applicant

KEY WORDS

Member of parliament/ Prime Minister/ Personal Liberty/ Freedom of Movement/ Authorization from the Assembly/ Effective Defense/ Proportionality / Right to be Elected/ Exercise of Parliamentary Mandate/ Security

Measures/ Law No. 95/2016/ Telecommunications Surveillance/ Obligation to Appear before the Judicial Police/ Prohibition from Leaving the Country

Authorization of the Assembly is necessary only if the restrictive measures imposed on the applicant constitute a restriction/ deprivation of his personal liberty, which would affect the applicant's right to be elected, in terms of exercising his rights as an MP, namely his parliamentary activity.

Sali Berisha (Challenge to Judicial Decisions Imposing Security Measures on the MP - Authorization from the Assembly According to Article 73, Paragraph 2 of the Constitution) - Judgment No. 81, of 21.11.2024

Facts

The Applicant, a politician, former president and prime minister, and currently a Member of Parliament (MP) and leader of the main opposition party, has been accused by the Special Prosecution Office as a suspect for committing the criminal offense of “Passive Corruption of High State Officials or Local Elected Officials,” in collaboration, as stipulated by Articles 260 and 25 of the Criminal Code, during his tenure as prime minister. Consequently, upon the request of the prosecuting authority, the ordinary courts have imposed two security measures on him: specifically, “Obligation to appear before the judicial police” and “Prohibition from leaving the country.” According to the courts at all three levels, the authorization of the Assembly under Article 73, Point 2 of the Constitution is not required for the imposition of such security measures, since it is only necessary in cases of personal security measures that restrict personal liberty, specifically with regard to measures of home detention or detention on remand.

Court's Assessment

Regarding the Violation of the Right to be Elected and Freedom of Movement (Procedural Aspect)

Regarding the Authorization from the Assembly According to Article 73, Point 2 of the Constitution

According to the Court, the phrase “*or be deprived of liberty in any form,*” as provided in Article 73, Point 2 of the Constitution, refers solely to personal liberty, guaranteed by Article 27 of the Constitution, and applies only in cases where a restrictive measure is imposed on an MP, that deprives him of his personal liberty. Consequently, the authorization of the Assembly is necessary only if the restrictive measures imposed on the applicant constitute a restriction/deprivation of his personal liberty, which would affect the applicant's right to be elected, in terms of exercising his rights as an MP, namely his parliamentary activity. The Court assessed that the security measure “Obligation to appear before the judicial police,” in relation to the right to be elected, under Article 45 of the Constitution, referring to the nature of the obligation and its frequency (in the present case, once every two weeks), does not affect the legislative functions of the Assembly and does not prevent the applicant from exercising his rights as an MP. On the same grounds, the Court found that the security measure prohibiting the applicant from leaving the country does not hinder him from conducting his parliamentary life. Therefore, insofar as such measure does not constitute a restriction of personal liberty, Article 73(2) of the Constitution does not require the Assembly's authorization for its implementation against the MP.

Regarding the Violation of the Principle of Impartiality due to Provisions of Law No. 95/2016

The Court found that Law No. 95/2016 contains sufficient guarantees to ensure the independence of judges of the special courts concerning how their personal telecommunications are supervised. According to the Court, the existing legal framework regulating the status of magistrates and the rights arising from it contains a set of additional legal and procedural guarantees that ensure the independence of these special judges in the exercise of their function, including the system of appointment, salary, career, dismissal, and their special treatment.

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INDIVIDUAL CONSTITUTIONAL COMPLAINT

The security measure “Obligation to appear before the judicial police,” in relation to the right to be elected, under Article 45 of the Constitution, referring to the nature of the obligation and its frequency (in the present case, once every two weeks), does not affect the legislative functions of the Assembly and does not prevent the applicant from exercising his rights as an MP. On the same grounds, the security measure prohibiting the applicant from leaving the country does not hinder him from conducting his parliamentary life. Therefore, insofar as such measure does not constitute a restriction of personal liberty, Article 73(2) of the Constitution does not require the Assembly’s authorization for its implementation against the MP.



Regarding the Violation of the Right to Effective Defense

The Court assessed that the First Instance Special Court has taken all measures to notify the applicant of the decision regarding the personal security measures imposed on him. Additionally, from the facts presented, evidenced by the ordinary jurisdiction courts, the Court noted that the applicant was given the necessary time to prepare his defense in relation to the volume of documents and the 5-day deadline within which, according to the Criminal Procedure Code provisions, the proceedings should have been concluded. Regarding the delay in the reasoning of the decision to continue the security measures, the Court assessed that such delay did not impair the applicant’s right to effective defense, since he exercised his procedural rights to appeal and recourse, in response to which the Special Appeal Court and the Criminal College of the High Court issued their respective decisions.

Furthermore, the Court noted that the applicant’s actions, who chose not to attend such hearing, as well as his defense lawyers’ actions, who requested time from the court and subsequently left the courtroom, appeared to be a voluntary choice by the applicant; on such grounds, he (*the applicant*) should have been able to foresee the replacement of his defense lawyers with a lawyer appointed mainly from the list of lawyers. In conclusion, the Court held that the applicant freely exercised his right to defense at all levels of the proceedings, through defense lawyers primarily appointed at the first instance, by submitting appeals and recourse by his chosen defense lawyers and their participation in the trial (regarding the appeal court’s hearing).

Regarding the Violation of the Standard of Reasoning of the Decision

Regarding the reasoning of the decision of the Criminal College of High Court, the Court deemed that, although technical terms were used in such decision which, at first glance, complicate its understanding, their use does not reach a level that undermines the standard of reasoning in terms of clarity. Furthermore, in the High Court, pursuant to legal provisions, the applicant was represented by his own defense lawyers, who were qualified to interpret the relevant terminology.

Regarding the Substantive Aspect

Referring to the reasoning and interpretation of the ordinary courts’ decisions concerning the review of the Special Prosecution Office request for the imposition of two security measures on the applicant, the Court found that those courts (the ordinary jurisdiction courts - the First Instance Special Court and the Appeal Court) lacked reasoning. Consequently, it does not appear that they assessed the necessity for imposing two personal security measures for the same proceedings. The Court emphasized that such lack of reasoning, interpretation, and assessment casts doubts on whether the courts considered the proportionality of such measures in terms of necessity to restrict the applicant’s freedom of movement and right to be elected, as a Member of the Parliament, pursuant to Articles 228 et seq. of the Code of the Criminal Procedure, in proportion to the legitimate aim of ensuring the proper conduct of the criminal proceedings. In this regard, since the Court found a lack of assessment concerning the necessity of restricting the applicant’s rights and freedoms, in relation to ensuring the proper conduct of the criminal proceedings, which is binding by the Constitution and the Criminal Procedure Code, the Court deemed that this constituted sufficient grounds to establish a violation of the principle of proportionality in the imposition of the measure “Prohibition from Leaving the Country.”

Similarly, the Court, based on the same grounds, found that merely the personal security measure “Obligation to Appear Before the Judicial Police” appeared to meet the requirements for ensuring the proper conduct of the criminal proceedings. In this context, the Court noted that, in the absence of reasoning regarding the necessity of imposing two security measures, as well as the fact that the legitimate aim of ensuring the proper conduct of the criminal proceedings is fulfilled by the security measure of obligation to appear before the Judicial Police, it held that there is a violation of the principle of proportionality due to the imposition of the security measure “Prohibition from Leaving the Country.”

In the Court’s assessment, the lack of reasoning regarding the necessity in establishing the two measures indicates, *inter alia*, a failure to consider this constitutional and legal aspect by the ordinary courts in imposing personal security measures. Consequently, the imposition of such last measure, with regard to the substantive aspect, violates the right to be elected and the freedom of movement.

Decision-making

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

INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right of access -
Right to a fair and
public hearing by an
impartial tribunal
established by law –
Principle of equality
of arms and adver-
sarial proceedings –
Standard of reason-
ing of judicial deci-
sions**

KEY WORDS

Compulsory insurance in the transport sector/ Implementation of substantive Law No. 10076/2009/ Retroactive application of Regulation No. 53/2009 by the Financial Supervisory Authority (AMF)/ Unifying Decision No. 12/2007 of the High Court's Joint Colleges

In cases involving constitutional claims, within the framework of the principle of subsidiarity that governs the relationship between constitutional and ordinary judicial jurisdictions, the lack of reasoning in the High Court's decision hinders the Court's ability to assess whether constitutional claims were examined or evaluated.

Ardian Hysa et al. (On Compulsory Insurance in the Transport Sector) – Judgment No. 82, of 26.11.2024

Facts

The applicants are relatives of a citizen who lost his life in a road traffic accident, as well as citizens injured in the accident and their relatives. They sought compensation for pecuniary and non-pecuniary damages from the insurance company of the vehicle responsible for the accident.

Claiming compensation for the accident, the applicants filed a lawsuit with the court, seeking the respective compensation pursuant to the provisions of Law No. 10076, dated 12 February 2009, "On Compulsory Insurance in the Transport Sector".

Their lawsuit was partially accepted by the Tirana District Court. Such decision was overturned by the Tirana Court of Appeal, while the High Court rejected the applicants' appeal.

Court's Assessment

Regarding the Right to a Trial within a Reasonable Time –

The Court emphasized that, given the constitutional nature of the claims raised in the appeal, the High Court, in exercising its functions, should have maintained a position aligned with applicable law, in accordance with constitutional principles and its own jurisprudence. This also includes addressing the merits of the appeal's grounds, which pertained to constitutional aspects of the proceedings. In this context, the High Court's rejection of the applicants' appeal, merely citing the grounds of the appeal and providing a *de plano* reasoning that such grounds fell outside statutory provisions, without providing a reasoned response to the constitutional claims - renders the application of procedural law manifestly unreasonable. This also calls into question the applicants' right of access to a court under the standard of effective remedy before a higher tribunal. Consequently, the substantial right of access related to the standard of reasoning of the judicial decision has been violated.

Decision-making

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

INDIVIDUAL CONSTITUTIONAL COMPLAINT

Imposition of Preventive Measures within the framework of Criminal Investigations – Procedural and Substantive Aspects of Personal Liberty – Right to Private Life – Freedom of Correspondence

KEY WORDS

Criminal proceedings/ Reasonable doubt/ Restriction of personal liberty/ Proportionality/ Equality before the law/ Non-self-incrimination for an act not legally criminal/ Right to private life

The substantive aspect of personal liberty is analyzed in light of Article 27 of the Constitution, while its procedural aspect is analyzed under Article 28 in conjunction with Article 42 of the Constitution.

Pursuant to Article 27 of the Constitution, the cases and procedures for the restriction of personal liberty due to criminal offenses are provided for in the Code of Criminal Procedure. In accordance with Article 27(2)(c) of the Constitution, a preliminary condition for ordering a security measure is the existence of reasonable doubt based on evidence that the individual has committed a criminal offense.

Jamarbër Malltezi (restriction of personal liberty) – Judgment No. 83, of 05.12.2024

Facts

The applicant is under criminal investigation for committing offenses under Articles 260 and 287 of the Criminal Code. Within the framework of such proceedings, he was initially subjected to the preventive security measure of “Detention on remand” later upheld by a court decision. The applicant legally challenged the imposition and continuation of such measure. The Court of Appeal modified the measure to “Home Detention” while the High Court rejected his appeal.

Court’s Assessment

Procedural aspect of personal liberty

The right to be heard was not violated due to the court’s decision to impose the preventive measure in deliberation room (*in camera proceedings*), since Article 244 of the Code of Criminal Procedure explicitly provides for such proceedings. The applicant’s claims to such measure were duly addressed by the ordinary courts.

The legislator has established expedited time limits for judicial review of preventive measures. The manner in which defense lawyers choose to conduct the defense remains a matter of strategy between them and the applicant. The claim of a violation of the right to effective defense due to the fact that the applicant was not given the necessary time to prepare his defense, is unfounded, since the court granted the applicant additional hours to prepare by postponing the hearing. Furthermore, the applicant’s right to access the case file arose at the moment of notification of the detention order, and from that point onward, all procedural rights and safeguards under Article 34/b of the Criminal Procedure Code (CPC) were established, of which the applicant was duly informed.

The standard of reasoning of the judicial decision has not been violated, since the decisions do not appear to be illogical, contradictory, lack reference to the applicable law, or fail to respect the elements addressed by constitutional jurisprudence. Although technical terms used in the High Court’s decision, may at first glance, complicate its understanding, they do not present clarity issues for the defense lawyers, who are qualified to interpret the relevant technical terms.

Substantial Aspect of Personal Liberty

The claims regarding the lack of reasonable doubt for the restriction of personal liberty are unfounded, since both the court of appeal and the High Court have demonstrated careful consideration in their analysis of reasonable doubt. Such analysis was based on evidence suggesting the existence of a *pactum sceleris* between the applicant and his father-in-law, the former Prime Minister. The courts, in their decisions, have provided reasoning based on facts, information, and evidence obtained in accordance with legal requirements. This evidence suggests that an objective link exists between the applicant and the criminal offenses under investigation. This link justifies the existence of reasonable doubt based on evidence, which is a *sine qua non* condition for restricting personal liberty.

Regarding the claims of violation of the proportionality principle due to the imposition of “Home Detention” and the right to privacy, the Court did not reach the required quorum for a decision.

One view held that the imposed security measure is proportionate to the legitimate aim of ensuring the efficient progress of criminal proceedings. It aligns with the security needs, the gravity of the alleged offense, and the potential legal sanctions for such offenses, while also considering the applicant’s personal circumstances.

(continues on page 14)

INDIVIDUAL CONSTITUTIONAL COMPLAINT

In order to assess whether the condition for the existence of reasonable doubt for restricting the applicant's personal liberty is met, the Court analyzes whether the reasoning of the judicial decisions was arbitrary from a constitutional viewpoint.



Conversely, the other view held that the ordinary courts failed to provide sufficient reasoning regarding the scope and extent of interference with constitutional rights and freedoms to justify its proportionality. They further argued that the courts failed to justify why “Home Detention” was appropriate and did not analyze whether alternative personal measures or a different approach to the Prosecutor’s request could have ensured the efficient progress of criminal proceedings without jeopardizing them.

Regarding the Right to Private Life - The Court examined whether the applicant had the opportunity to create the necessary space to develop his personality and freely exercise his freedom of correspondence and communication. This examination also considered the provisions of Article 237 of the Code of Criminal Procedure, before and after its amendments. The Court, after reviewing such claims, did not reach the required number of votes for a decision.

One view argues that there is no violation of the right to privacy. This position asserts that restricting or prohibiting the defendant from communicating with individuals other than those residing with him is merely a means of executing the security measure and not an independent security measure in itself.

The opposing view argues that the court’s imposition of a communication ban on the applicant, except with those residing in the same household, constitutes a new and additional restriction on his constitutional rights, specifically the right to privacy. Therefore, the communication ban is not a measure aimed at executing the “Home Detention” but rather an independent restriction.

Decision-making

The Court decided to reject the application (unanimously regarding some of the applicant’s claims, while regarding the others, pursuant to Article 73, point 4, of Law No. 8577/2000, due to the failure to reach the majority of 5 judges required by Article 133, point 2, of the Constitution).

Procedural and Substantive Aspects of Personal Liberty

KEY WORDS

Electronic Communications/ Interception/ Sky ECC Application/ Letters Rogatory/ Mass Surveillance/ Proportionality of the Measure/ Bail

The ordinary courts did not violate the applicant's right to personal liberty, neither procedurally nor substantively. The applicant was granted access to the case files, freely exercised the right to appeal, and had sufficient time to prepare a defense. The reasonable doubt justifying the imposition of detention on remand was based not only on electronic communications from the Sky ECC application but also on other evidence. During the trial, the applicant will have every opportunity to challenge the validity and admissibility of the evidence, including the electronic communications.

Pëllumb Gjoka (*restriction of personal liberty*) – Judgment No. 86, of 30.12.2024

Facts

The Special Prosecution Office (SPAK) initiated criminal proceedings against the applicant for several criminal offenses. After examining evidence obtained through letters rogatory from French judicial authorities (*communications on the Sky ECC application*), SPAK filed a request for the imposition of the personal security measure of “Detention on Remand”. The First Instance Special Court accepted such request, on the grounds that there was reasonable doubt based on evidence that the applicant had committed the alleged offenses. The court emphasized the significance of the Sky ECC communications alongside other investigative findings. Such decision was upheld by the Special Court of Appeal, and subsequently, the High Court upheld the court of appeal's decision. The applicant lodged an individual constitutional complaint with the Constitutional Court, initially challenging the judicial decisions and subsequently requesting the repeal of several provisions of the law on the organization and functioning of institutions for combating corruption and organized crime.

Court's Assessment

Legal standing (*locus standi*)

The Court found the claims for the repeal of legal provisions inadmissible, since they were essentially identical to those previously examined by the Court, thus constituting *res judicata*.

The Constitution expressly allows for the restriction of personal liberty for public interests related to the proper conduct of criminal proceedings and the administration of justice. The existence of reasonable doubt not only justifies the restriction of personal liberty at the constitutional level but also does not jeopardize the presumption of innocence at this stage of criminal proceedings. Moreover, reasonable doubt is the basis for ordering pre-trial detention in judicial proceedings that guarantee fundamental elements of a fair trial. Therefore, the Court's analysis focuses on verifying the existence of reasonable doubt justifying the restriction of the applicant's personal liberty.

Merits

– *Regarding the violation of personal liberty in its procedural aspect* – The Court examined the claims regarding the violation of the right to defense related to the right to access case files and the right to an effective appeal. The Court found that albeit the applicant's legal representatives were not allowed to take notes on the case files, such violation did not inherently affect the right to defense at this stage of the proceedings, since the applicant had exercised the right to appeal. Regarding the *necessary time to prepare the defense*, the Court considered that the applicant's representatives were not hindered in preparing his defense, since all measures were taken to ensure access to the case files. Concerning the *claim regarding the right to an effective appeal*, the Court found that the applicant had exercised such right both formally and substantively.

Regarding the right to be heard in relation to the principle of equality of arms and adversarial proceedings, the Court considered that the applicant was guaranteed the right to challenge the prosecution's claims regarding the existence of reasonable suspicion of his involvement in the commission of criminal offenses justifying the restriction of personal liberty.

– *Regarding the violation of personal liberty in its substantive aspect* – *Regarding reasonable doubt based on evidence*

The Court initially emphasized that the evidence on which the personal security measure is based is not required to meet the same standard of proof as that required for a conviction. The Sky ECC communications were transmitted by the French authorities within the framework of mutual legal assistance between the authorities of both countries. The establishment of reasonable doubt in this case wasn't based solely on the Sky ECC communications but also on other information gathered during the investigation or obtained from other criminal proceedings. The Court emphasized that the applicant retains the right to challenge the legality and admissibility of the Sky ECC communications during the trial on the merits. It is ultimately the role of the ordinary courts to assess the (in)validity and (in)admissibility of all evidence.

– *Regarding the right to be released on bail*

The Court considered that the personal security measure of “Detention on Remand” is proportionate to the legitimate aim of ensuring the efficient progress of criminal proceedings and is appropriate in light of the security needs, the gravity of the alleged offenses and the potential legal sanctions for such criminal offences.

Decision-making

The Court decided, unanimously, to reject the application.



MEETING OF JUDGES DECISIONS ON INDIVIDUAL CONSTITUTIONAL COMPLAINT

Personal Liberty, Dignity, and Security - Right to Privacy of Correspondence - Right to Property - Rights to Practice a Profession and Education - Right to a Fair Trial related to the Standard of Reasoning of a Judicial Decision

KEY WORDS

lifting of seizure/ movable property/ personal and family use/ items unrelated to criminal offenses/ passive corruption/ money laundering/ evidentiary value/ interference with rights

The court decisions denying the return of the seized movable property have interfered with some of the applicants' fundamental rights. Given their status as third parties to the criminal proceedings, it is unlikely that the consequences of such interference with their constitutional rights will be remedied during the review on the merits, which will determine the guilt or innocence of the person under investigation.

Eljona Hoxha, Flamur Hoxha, Teuta Hoxha, Brunilda Mene - Meeting of Judges' Judgment No. 279, of 19.11.2024

Facts

The Special Prosecution Office (SPAK) initiated criminal proceedings against a former member of parliament, as a suspect for several criminal offenses, including abuse of duty, passive corruption, non-disclosure of assets, and money laundering. Based on SPAK's request, the First Instance Special Court against Corruption and Organized Crimes authorized personal searches of several individuals (close to the suspect) and searches of several locations to locate and seize physical evidence related to the alleged offenses. The applicants, claiming that certain items seized during the searches were for personal, family, and daily use and did not constitute physical evidence related to the offenses under investigation, filed an appeal seeking the lifting of the seizure order. Both lower courts rejected the applicants' appeal. Similarly, the High Court dismissed their appeal as unfounded in law. The applicants subsequently lodged an application with the Constitutional Court, seeking the repeal of all three judicial decisions.

Meeting of Judges' Assessment

Standing Ratione Materiae - Under circumstances when violations of constitutional rights during criminal proceedings are alleged, the plaintiff must state the facts specifically, accurately, and completely, thus allowing for an assessment of whether a procedural error with constitutional implications exists. The applicants failed to provide any information suggesting a risk of misuse of their private data and communications during the investigation and trial, especially considering that the criminal procedure legislation provides adequate safeguards in this regard. The courts considered the seized items, some of which contained documentary information, to be of evidentiary value for the criminal proceedings. This implies that there is a legal basis for potential interference in the applicants' electronic communications and correspondence, which is deemed necessary to achieve the legitimate aim of ensuring efficient criminal proceedings. The individual constitutional complaint does not specify the duration of the seizure, and the claim that one of the applicants was deprived of liberty during the execution of this procedural action is manifestly unfounded. The restriction imposed on the free disposal of the seized items pursued a legitimate aim and was executed in accordance with the relevant legal procedures. The prosecution and the courts provided sufficient and convincing arguments justifying the seizure of the items, some of which will be returned to their owners after the completion of the expert examination, while the source of acquisition for the remaining items will be verified, particularly in light of the money laundering offense under investigation.

Decision-making

The Court, unanimously, decided not to pass the case for a plenary hearing.

MEETING OF JUDGES DECISIONS ON INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right to be Informed
in Relation to the
Right to be Heard and
to Defend Oneself -
Standard of Reasoning
of the Decision**

KEY WORDS

*Civil Servant Status/
transfer to waiting list
order/ High Court notifi-
cation/ arbitrary interpre-
tation*

The High Court's failure to individually notify the applicant of the date of the hearing in the deliberation room did not violate her right to be informed related to the right to be heard and to defend oneself.

The High Court's interpretation of the legal dispute in this specific case is not deemed arbitrary or unreasonable. The High Court acted within its constitutional jurisdiction.

Migena Reçi - Meeting of Judges' Judgment No. 282, of 25.11.2024

Facts

The applicant was employed by a state institution. On 19.12.2013, her transfer to a waiting list was approved as part of the institution's restructuring. She challenged this transfer order in court. The Tirana Administrative Court of First Instance partially accepted her lawsuit, holding that Law No. 8549/1999 on the Status of Civil Servants applied to her case. The Court of Appeal also partially accepted her lawsuit, but argued that Law No. 152/2013 was the applicable law. Subsequently, the High Court overturned both lower court decisions and dismissed the lawsuit. It determined that Law No. 8549/1999 was indeed applicable, but that the transfer to the waiting list was not absolutely invalid.

Court's Assessment

Right to be Informed in Relation to the Right to be Heard and to Defend Oneself - The High Court's failure to individually notify the applicant of the date of the hearing in the deliberation room did not violate her right to be heard or to defend herself in a substantive sense. The applicant had been notified of the appeals and chose not to file a counter-appeal. Furthermore, the appeals raised claims that were debated by the relevant parties.

Standard of Reasoning of the Decision – The Meeting of Judges found that the High Court acted within its constitutional jurisdiction by interpreting the applicable law in this specific case, reasoning that Law No. 8549/1999 was indeed applicable. The applicant's claims were legal in nature and related to the interpretation and application of the law by the lower courts. The High Court's decision did not appear to be contradictory, nor did it fail to meet the standards of reasoning of the judicial decisions. Additionally, the interpretation of the law did not appear to be arbitrary.

Decision-making

The Meeting of judges, by majority vote, decided not to pass the case for a plenary hearing (one judge expressed a dissenting opinion).

MEETING OF JUDGES DECISIONS ON INDIVIDUAL CONSTITUTIONAL COMPLAINT

Right of Access to Court and Substantive Appeal - Right to be Heard in Relation to the Reasoning of a Judicial Decision

KEY WORDS

Notarized loan agreement/ Criminal complaint/ Decision not to initiate criminal proceedings/ Civil lawsuit for dispute resolution

The legal effect of the decisions challenged by the applicant is the non-prosecution of the alleged offense. This determination was made based on the available evidence and the factual circumstances at the time the decisions were issued. These decisions did not, and could not have, affected the applicant's property rights, which he had every opportunity and legal means to protect through a civil lawsuit. Even if the applicant had obtained a favorable decision in the civil lawsuit, it is not evident that the remedy sought in the criminal proceedings would have effectively safeguarded the substantive right in question, since a favorable outcome would not necessarily have resulted in the restoration of the right, which the applicant claims was violated.

Thodhori Stambollaj - Meeting of Judges' Judgment No. 283, of 25.11.2024

Facts

The applicant signed a loan agreement with two other individuals, providing them with a loan of 6,000,000 Lek with a fixed repayment term. To secure the loan repayment obligation, a mortgage agreement was concluded on the same date, in accordance with which the borrowers mortgaged their property in favor of the applicant. Nine years later, the applicant filed a criminal complaint against the borrowers for "Fraud". The Korça Prosecution Office decided not to initiate criminal proceedings, since the alleged act did not constitute a criminal offense but could be settled through a civil lawsuit. The applicant challenged the prosecutor's decision in the Korça District Court, which dismissed the lawsuit. The Court of Appeal upheld the first instance decision upon the applicant's appeal. Upon discovering that the property pledged as collateral for the loan repayment had been sold to a third party, the applicant filed another criminal complaint. However, the prosecutor once again decided not to initiate criminal proceedings, thus the applicant filed a new lawsuit in the first instance court, which was dismissed. The Court of Appeal upheld such decision upon the applicant's appeal. Meanwhile, the High Court overturned the court of appeal's decision and remanded the case to the Court of Appeal for further proceedings. Upon reconsideration, the Court of Appeal upheld the first instance decision. The applicant appealed to the High Court, which declared the appeal inadmissible.

The applicant subsequently lodged an application with the Constitutional Court seeking the repeal of the three court decisions.

Court's Assessment

Standing Ratione Materiae

Concerning the substantive aspect of this criterion, the Meeting of Judges would focus on verifying the constitutional right at issue and the impact of the alleged violation on the applicant, specifically whether the applicant qualified as a victim. The applicant's claims focused on procedural aspects of the challenged proceedings, without clearly identifying the substantive constitutional right they seek to protect through the procedural right to a fair trial. However, considering the relationship between the parties (the lender/applicant and the borrowers/accused), even if the applicant's objective was deemed to be the return of the loaned amount - which falls under the concept of property and thus is protected by the right to private property - the applicant failed to demonstrate a violation of this right due to the challenged decisions. The legal effect of the decisions challenged by the applicant is the non-prosecution of the alleged offense. This determination was made based on the available evidence and the factual circumstances at the time the decisions were issued. These decisions did not, and could not have, affected the applicant's property rights, which he had every opportunity and legal means to protect through a civil lawsuit. Even if the applicant had obtained a favorable decision in the civil lawsuit, it is not evident that the remedy sought in the criminal proceedings would have effectively safeguarded the substantive right in question, since a favorable outcome would not necessarily have resulted in the restoration of the right, which the applicant claims was violated.

This criterion is also intertwined with the exhaustion of legal remedies criterion. The applicant not only failed to demonstrate that the legal remedies used (the criminal complaint and the appeal against the prosecutor's decisions not to initiate criminal proceedings) were the only means available to protect the allegedly violated right, but also failed to show that no other remedies were available or that other remedies, such as filing a civil lawsuit, would not have been effective in a constitutional sense. Specifically, the applicant did not demonstrate that, from an effectiveness standpoint, a civil lawsuit would not redress such alleged violation.

Decision-making

The Meeting of judges, by majority vote, decided not to pass the case for a plenary hearing.

MEETING OF JUDGES DECISIONS ON INDIVIDUAL CONSTITUTIONAL COMPLAINT

Right to be elected and principle of proportionality - Principle of equality before the law - Right of access - Principle of a tribunal established by law - Right to be tried by an impartial tribunal - Standard of reasoning of the decision

KEY WORDS

Letter from the prison director/ security measure/ candidate for mayor/ right to take an oath

The restriction imposed on the applicant's right to take an oath is a consequence of the pre-trial detention measure imposed against him. This restriction does not stem from the letter of the General Director of Prisons denying the applicant's special permission to take the oath as elected mayor.

Dhionisios Alfred Beleri - Meeting of Judges' Judgment No. 300, of 16.12.2024

Facts

The applicant was a candidate for mayor. Two days before the elections, he was arrested in *flagrante delicto* on suspicion of active corruption in the elections. He was declared the winner of the election by the Central Election Commission. Upon the prosecution's request, the courts ordered his detention on remand. The applicant requested special permission to appear before the municipal council to take the oath as elected mayor. The General Directorate of Prisons denied his request in writing. The applicant challenged such decision in court. The lower courts rejected his application, and the High Court declared his appeal inadmissible.

Court's Assessment

The Meeting of Judges found, that the restriction imposed on the applicant's right to take an oath, was directly related to the pending criminal charges against him, for which he was placed under pre-trial detention. At the time of the review of the individual constitutional complaint, the applicant was still being tried by the ordinary courts for such charges. In essence, this restriction was a consequence of the pre-trial detention measure ordered by the courts, not a direct result the letter of the General Director of Prisons denying the applicant's special permission to take the oath as elected mayor.

Decision-making

The Meeting of judges, by majority vote, decided not to pass the case for a plenary hearing (three judges expressed a minority opinion).

MEETING OF JUDGES DECISIONS ON INDIVIDUAL CONSTITUTIONAL COMPLAINT

Standing Ratione Personae

KEY WORDS

*Complaint/ Tax Liability/
Criminal Complaint/ Expert
Witnesses/ Judges/
Prosecutors*

The applicant's claims focus on the alleged unconstitutionality of the judicial decisions rendered in the criminal proceedings she initiated. These proceedings were initiated after a final judicial decision was issued against her in a separate case, a decision which rejected her claim seeking the annulment of tax liabilities imposed by the tax authorities. The applicant does not meet the requirements for standing, or *ratione personae*, since the restoration of her right to private property, which she claims was violated, does not appear to depend on the way the contested criminal proceedings are concluded.

Leonora Puro - Meeting of Judges' Judgment No. 307, of 16.12.2024

Facts

The applicant was unsuccessful in administrative court proceedings concerning the legality of tax liabilities imposed on her. Those proceedings ended with a decision by the High Court dismissing her case. Thus, the applicant filed a criminal complaint against the tax officials who had imposed the tax liability. The High Court overturned the lower court decisions, which had convicted the tax officials, and dismissed the criminal case, on the grounds that at the time of the tax audit, the tax legislation did not explicitly require the buyer to sign tax invoices. Therefore, the alleged failure of the defendants to identify this as a violation did not constitute a breach of their official duties. With regard to these proceedings, the applicant filed two additional criminal complaints: one against the expert witnesses called in the trial and another against the judges, prosecutors who adjudicated the case, and other experts witnesses involved in the case. The High Court declared the appeal against the expert witnesses inadmissible, holding that it did not meet the grounds for appeal stipulated in Article 432 of the Code of Criminal Procedure. Concerning the criminal complaint against the judges, prosecutors, and other experts, the High Court declared the appeal inadmissible due to the lack of signature by the applicant's defense lawyer, notwithstanding that the applicant was informed of such legal requirement.

Meeting of Judges' Assessment

Standing Ratione Personae

The applicant's claims focus on the alleged unconstitutionality of the judicial decisions rendered in the criminal proceedings she initiated. These proceedings were initiated after a final judicial decision was issued against her in a separate case, a decision which rejected her claim seeking the annulment of tax liabilities imposed by the tax authorities. The applicant does not meet the requirements for standing, or *ratione personae*, since the restoration of her right to private property, which she claims was violated, does not appear to depend on the way the contested criminal proceedings are concluded.

Decision-making

The Court, by majority vote, decided not to pass the case for a plenary hearing.