

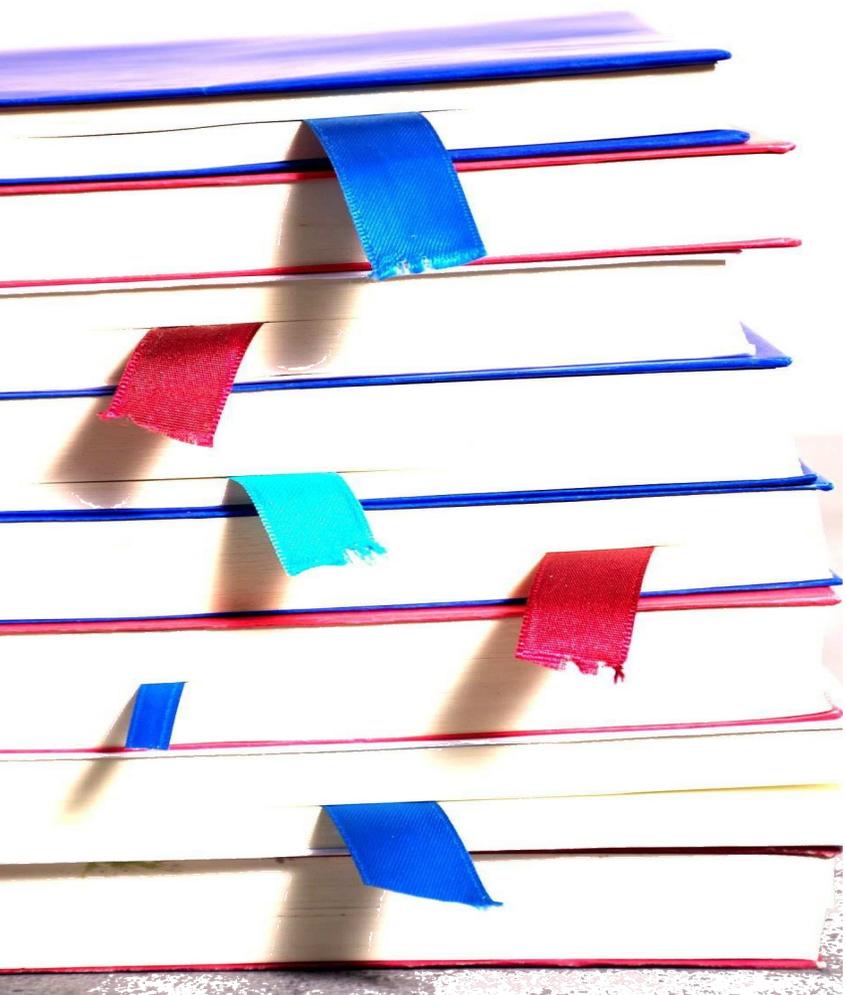


REPUBLIC OF ALBANIA

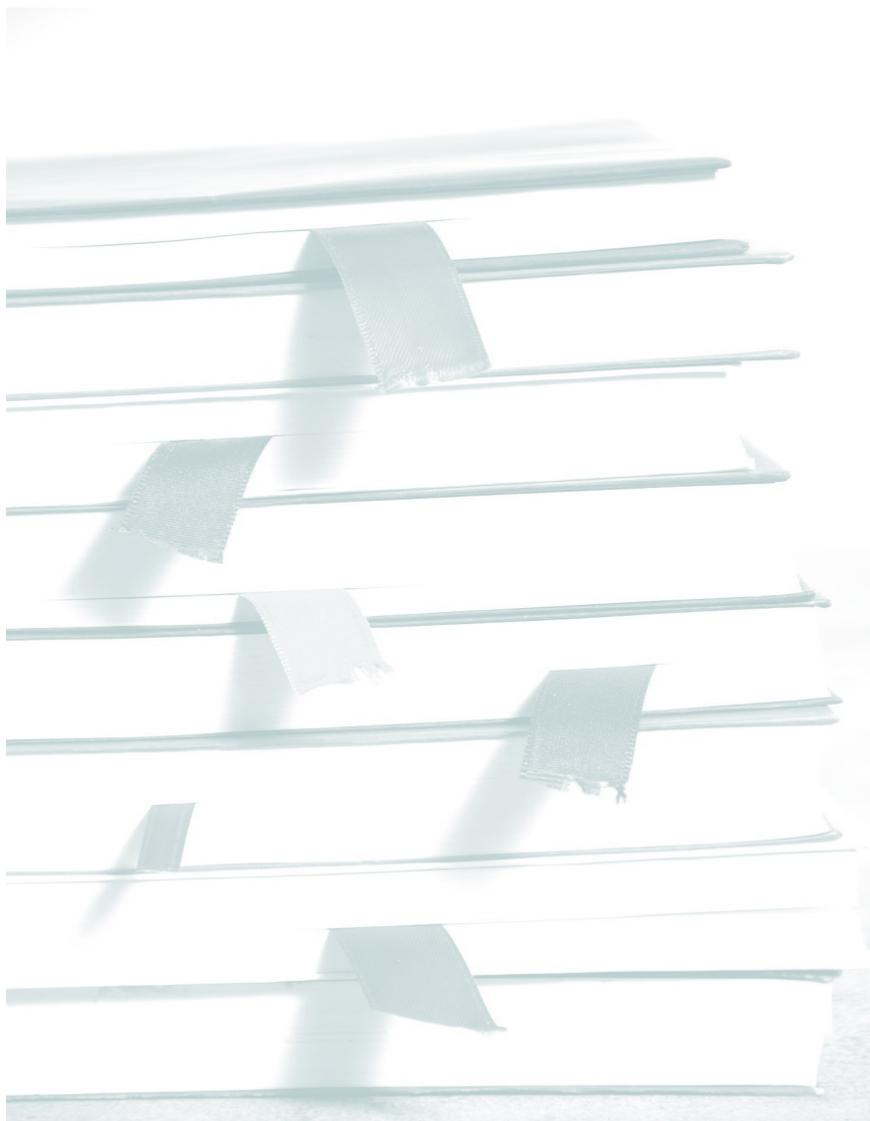
**Constitutional Court**

# **Periodical Newsletter** *of the Constitutional Court*

*Decisions July 2025*



Periodical Newsletter 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 in July 2025.*

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

*This publication introduces final judgments issued during the relevant period.*

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**Principle of hierarchy of norms – Principle of legal certainty – Principle of equality before the law – Principle of non-discrimination**

### KEY WORDS

*Pre-university education system/ Category of staff/ Recognition of diplomas/ Bologna Charter/ Element of an additional qualification level/ Remuneration/ Acquired right/*

**The legal framework concerning the rights of individuals must demonstrate sufficient stability to ensure their continuity. As a rule, individuals' legitimate interests and expectations cannot be denied by legislative amendments. The State should intervene to change a previously regulated legal situation, only if such a change brings about beneficial consequences.**

### **Trade Union Federation of Albanian Education, (repeal of point 2(ii) of Council of Ministers' Decision no. 425, dated 26.06.2025) – Judgment No. 43, of 24.07.2025**

#### *Facts*

On 12 November 2024, the applicant, Trade Union Federation of Albanian Education, lodged an application with the Constitutional Court seeking the repeal of paragraph 2(ii) of the Decision of the Council of Ministers (DCM) No. 425 of 26 June 2024, as incompatible with the Constitution.

This provision stipulates that one of the constituent elements of the gross monthly salary of teaching staff in the pre-university education system is the salary supplement for the qualification level, which remunerates the level of education required for the relevant position. The application also sought the repeal of Annex No. 4, as an integral part of the DCM, which specifies the values of the salary supplement for the qualification level for each category of diploma.

#### *Court's Assessment*

*Regarding the jurisdiction ratione materiae over the alleged violation of the principle of hierarchy of legal norms* – The Court considered that the applicant's claim constituted a constitutional matter falling within its jurisdiction.

However, it held that the nature of the claims determines whether the Court, in a specific case, is competent to assess the constitutionality of the acts which, according to the applicant, allegedly violate such principle. In this respect, the required number of votes for a decision under Article 73(4) of Law No. 8577/2000 was not reached concerning the nature of the submitted claims – namely, whether they were of a constitutional nature or concerned a conflict between a subordinate act and a primary legislation.

As a result, the claim was consequently rejected.

*The claims regarding the violation of the principles of legal certainty, equality before the law, and non-discrimination* were examined jointly by the Court. At the conclusion of the deliberations, the required number of votes for a decision was not reached. *According to one position, regarding the alleged violation of the principle of legal certainty*, the applicant failed to substantiate that the change in the calculation of the salary supplement for the qualification level had led to negative consequences for the calculation of the salary as a whole. This was because, in fact, the acquired legal right is the salary in its entirety – composed of the five elements under DCM No. 425/2024 – and not its individual components. Furthermore, the applicant failed to substantiate how the change to this single element would influence in the future other rights, such as the right to a pension. In fact, for the latter, the total salary value is taken as the basis for calculation, and not its individual components. *According to the same position, concerning the violation of the principle of equality before the law and non-discrimination*, it was held that a member of the pre-university teaching staff who had completed an eight-semester education, equivalent to a "Master of Science" diploma pursuant to Article 124 of Law No. 80/2015, could file an application with the courts of ordinary jurisdiction for the interpretation and application of the relevant law. As for all categories of employees whose salary is calculated according to their respective education following the adaptation to the Bologna system, the provisions of DCM No. 425/2024 were found not to have violated the principle of equality before the law and non-discrimination.

– According to the other viewpoint, the Council of Ministers, by enacting DCM No. 425/2024, failed to recognize in the same manner the equivalence of diplomas as an acquired right for the categories listed in sub-paragraphs (ii) teaching staff who began their studies at former pedagogical institutes and completed them in the respective faculties of education; and (iii) teaching staff who began and completed their studies in faculties of education until the entry into force of the obligations under the Bologna Charter. Thus, the Council of Ministers violated the legitimate expectations of those categories and differentiated between them with no objective or reasonable grounds, *thereby violating the principles of legal certainty, equality before the law, and non-discrimination*.

The rules of DCM No. 425/2024 cannot be remedied through the interpretation of the law by the ordinary courts; therefore, the violated rights can only be restored through the repeal of the relevant part of the DCM.

#### *Decision-making*

The Court decided to reject the application, due to the failure to reach the majority of five (5) judges under Article 73(4) of Law No. 8577.2000.

**Right to be informed of the status of the environment and its protection – Principle of solidarity between generations – National identity and cultural heritage – Right to a healthy and ecologically suitable environment for present and future generations – Obligation for a draft law to be accompanied by a report justifying its financial costs – Incompatibility of the law with the SAA and other international agreements, as well as with EU law – Functions of the Assembly and the normative system – Principles of the rule of law, equality before the law, and the hierarchy of norms**

### KEY WORDS

*Protected areas/ Prevention of environmental degradation/ Framework law/ Legislative initiative/ Public consultation/ Justification of financial costs/ SAA (Stabilization and Association Agreement)/ EU law/ Aarhus Convention/ Paris, Ramsar, Bern, and Rio Conventions*

**The Aarhus Convention is primarily addressed to executive public authorities. Once a draft law is no longer within the remit of these authorities, having been transmitted to the legislative body for adoption, it is no longer considered to be in a “preparatory” phase by a public authority, therefore**

## **A group of not less than one-fifth of the Members of Parliament of the Republic of Albania (repeal of the act amending the Law “On Protected Areas”) – Judgment No. 45, of 31.07.2025**

### *Facts*

Twelve members of the Parliament proposed the draft law “On some additions and amendments to Law No. 81/2017

‘On Protected Areas’”. The Assembly enacted Law No. 21/2024 “On some additions and amendments to Law No. 81/2017 “On Protected Areas”” (*the amending act*), which was published in the Official Gazette No. 50, of 20 March 2024. Therefore, one-fifth of members of the Parliament lodged an application with the Court, seeking the repeal of the amending act, as incompatible with the Constitution of the Republic of Albania and international agreements.

### *Court’s Assessment*

*Regarding the incompatibility of the amending act with the Stabilization and Association Agreement (SAA) in terms of compliance with EU law, the judges’ opinions were divided, and consequently, the Court did not proceed to a decision on the merits of the claim.*

–According to one view, the specific claim concerns compatibility with EU directives and not the obligations arising from the Stabilization and Association Agreement itself. The SAA establishes the directives as a basis and reference for the approximation of legislation, but without making them legally binding instruments or part of domestic law within the constitutional meaning. Although the Court has referred to Community law in some of its decisions, it has not ruled on the compatibility of domestic legal acts with an act of the European Union.

–According to the other view, albeit Community law is not part of the domestic legal order, the case at hand concerns the binding nature of the Stabilization Association Agreement (SAA). The claim that the contested act infringes Article 108 of the SAA cannot be excluded from the Court’s constitutional jurisdiction, pursuant to Article 122 of the Constitution. The obligations stipulated in this article cannot be assessed from a constitutional perspective without specific reference to EU law, as they would otherwise be devoid of substance.

*Regarding the compatibility of the amending act with international agreements concerning national identity and cultural heritage –* The Court found that the amending act, being a framework law, does not appear to have direct, specific consequences in this regard, even though it introduces new elements to the administration of protected areas.

Taking into consideration the fact that – the implementation of the law will require the issuance of specific Decisions of the Council of Ministers (*DCM*) for the designation of protected areas, which will provide detailed provisions for each area in accordance with Article 33 of the Basic Law, only under such circumstances shall it be possible to verify their compliance with the general obligations arising from Article 108 of the SAA concerning the prevention of environmental degradation. Such verification will depend on the specific characteristics of the particular protected area designated in the relevant *DCM*. Anyway, such an implementing act may be subject to a review of its legality or constitutionality. The same analysis applies to the act’s compatibility with the Paris, Ramsar, Bern, and Rio international conventions.

*Regarding the obligation for a draft law to be accompanied by a report justifying its financial costs, pursuant to Article 82(1), of the Constitution –* On this claim the judges’ opinions were divided; consequently, the claim was dismissed.

– According to one view, the intention of the framers of the Constitution in this provision is related to justifying the financial expenditure for the implementation of draft laws that increase state budget expenditure or decrease revenue, and does not concern the verification of the amount of such expenditure.

*( continues on page 6 )*

## REVIEW OF NORMATIVE ACTS

**Article 8 of the Convention ceases to be applicable. In other words, the issue of the applicability of Article 8 of the Aarhus Convention – which, in addition to Article 56 of the Constitution, establishes a positive obligation for public consultation – pertains only to governmental acts and procedures undertaken by executive public authorities, and not to the legislative ones.**

**Although national identity, the right to a healthy and ecologically suitable environment and the rational use of natural resources – are provided for in Article 59 of the Constitution as an obligation towards present and future generations, they constitute social objectives which the State, within its constitutional powers and available means, aims to fulfil. Their fulfilment cannot be directly claimed in court.**



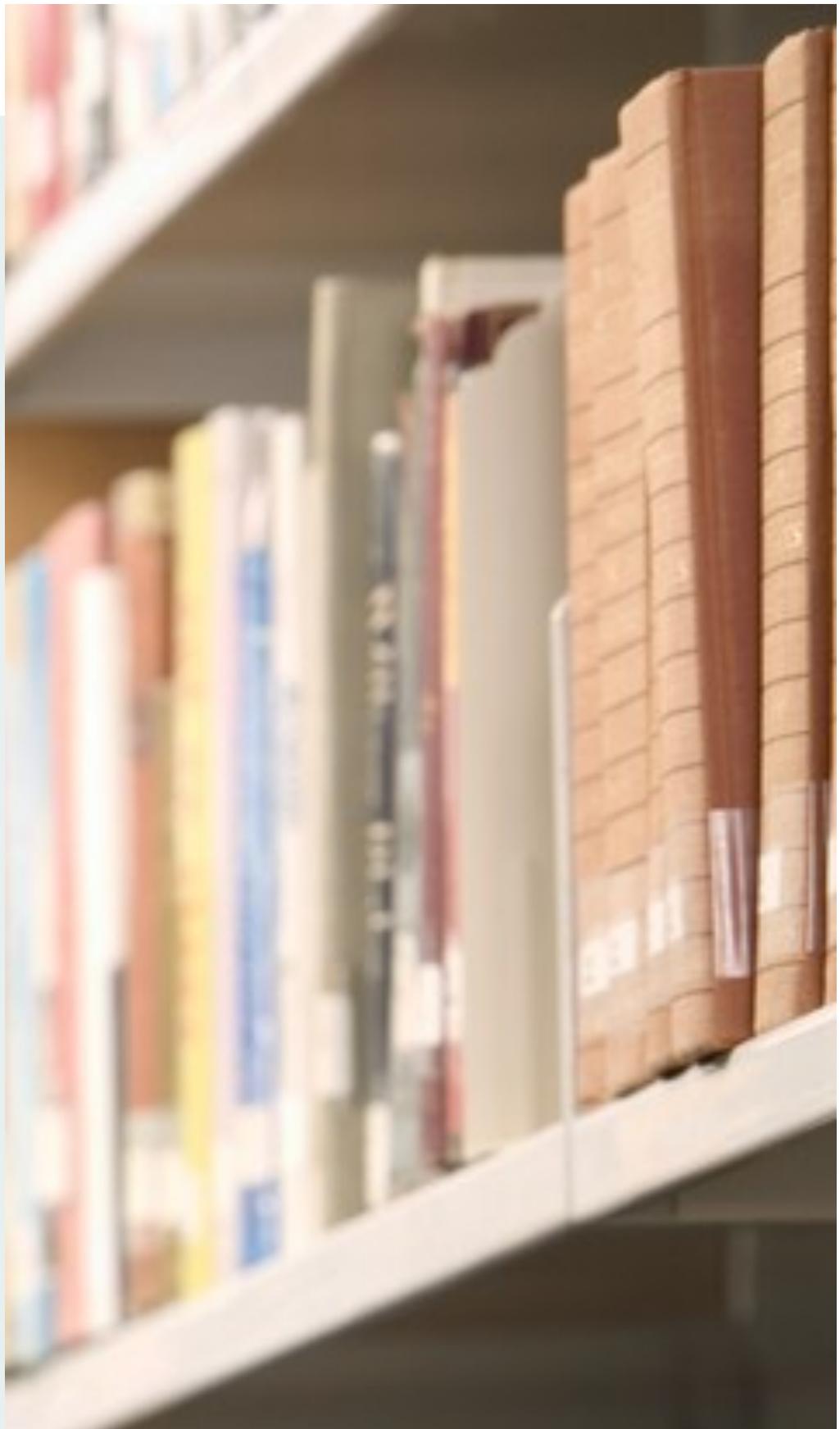
Article 17 of the amending act assigns to the National Parks Administration Office, inherently, the same functions as those of the existing structures. Consequently, there appeared to be no need for a further justification of such costs.

– According to the other view, Article 82(1), of the Constitution establishes an obligation for a draft law to be accompanied, whenever applicable, by a report justifying its financial implementation costs. The absence of such a report is not a mere formal defect and cannot be rectified, since such an action would distort the management of public finances by allowing changes to the state budget to be made not by law, but by sub-legal acts – which are not subject to parliamentary examination.

*Regarding the violation of the right to be informed of the status of the environment and its protection* – The Court held that the public consultation conducted by the Assembly concerning the draft law, an initiative of twelve (12) members of the Parliament, meets the requirement stipulated in Article 56 of the Constitution. The issue of the applicability of Article 8 of the Aarhus Convention which – in addition to Article 56 of the Constitution, establishes a positive obligation for public consultation – pertains only to governmental acts and procedures undertaken by executive public authorities, and not to legislative ones. In the case under review, the Court deemed that the initiative to amend the law on protected areas, despite having undergone amendments based, *inter alia*, on suggestions from the Council of Ministers, remained an original initiative of the members of the Parliament.

### *Decision-making*

The Court decided, by majority vote, to reject the application (*three judges expressed dissenting opinions*)



# INDIVIDUAL CONSTITUTIONAL COMPLAINT

## Right to Inviolability of Property – Freedom of Economic Activity

### KEY WORDS

*Seizure order/ High degree of precision/ Search measure/ Powers of judicial police officers/ Burden of proof/ Preventive search/ Search of home or premises/ Relinquishment of a right/ Preliminary judicial proceedings/ Ex post factum judicial proceedings*

**The main office or premises of a legal entity, where professional activities are carried out, are equivalent to a “home” within the meaning of Article 37 of the Constitution and Article 8 of the ECHR; therefore, their inviolability is guaranteed.**

**It would be disproportionate for the burden of proof to be placed solely on the individual, when it is the obligation of the public authority to clearly document and prove the measures and actions undertaken, particularly when they interfere or may interfere with constitutional rights and freedoms.**

**Although the Code of Criminal Procedure provides, as a rule, for preliminary judicial proceedings, it exceptionally allows for the absence of such proceedings in urgent cases. However, the lack of a prior court order for a search of premises or a home can be balanced by effective *ex post facto* judicial proceedings of the lawfulness and necessity of this investigative measure, including the condition of its urgency.**

**The power which the Code of Criminal Procedure confers on a judge to order a search of premises or a home is intended as a preventive examination of such measure by an independent and impartial body. The prosecution authorities have an obligation to ensure that the legal requirement of preliminary judicial supervision, as a safeguard for the fundamental rights of the individual – is effective in practice.**

## “Studio Pustina” Ltd. Company (*search of the applicant’s office in the course of enforcing a seizure order*) – Judgment No. 42, of 01.07.2025

### Facts

The applicant, “Studio Pustina” Ltd., a consultancy and financial services company, was subjected to a seizure of documents and computers potentially containing evidence, in the course of an investigation into the criminal offence of “Laundering of the proceeds of a criminal offence or criminal activity”. The investigation had been initiated previously by the Special Prosecution Office against the applicant company’s client, namely – the construction company “H” Ltd., and its partners. The seizure measure was enforced by three judicial police officers on the order of the prosecutors in charge of the case, following a statement by F.B., the administrator of company “H” Ltd., that the applicant company held the financial documentation related to the construction activity on the property under investigation. The applicant company’s administrator, A.P., lodged an appeal against the seizure order. The appeal was rejected by the Special Court of First Instance against Corruption and Organized Crime, a decision which was upheld by the Special Court of Appeal against Corruption and Organized Crime and subsequently by the High Court. Therefore, on 20 June 2024, the applicant company lodged an individual constitutional complaint with the Constitutional Court.

### Court’s Assessment

*On the right of inviolability of the home* - The interference with the applicant’s right consisted of the practical implementation of a search measure at its office, accompanied by a seizure. By its nature and practical effects, this essentially constituted a home search for the purposes of implementing Article 37 of the Constitution and Article 8 of the European Convention on Human Rights (*ECHR*).

The fact that the applicant’s representative, A.P., allowed the judicial police officers to enter the office, or that she cooperated with them, cannot be interpreted as consent to a search in her office, or her belongings, documents, or anything relevant to the ongoing criminal investigation. In this respect, the principle applies that relinquishment of a fundamental right must be clearly defined, with full knowledge of the facts, i.e., on the basis of informed consent and without compulsion. Thus, the Court concluded that there had been an interference with the applicant’s right of inviolability of her home.

The Court notes that a search of premises or a home initiated by the judicial police officers without a court order is a measure permitted by the Code of Criminal Procedure, but only under strictly defined conditions, a matter that essentially requires the interpretation of the legal provisions. The Court found that it should not focus specifically on the compliance with the provisions of the Code of Criminal Procedure regarding the seizure measure carried out by the judicial police officers within the framework of enforcing the seizure decision, but rather *on the proportionality of the measure*.

The (limited) search in the present case was aimed at finding data and evidence for the criminal offense of laundering the proceeds of a crime or criminal activity, with the objective of preventing and safeguarding public order and security, which constitutes a legitimate aim in terms of public interest, within the meaning of Article 17 of the Constitution.

Regarding *the proportionality of interference*, the Court emphasized that, in addition to the lack of preliminary judicial proceedings, the not entirely precise nature of the seizure order and the fact that the applicant company was not guaranteed the right to be accompanied by a trusted person or her defense lawyer, the judicial proceedings in the case at hand, albeit initiated *ex post facto* upon the applicant company’s appeal, were not effective.

The interested entity and, subsequently, the ordinary courts failed to fulfil their obligation to provide “relevant and sufficient” reasons to justify carrying out a search measure at the applicant company’s office.

Therefore, the Court found that the interference with the applicant company’s office was not proportionate to the circumstances that necessitated it.

*Regarding the freedom of economic activity* – Given the legitimate aim of the interference, in terms of public interest, and in relation to the duration of the seizure measure, the Court found the applicant company’s claim concerning the seized computer equipment to be unfounded. The maintenance of the seizure for this period of time struck a fair balance between the applicant company’s pecuniary interests and the public interest in the prevention and prosecution of the criminal offence.

### Decision-making

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

# INDIVIDUAL CONSTITUTIONAL COMPLAINT

**The right to the protection of personal data – The right to confidentiality of correspondence – The right to decide for oneself about information -The right to private life**

## KEY WORDS

*Person having knowledge of the criminal offence/ Seizure of electronic device (phone)/ Technical examination of the phone/ Electronic device/ Electronic evidence/ Smartphone/ Personal data/ Informational self-determination/Data processing/ Correspondence/ corpus delicti/ Procedural safeguards/ Proportionality of interference/Unifying decision no.147/202/ judicial control/ consent*

**The Court notes that, in the context of smartphones, access to stored data can potentially extend to a very wide range of information and allow for very detailed conclusions to be drawn about the private, professional and social life of the individual.**

**For this reason, state interference therewith is an interference in an extended area of private life, of high constitutional intensity.**

**The interference under Articles 35 and 36 of the Constitution and Article 8 of the ECHR must in principle be considered as “serious” and in certain circumstances as “particularly serious”, when it affects data of a sensitive nature.**

## ***Onejda Ymeraj (violation of the right to the protection of personal data and the secrecy of correspondence, resulting from the seizure and examination of a mobile phone) – Judgment No. 44, of 29.07.2025***

### *Facts*

The applicant was questioned by the Special Prosecution Office in the capacity of a person having knowledge of the criminal offense of corruption, in connection with criminal proceedings initiated against two citizens, A and B. In her statements, the applicant confirmed her acquaintance with the person under investigation B, the latter's recommendation to citizen C (representative of a commercial entity that has made service payments to citizen B's company) and the possibility of contact between them. Following the applicant's statements, on the same day, the Special Prosecutor's Office has issued a decision “To examine the items/ documents”, on the mobile phone data of the applicant, who has not objected. After identifying several communications of interest to the investigation, according to Article 300 of the CPC, the judicial police officers seized the applicant's "mobile phone" item, where an electronic examination was subsequently conducted that enabled the extraction of data.

The applicant requested the return of the mobile phone, but the prosecutors in the case decided not to accept the request. The First Instance Court against Corruption and Organized Crime accepted the appeal, as the seizure of the phone was carried out without a court decision and ordered its return to the applicant. The Appeals Court against Corruption and Organized Crime reversed the decision and the applicant filed a recourse, which left the seizure measure in force. On 08.11.2024, the applicant filed an individual constitutional appeal with the Constitutional Court.

### *Court's Assessment*

*Regarding the violation of the right to protection of personal data* - The Court considered that the personal data contained in a mobile phone in the use of an individual fall within the scope of protection guaranteed by Article 35 of the Constitution. The seizure of the mobile phone also constitutes the seizure of the "archive" of data stored on it, including the applicant's personal data and correspondence.

*Regarding the right to secrecy of correspondence*- The Court noted that the protection guaranteed by Article 36 of the Constitution focuses on the individual's communication at a distance. The guarantee extends to electronic communications *in itinere* (in transit), also static communications. This is because limiting it only to communications in progress and not completed (*in itinere*) would mean giving a restrictive interpretation to the concept of correspondence, allowing investigative bodies to evade the constitutional obligation. The Court analyzed and concluded that there had been an interference with the applicant's right to decide for herself about personal information related to personal data and the confidentiality of correspondence; the interference had been justified within the meaning of Article 17 of the Constitution and the case law of the ECtHR; it had been carried out without the applicant's consent, but was authorized by law; and it had pursued a legitimate aim.

*( continues on page 10)*

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

**To avoid arbitrariness, the search, analysis, and selection of data should, as a rule, be subject to prior verification by the court, who may refuse or limit the measure when the interference is disproportionate.**

**The Court assessed that the finding of a violation of the right to the protection of personal data and the confidentiality of correspondence, accompanied by specific remedial orders and the determination of the responsible body, the manner and deadlines for execution, meets the requirements of the effectiveness of the individual constitutional complaint and makes it unnecessary to send the case for reconsideration to the courts of ordinary jurisdiction.**

**Constitutional redress cannot remain merely declaratory, but must prohibit the continuation of unjustified interference, limit justifiable interference to the unavoidable minimum, and establish sufficient and effective procedural guarantees against arbitrariness.**

**To this end, the Court has ordered the ordinary courts to conduct a preliminary assessment, according to the criteria assessed by the Court in this decision.**

In reaching these conclusions, the Court examined the *applicant's consent* to the intervention, noting that the waiver of a fundamental right can only be made on the basis of informed consent, in other words, when the subject has full knowledge of the relevant facts, and must also be accompanied by minimum guarantees proportionate to the importance of the right. As regards the *authorisation by law of the interference*, the Court observed that the search for computer data representing personal data or private correspondence must, in principle, be authorised by a prior court decision, which must be sufficiently reasoned, so that the interference is limited to what is strictly necessary for the investigation, avoiding arbitrariness.

The Court stressed that the decision on the measure of seizure must establish, at least, procedural guarantees to minimize the interference, in particular in terms of: (a) limitation of the scope of the search; (b) limitation of the storage time and the circle of exposure of the data; (c) as well as detailed documentation of all actions performed. In cases of emergency, as an exception, the electronic device may be seized on the initiative of the judicial police officers, without a prior court decision, but the measure must be subject to automatic control by the prosecutor and *ex post* judicial control (upon the complaint of the individual, in terms of the urgency and the necessity) with adversarial proceedings and with the participation of the parties.

The Court further analyzed *the proportionality of the interference* and noted that the decision for the technical-electronic examination of the applicant's phone was drafted in broad terms and that the seizure of all data contained in the phone, as well as the examination of data that was not relevant to the investigation, went beyond what was necessary to achieve the legitimate aim, consequently, the interference was not proportional.

The Court emphasized that in these cases, several basic standards are applicable, relating to **i)** objective and material limitation of the interference, which means the prohibition of any action not authorized by the court in terms of opening/entering into the device, searching, extracting, processing and using personal data and/or correspondence; storing the seized device, when it contains personal data and/or correspondence, in a closed, sealed state, an action that, when possible, should be carried out in the presence of the individual and/or lawyer and documented in the minutes; as well as the prohibition of making copies of the contents of the device without judicial authorization, except in the case where a complete technical copy is made only as a precautionary storage measure in emergency conditions, to prevent the loss or change of evidence, when there is a real possibility of interference with the state of the data and their remote deletion, guaranteeing the integrity of the evidence and the chain of custody; **ii)** clear separation between data relevant to the investigation and those irrelevant, as well as those that enjoy special protection by law; **iii)** exercise of real and effective judicial control for each phase of the intervention; **iv)** respect for the principle of minimization, in the sense that, even when preliminary preservation of the content of the device is permitted in emergency conditions, any further action of searching, analyzing, selecting and obtaining data relevant to the investigation requires special authorization from the court and must be limited to the minimum necessary.

In conclusion, the Court found a violation of the applicant's constitutional rights to the protection of personal data and the confidentiality of correspondence for computer data that were not related to the subject of the criminal investigation; ordered the destruction of those data and effective *ex post* judicial control for the computer data that should be kept seized for the purposes of the criminal process, as well as the implementation of constitutional procedural guarantees for the computer data that will be kept seized, assigning the Special Prosecutor's Office with the execution of the decision.

### *Decision-making*

The Court decided, unanimously, to accept the application in part\*

\* This judgment produces its legal effects within the framework of the case at hand and within the limits of the operative provisions' orders. Furthermore, it shall serve as a guide for competent authorities in all future proceedings, involving investigative measures of a similar nature, which must be implemented in conformity with the procedural guarantees delineated in the reasoning of this judgment.