

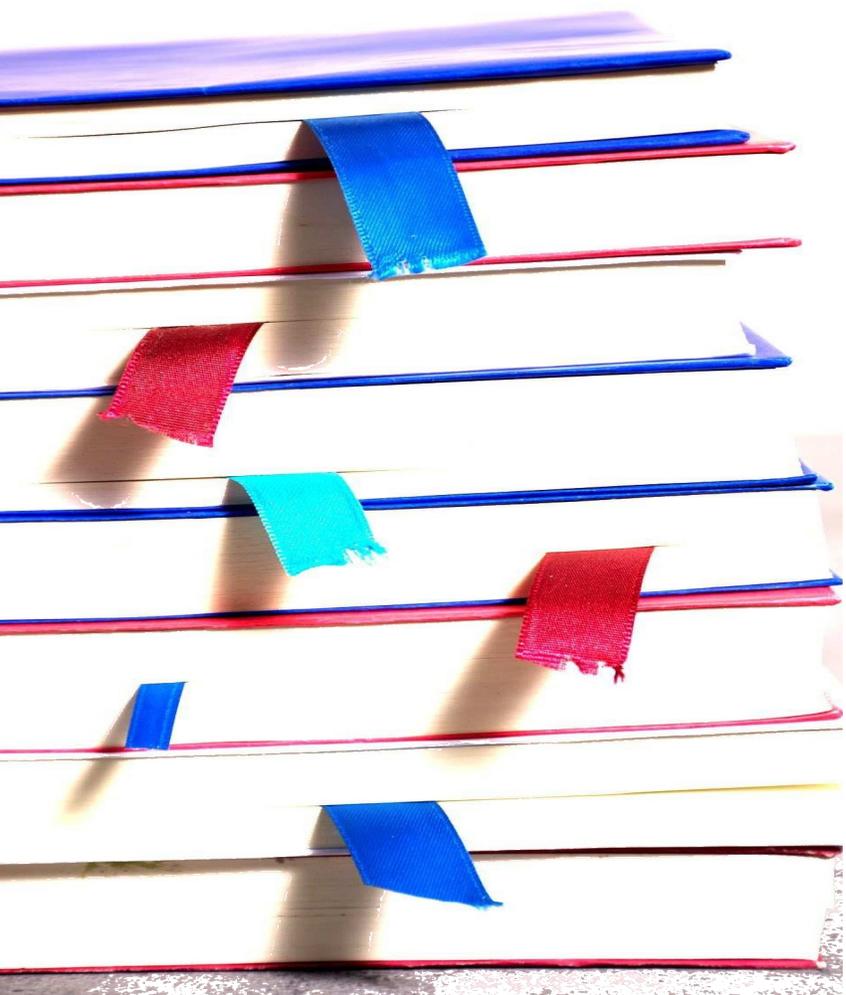


REPUBLIC OF ALBANIA

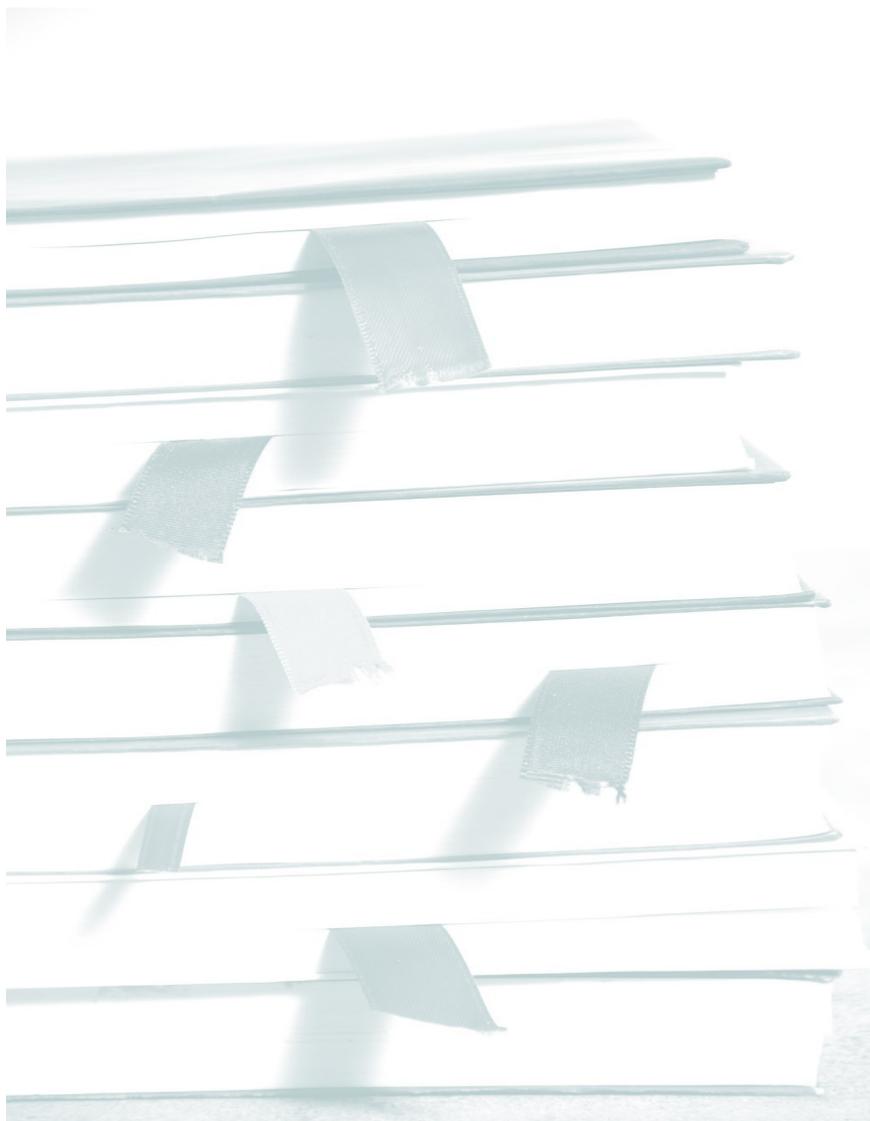
**Constitutional Court**

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

*Decisions November-December 2025*



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## INTRODUCTION

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

Principle of local autonomy – Right to be heard – Right of defense

## KEY WORDS

*Mayor/ dismissal from office/ detention on remand/ absence from office/ local self-government/ Presidential decree on the election date/ Constitutional loyalty*

**A Mayor may be dismissed from office only upon the commission of serious constitutional or legal violations. Thus, the ordinary legislature does not have the competence to prescribe additional grounds for dismissal that exceed the scope of such violations. Since the measure of dismissal entails direct consequences for the exercise of the elected body mandate, public authorities are under a positive obligation to actively ensure the observance of the procedural rights of the dismissed official and to avoid any practice that deprives them of a practical and effective opportunity for defense.**

## **Erjon Veliaj, Mayor of Tirana (right to a fair trial in the proceedings for the dismissal of a mayor from office) – Judgment No. 66, of 03.11.2025**

### *Facts*

The applicant, elected Mayor of Tirana in 2015, was subjected to the security measure of detention on remand by the courts in connection with criminal proceedings initiated against him in 2024. By Decision No. 69 of 23 September 2025, the Municipal Council proposed the applicant's dismissal from office to the Council of Ministers, pursuant to Article 62, letter (c) of the Law on Local Self-Government, stipulating that a mayor shall be dismissed for failure to exercise his duties for a continuous period of three months, without any finding of culpable conduct on his part. By Decision No. 539 of 25 September 2025, the Council of Ministers dismissed the applicant from office. The entire administrative proceedings regarding the applicant's dismissal – were concluded within five days. In relation to such proceedings, the applicant was neither notified for the purpose of being heard nor provided with the relevant acts. Therefore, the applicant lodged an individual constitutional complaint with the Court, seeking the repeal of the Council of Ministers' decision.

Following notification by the Council of Ministers regarding the vacancies for the office of Mayor in six municipalities, including the Municipality of Tirana, and the holding of partial elections, on 1 October 2025 the President issued a decree determining the date of elections for the Municipality of Tirana as well. Thus, the applicant lodged another application with the Court, seeking the repeal of the decree determining the election date and the suspension of its effects in respect of the part setting the date of local elections in the Municipality of Tirana. Therefore, the Meeting of Judges ordered a stay of execution of the decree regarding the part determining the election date in the Municipality of Tirana.

### *Court's Assessment*

*Regarding constitutional jurisdiction* – The Court has the competence to review the Council of Ministers' decision on the dismissal of a local self-government body, irrespective of the grounds cited in such decision. The mechanism for the dismissal of the Mayor by the Council of Ministers for serious constitutional and legal violations, provided for in Article 115 of the Constitution, constitutes administrative supervision by the central government over local government activities. The constitutional complaint lodged by the Mayor against the dismissal decision serves as an essential safeguard for local autonomy and the balance of powers. Domestic law does not take precedence over the Constitution – therefore, it cannot establish new grounds for dismissal beyond those prescribed by the Constitution. It is the Court that has the jurisdiction to review the Presidential decree determining the election date, due to the functional link between that decree and the decision to dismiss the elected local body. These two instruments are not normative acts but constitute consecutive steps in the procedure for electing a new local body to fill the vacancy created by the dismissal, they serve the same constitutional objective, and thus, their judicial review cannot be detached. A contrary approach would prejudice the establishment of the facts of the dispute and compromise the coherence of legal acts.

*Regarding the right to a fair trial concerning the dismissal of the mayor from office* – The Court held that the decision to dismiss the applicant from office was the result of unfair proceedings conducted by the Municipal Council and the Council of Ministers, which consequently entailed a violation of the principle of local autonomy. Public authorities are under a positive obligation to take active steps to implement all necessary procedural measures to guarantee a fair trial. The failure to notify the applicant of the reasons, the legal basis, and the course of the proceedings, as well as the failure to take the necessary measures to enable him to effectively exercise his right to be heard and his rights of defense, created a situation in which his participation was rendered illusory and formalistic. Consequently, the decision to dismiss the elected local body was taken in violation of the very essence of the constitutional guarantees, to the point of nullifying them.

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## INDIVIDUAL CONSTITUTIONAL COMPLAINT



The explicit wording of Article 115 of the Constitution regarding the grounds for dismissal does not grant the ordinary legislature the competence to prescribe additional grounds for dismissal that exceed the scope of serious constitutional or legal violations. Although the legislature did not specify that the three-month absence provided for in Article 62 (c) of the Law on Local Self-Government must be unjustified, intentional, or dependent on the will of the local self-government body, such provision cannot be interpreted in isolation from Article 115 of the Constitution. The interpretation of Article 62 of the Law on Local Self-Government must ensure that its application does not allow for factual circumstances not stemming from the conduct of the head of the local self-government body himself to be automatically regarded as a serious violation of the Constitution or the laws. A continuous three-month absence may constitute a serious violation of the Mayor's official duties, but only where he is held liable. In the instant case, such legal liability cannot be attributed to the applicant. The mechanical application of a statutory provision, without considering substantive constitutional requirements, constitutes a violation of the constitutional framework and infringes the fundamental guarantees governing the exercise of a local elected mandate.

*Regarding the decree determining the election date* – the Court noted that the President had issued the election decree, despite the fact that the Council of Ministers' dismissal decision was suspended *ipso iure*. Under Article 115 of the Constitution, the dismissal was automatically stayed, upon the constitutional complaint lodged by the elected local body. The President was legally bound to await the Court's final decision; only in the event that the dismissal decision was upheld – was he authorized to exercise his powers. Such power must be exercised in accordance with the principle of constitutional loyalty to ensure the early upcoming elections are democratic and legitimate. This aligns with the President's neutral constitutional role – to represent the unity of the people and serve the public interest, while guaranteeing a fair trial and local autonomy. In conclusion, the Court held that the President's decree, regarding the determination of election date in the Municipality of Tirana, was issued in violation of constitutional provisions and, therefore must be repealed.

### *Decision-making*

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

## Principle of Presumption of Innocence – Standard of a Reasoned Judicial Decision

### KEY WORDS

*Missing person/ absence of a body/ presumption of death/ circumstantial evidence/ conviction without evidence/ forensic evidence/ blood stains/ DNA testing/ assessment of evidence/ decisive evidence/ burden of proof/ presumption of fact and law/ reasonable doubt*

**In the context of an investigation into a suspicious disappearance and death, the analysis must necessarily begin with the discovery of the body, the murder weapon, the crime scene, the motive, and the mechanism of murder.**

**In the instant case, the courts of ordinary jurisdiction failed to assess the probative value of the bloodstains in conjunction with the absence of a body regarding the establishment of guilt, particularly given that the murder weapon had not been found.**

**The courts of ordinary jurisdiction reasoned that the applicant had failed to cooperate in disclosing the location of the victim's body, however, this element is insufficient to justify the application of a presumption of fact.**

**The Court considers that, in criminal proceedings, presumptions of fact cannot be ruled out. However, they must be applied by the courts of ordinary jurisdiction, taking into consideration the importance of what is at stake, due to the nature and type of the criminal offence and the severity of the penalty, which directly affects the safeguarding of the rights of defense.**

**For this reason, presumptions of fact must be confined within reasonable limits, which must be clearly defined in the reasoning of the judicial decisions. In the instant case, such reasoning ought to have focused on analyzing why the murder was presumed despite the absence of the victim's body, having regard also to the other evidence gathered during the criminal proceedings.**

## Aleksandër Fadili (*violation of the principle of the presumption of innocence in relation to the standard of a reasoned judicial decision*) – Judgment No. 67 of 05.11.2025

### Facts

The applicant filed a criminal complaint with the Kurbin Police Commissariat reporting the disappearance of the citizen F.F, his friend and colleague. Following investigative measures, the Kurbin Prosecution Office brought charges against the applicant. Such decision was based on a reasonable doubt that the citizen F.F. had been murdered for the purpose of robbing him of the sum of money he was carrying, and that the applicant had been the last person to have contacted him.

At the conclusion of the trial, the Kurbin District Court found the applicant guilty of the criminal offence of “theft resulting in death” and sentenced him to twenty-five years’ imprisonment. Such judgment was upheld by the Court of Appeal, and subsequently – the Criminal College of the High Court declared the applicant’s appeal inadmissible. Therefore, on 21 January 2025, the applicant lodged an individual constitutional complaint with the Constitutional Court, challenging the decisions of all three domestic courts.

### Court’s Assessment

*Regarding the violation of the right not to be convicted on the basis of unlawfully obtained evidence* – The Court found that the applicant had failed to exhaust effective domestic remedies. It noted that he had not raised such claim in his appeal or recourse, notwithstanding the fact that he had referred to it in general terms in the recourse.

*Regarding the principle of an impartial tribunal* – The Court held that the applicant had failed to submit arguments of a constitutional nature.

*Regarding the principle of the presumption of innocence in relation to the standard of a reasoned judicial decision* – The Court, in order to assess compliance with the guarantees afforded by the presumption of innocence, examined three criteria:

(i) *The first criterion: The fair and clear establishment of the material facts relevant to the assessment of criminal liability.* Regarding this point, the Court found that the domestic courts had failed to provide sufficient reasons concerning the absence of a body; specifically, whether the citizen F.F. had disappeared or had been killed, and on what grounds his disappearance was presumed to be a murder.

(ii) *The second criterion – This was subdivided into three elements: the discharge of the burden of proof through the identification of decisive evidence (first element); observance of the privilege against self-incrimination (second element); and whether the proceedings started with the preconceived idea that the applicant had committed the offence (third element).* Summarizing its analysis of each element, the Court held as follows:

*Regarding the first element:* The courts of ordinary jurisdiction sought to discharge the burden of proof by identifying certain decisive forensic evidence, which was assessed as a whole. However, the reasoning employed appeared to exempt the prosecution from the burden of proof and shift it onto the applicant, who, according to those courts, had maintained a denial and an uncooperative stance.

*Regarding the second element:* The privilege against self-incrimination was interpreted arbitrarily, since the courts of ordinary jurisdiction established the existence of “cruelty” in the commission of the criminal offence based merely on the applicant’s denial during the trial and his refusal to disclose the location of the body.

*Regarding the third element:* The Court found no indication that the investigation and trial had commenced with a preconceived view or assumption that the applicant was guilty of the murder of F.F. However, it held that the courts of ordinary jurisdiction ought to have analyzed and reasoned more clearly the link between the fact of the murder and the attribution of that murder to the applicant, given that the victim’s body had not been found.

(iii) *The third criterion: Whether presumption of facts and of laws were applied reasonably* – The Court held that presumptions of fact must be confined within reasonable limits, which must be clearly defined in the reasoning of the judicial decisions. In the instant case, such reasoning ought to have focused on analyzing why the murder was presumed despite the absence of the victim’s body, having regard also to the other evidence gathered during the criminal proceedings. In light of such assessment, the Court concluded that the courts of ordinary jurisdiction’s reasoning concerning the presumption of the disappearance, death or murder, and the authorship thereof, was neither complete nor clear. Those courts failed to fully discharge their duty to provide a reasoned response to the applicant’s complaints regarding the *alleged violation of the presumption of innocence*. Specifically, they failed to analyze in a fair and coherent manner the totality of the evidence establishing guilt – whether that evidence was decisive, direct, or circumstantial – taking into consideration that the standard of scrutiny must be reasonable, given the nature of the criminal offence, where the severity of the penalty significantly affects substantive constitutional rights.

In conclusion, the Court held that the High Court had adopted a formalistic approach and had failed to restore the violation committed by the lower courts, whose reasoning was unconvincing, *thereby violating the standard of a reasoned judicial decision concerning the principle of the presumption of innocence.*

### Decision-making

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

# INDIVIDUAL CONSTITUTIONAL COMPLAINT

## Right to a fair trial – Standard of a Reasoned Judicial Decision

### KEY WORDS

*Commercial company/ industrial property/ international registration of a trademark/ patent/ General Directorate of Patents and Trademark/ absolute nullity of an administrative act/ Paris Convention/ right of priority/ Madrid Protocol/ hierarchy of norms/ transfer of rights*

**In cases of reopening of proceedings, the scope of the review is determined by the grounds for reopening. This entails that where the reopening of proceedings concerns a violation affecting only a part of the decision, the proceedings shall be reopened solely in respect of that part. Furthermore, in reopening of proceedings, the applicant may not extend the grounds of the initial constitutional complaint nor present further arguments in relation thereto.**

**Regarding the merits of the complaint claiming a breach of the standard of a reasoned judicial decision, according to one view, the ordinary courts failed to address the merits of the applicant's claims, particularly regarding the issue of bad faith.**

**Conversely, according to the other view, the ordinary courts provided sufficient and exhaustive reasoning regarding the merits of the claims raised by the parties in those proceedings, thereby providing a specific response to the claims concerning bad faith and priority rights.**

## Swinkels Family Brewers N.V. (reopening of proceedings pursuant to the ECtHR judgment) – Judgment No. 68, of 05.11.2025

### Facts

Two sets of judicial proceedings were conducted between the applicant company (a Dutch commercial company which registered a trademark in its ownership in 2009) and the interested party, “Arseni” ltd. (an Albanian commercial company). The latter had acquired the rights to the same trademark in 2010 from the Macedonian company “N.D.L.”, which had registered ownership of the trademark in Albania with the General Directorate of Patents and Trademarks in 2008.

Regarding the judicial proceedings between the applicant company and the interested party, the first set of proceedings concerned the claim of each party regarding the “intellectual ownership” of the trademark, a decision confirmed in favor of the interested party at all levels of jurisdiction.

The second set of proceedings was instituted by the interested party following the international registration of the trademark with a new logo by the applicant company. The Tirana District Court decided to invalidate the applicant company's registration of the trademark, a decision upheld at the other levels of jurisdiction.

Such proceedings were challenged by the applicant company before the Constitutional Court, which decided to reject the request regarding the claims of a violation of the principle of impartiality, the right to be tried by a tribunal established by law, and the principle of legal certainty. Regarding the claim concerning the violation of the standard of a reasoned judicial decision, the Court did not reach the necessary legal quorum for decision-making.

Therefore, the applicant company lodged an application with the European Court of Human Rights, claiming a violation of the right of access to a court and the standard of a reasoned decision. The ECtHR found a violation regarding the standard of a reasoned decision and held that the most appropriate form of redress would be the reopening of the domestic proceedings.

### Court's Assessment

*Regarding the reopening of proceedings before the Court* – The Court emphasized that in cases of the reopening of proceedings, only the relevant part of the rendered judgment which constituted a violation shall be examined. The applicant's other claims, in respect of which the ECtHR found no violation, are considered *res judicata*.

*Regarding the violation of the standard of a reasoned judicial decision* – the Court, at the conclusion of deliberations, did not reach the required number of votes for a decision – thus, the application was deemed rejected.

*According to one view*, the claim concerning the violation of the standard of a reasoned decision is founded. Regarding the applicant's claim of bad faith on the part of the interested party, the domestic courts' decisions are unclear and contradictory; while the argument they relied upon regarding the existence of *res judicata* should have precluded an examination of the merits of the plaintiff's claims, it appears that such claim was, in fact, examined on the merits. Furthermore, the ordinary courts failed to adjudicate the merits of the claim concerning the unlawfulness of the national registration (in Albania) of the trademark by the Macedonian company and the subsequent acquisition of rights by the interested party, in relation to the relevant facts and the principles governing the protection of industrial property rights.

*According to the other view*, the claim concerning the violation

of the standard of a reasoned decision is manifestly unfounded, since the ordinary courts examined the applicant's claims and provided reasoned responses thereto, particularly with regard to the conduct in bad faith of the interested party and the matter of priority rights. Such decisions do not appear to be arbitrary, illogical, insufficient, contradictory, or unclear regarding the facts reflected therein. Such decisions contain sufficient reasoning regarding the establishment of the facts of the case and the proper application of the law, which is not incompatible with the standards of a fair trial.

### Decision-making

The Court decided, to accept the application for the reopening of the proceedings and to reject the applicant's individual constitutional complaint, due to the failure to reach a majority of five judges within the meaning of Article 73 (4) of the Law 8577/2000.

# INDIVIDUAL CONSTITUTIONAL COMPLAINT

## Principle of legal certainty – Standard of a Reasoned Decision

### KEY WORDS

*Statutory time limit/ statute of limitations / early retirement pension/ absolute invalidity/ release order/ compensation/ reasonable time*

**The Court has held that the right to a fair trial also encompasses the right to a reasoned judicial decision, a guarantee enshrined in Articles 42 and 142(1) of the Constitution. The arguments provided in the reasoning must be well-founded and logically coherent; in compliance with the requirements of sound legal reasoning and must constitute a cohesive whole, thereby precluding any inconsistency, whether patent or latent.**

## Aleks Čela (*release from the State Intelligence Service*) – Judgment No. 69, of 06.11.2025

### Facts

The applicant was employed by the State Intelligence Service until 2006. Despite his release from service due to a breach of regulations, the applicant was granted an early retirement pension. In 2014, after the State Intelligence Service had made available to him an extract of the release order, the applicant filed an application to the Administrative Court seeking a declaration of the absolute invalidity of the release order, the restoration of the consequences, and compensation for damage in the amount of one year's salary. The court declared such application inadmissible as being time-barred, on the grounds that it had been filed outside the statutory thirty-day time-limit pursuant to the Law on the Status of the State Intelligence Service, as well as outside the three-year time-limit under Article 203 of the Labour Code. However, the Administrative Court of Appeal reversed such decision and remanded the case for retrial to the first-instance court, reasoning that a claim for the declaration of absolute invalidity of an administrative act could be filed at any time. In the retrial proceedings, the First-Instance Court partially accepted such claim. Consequently, both parties filed an appeal against such decision – the Court of Appeal decided to partially reverse the first-instance court decision. In addition, it also found that the formal requirements for the issuance of the release order had not been satisfied. Following an appeal filed by the State Intelligence Service, the Administrative College of the High Court reversed the lower courts decisions, reasoning that the claim had been filed outside the statutory time-limit. Therefore, the applicant lodged an individual constitutional complaint with the Court.

### Court's Assessment

*Regarding the violation of the principle of legal certainty in relation to the standard of a reasoned judicial decision* – The Court found that the Court of Appeal decision – namely, the order remanding the case for retrial – did not constitute *res judicata*, since it had not definitively resolved the issue of the applicable time-limit for filing the claim. The High Court provided reasoned grounds for its finding that the applicant's claim regarding the absolute invalidity of the release order was unsubstantiated, noting that the arguments presented were not persuasive. In this regard, the High Court's reasoning did not appear to suffer from factual or legal errors of such a nature as to render it manifestly unreasonable from a constitutional perspective. Furthermore, the Court held that the applicant's claim concerning the violation of the principle of legal certainty in relation to the standard of a reasoned judicial decisions was unfounded.

### Decision-making

The Court decided, unanimously, to reject the application.

# INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Legitimacy criteria for filing an individual constitutional complaint – *Ratione personae* - *Ratione temporis***

## **KEYWORDS**

***Extradition/ prescription of sentence/ execution/ recognition of foreign criminal decision/ security measure “prison arrest”***

**Inssofar as it is not established that any aspect of the constitutional right alleged to have been violated remains at risk, the applicant’s complaint has lost its essential purpose, namely the protection of the right not to be extradited and, in this sense, it is not observed that he possesses a substantial interest.**

## **Bledar Bedini alias Imami (*the applicant's interest on the complaint about the right not to be extradited*) - Judgement No. 70, of 06.11.2025**

### *Facts*

The applicant was declared internationally wanted by the Italian authorities for the purpose of executing a sentence of 7 years imprisonment for “*Trafficking in narcotics*” according to the Italian legislation. Tirana District Court decided to recognize the foreign criminal decision and sentenced him to 7 years imprisonment. After the case was tried several times by the courts, the Court of Appeal dismissed the prosecutor’s request to recognise and execute the foreign criminal decision. The prosecutor filed a *recourse* against such decision to the High Court. The applicant was arrested for the purpose of being extradited.

Meanwhile, following the extradition request from the Italian state, the Albanian authorities initiated the relevant extradition procedures. Upon the request of the Prosecutor's Office, Tirana District Court decided to accept and allow the extradition, while, after the applicant's appeal, the Court of Appeal decided to reject the extradition request and ordered his release. The prosecutor submitted in his appeal (*recourse*) to the High Court, among others, the need to unify judicial practice with regard to Article 10, paragraph 2 of the European Convention on Extradition and the letter “è” of Article 491 of the Code of Criminal Procedure. The High Court suspended the trial and referred the matter to the Constitutional Court on the compatibility of letter “è” of Article 491 of the CPC, -which does not allow extradition when criminal prosecution or punishment is prescribed under the law of the requested state,- with Article 39, point 2, of the Constitution. The Constitutional Court decided not to proceed with the case for review. The High Court subsequently upheld the decision of the District Court which allowed extradition.

Further, the applicant addressed the Constitutional Court with an individual constitutional complaint, requesting the annulment of the decision of the Criminal College of the High Court and the refusal of extradition.

During the examination of the case by the Constitutional Court, the Italian authorities revoked the extradition request, pursuant to a decision of the Italian court which ordered the expungement of the prison sentence, due to the limitation period under Italian law. In these circumstances, the applicant applied to the Court of First Instance, which ordered his release.

### *Court's assessment*

*Legitimacy in relation to the ratione personae criterion* – The Court assessed that at the time of filing the individual constitutional complaint the applicant was legitimized *ratione personae*, but in the current circumstances this legitimization criterion is met only with regard to the procedural aspect and not to the substantive one. The purpose of the individual constitutional complaint and the applicant’s interest in challenging the decision of the High Court is precisely the guarantee of the right not to be extradited. The applicant was not extradited and there was no active extradition procedure, also the imprisonment sentence which was the basis of the extradition request, no longer existed. The situation that caused the alleged violation of the right not to be extradited had been irreversibly changed, no longer posing a risk of his extradition. In conclusion, the applicant is not legitimized *ratione personae*.

*With regard to legitimacy in relation to the ratione temporis criterion* – the Court observed that, in relation to violation of personal freedom, the applicant brought forward claims for his time in pre-trial detention for the purpose of extradition to Italy – between February to December 2022 -, up until Tirana Court of Appeal issued a decision to refuse the extradition and ordered his release from pre-trial detention. The Court also noted that the individual complaint has been submitted on 24.12.2024, thus, more than two years from removal of personal freedom. Hence, the claim of the applicant on violation of personal freedom has been submitted beyond the 4-months term, thus, cannot be taken into consideration.

### *Decision-making*

The Court decided, unanimously, to reject the application.

# INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Admissibility criteria for lodging an individual constitutional complaint –The applicant’s standing *ratione personae***

## KEY WORDS

***Voting procedure/ election of a member of the Court/ vacancy in the Court/ special Meeting of Judges of the High Court/ Justice***

**The claim seeking a declaration of unconstitutionality of the procedure for the election of the constitutional judge by the Special Meeting, and the repeal of the latter’s decision, falls within the constitutional jurisdiction under Article 131 (1), letter “e” of the Constitution.**

## **Naureda Llagami (*repeal of the decision of Special Meeting of Judges of the High Court regarding the election of a constitutional judge*) – Judgment No. 71, of 12.11.2025**

### *Facts*

The applicant applied for the vacant position of constitutional judge. Following the candidates’ assessment procedure, the Justice Appointments Council (*JAC*) submitted a final shortlist of three candidates to the Special Meeting of the High Court, in which the applicant was ranked second. During the voting process at the Special Meeting, the applicant obtained eight votes and the first-ranked candidate six votes. One vote was declared invalid due to the presence of an additional mark other than the mark in the box designated for casting the vote. Therefore, pursuant to the Court’s Organic Law, since no candidate obtained the required qualified majority of three-fifths of the judges present (nine votes), the Special Meeting declared the candidate A.V. elected on the basis of their ranking. The applicant had recourse to the ordinary jurisdiction, initially filing a request for interim measures to stay the execution of the Special Meeting’s decision on the election of the member of the Court, and subsequently filing a lawsuit seeking the repeal of that decision and a declaration of the result in her favor. Regarding the request for interim measures, the Administrative Court of First Instance decided that the matter fell outside its jurisdiction and, therefore, declared the request inadmissible. The applicant lodged an individual constitutional complaint with the Court seeking the repeal of the Administrative Court of First Instance’s decision regarding the finding that the case fell outside its jurisdiction, or, in the alternative, the repeal of the Special Meeting’s decision on the election of the member of the Court and remanding of the case to the Special Meeting in order to decide to declare the applicant as the elected member of the Court.

### *Court’s Assessment*

*Regarding the Court’s jurisdiction* – The Court found that the applicant requested the Court to examine the “verification of the election” of the official in relation to the specific violation concerning the (non) existence of legal impediments that would constitute grounds for finding the public official ineligible, while also challenging the instant act embodying the alleged constitutional violation, namely the decision of the Special Meeting. The Court further held that the claim seeking a declaration of unconstitutionality of the procedure for the election of the constitutional judge by the Special Meeting, and the repeal of the latter’s decision, fell within its constitutional jurisdiction under Article 131 (1), letter “e” of the Constitution. Therefore, the Court considered that it should not examine separately the applicant’s claims concerning the unconstitutionality of the Administrative Court of First Instance’s decision declaring the matter outside its jurisdiction, in accordance with Article 131, (1) letter “f” of the Constitution. Instead, it deemed it necessary to examine such claims jointly with the issue of the applicant’s *locus standi* to seek the repeal of the decisions of the Special Meeting and the Voting Commission determining the voting result.

*Regarding the applicant’s standing (locus standi)* – The Court, having assessed the first criterion of standing *ratione personae*, did not, at the conclusion of its deliberations, reach the number of votes required to render a decision pursuant to Article 133 (2) of the Constitution, further elaborated in Article 72 (2) of the Court’s Organic Law.

– According to one view, the applicant, in her capacity as an individual, lacked standing *ratione personae* to apply to the Court regarding the electability of officials of the bodies provided for in Article 131 (1), letter “e” of the Constitution. While the applicant may, as an individual, lodge a constitutional complaint under Article 131 (1), letter “f” regarding an act of public authority – such as the impugned decisions – that provision requires that such act must have infringed his or her fundamental rights and freedoms guaranteed by the Constitution. In line with this view, the right to be elected as a constitutional judge does not constitute a fundamental constitutional right; therefore, the applicant lacks standing *ratione personae*.

– According to the other view, candidates for offices provided for by the Constitution possess standing to challenge the constitutionality of the election process before the Court, insofar as they were participants in that process, pursuant to Article 131 (1), letter “e” read in conjunction with Article 134 (1) letter “i” and 2 of the Constitution.

### *Decision-making*

The application was rejected, due to the failure to reach the majority of five (5) judges regarding the criterion of standing *ratione personae*, pursuant to Article 73 (4) of the Court’s Organic Law.

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right to fair trial –  
The right to be tried  
by a court determined  
by law**

### KEYWORDS

*Public construction contract/contract implementation/dispute resolution/international arbitration/National Chamber of Commerce/execution of decision/private bailiff/ public interest/ cessation of the case/deed of waiver/principle of disposition*

**The Court notes that in order to put into motion a constitutional review process, the principle of disposition applies, according to which the applicant is granted the right to terminate the procedure initiated by him/her through an act of withdrawal. The latter, as a rule, entails the cessation of the examination of the case, except in cases where its examination carries a public interest.**

### ***Company “VEGA” sh.a. (cessation of constitutional proceedings following the withdrawal of the application) - Judgement No. 72 of 17.11.2025***

#### *Facts*

The applicant has entered into a contract with the Ministry of Transport and Infrastructure (MTI), for the construction of the Durrës ferry terminal in 2008. For disputes arising regarding implementation of the contract, the applicant addressed the International Court of Arbitration of the International Chamber of Commerce (ICC), which has ruled partially in favour of the applicant.

Tirana Court of Appeal recognized ICC's decision and issued an execution order for this decision. MTI paid the procedural obligations and costs in favour of the applicant, except for interests for the delay.

Ministry of Infrastructure and Energy (the revised name of the MTI), filed a lawsuit where sought to suspend the execution of the arbitration decision, as well as to oppose the actions of the private bailiff who carried out the execution. The lawsuit was addressed initially to Tirana District Court, then for jurisdiction to Tirana Administrative Court of First Instance. The latter decided to accept the lawsuit. Upon appeal of the applicant and the bailiff's office, the Administrative Court of Appeals changed the decision and rejected the lawsuit. Following the recourse filed by the litigants, the Administrative College of the High Court decided to overturn the decision of the appellate court and send the case for retrial.

The applicant addressed the Constitutional Court with an individual constitutional complaint and the Meeting of Judges decided to accept the request and send the case to the plenary session. On 29.10.2025, the applicant filed a request to waive the examination of the individual constitutional complaint.

#### *Court's assessment*

The Court notes that Article 31/b of Law No. 8577/2000 provides for the applicant's right to withdraw the application before the Court begins its consideration, which in this case decides to cease the trial of the case, and that the withdrawal of the application is not accepted when the Court considers that the consideration of the case represents a public interest. In this regard, the Court reasoned whether the consideration of the specific case carried a public interest, in the sense of the application of the exceptional rule of the principle of disposition of the party.

After noting that the applicant's individual constitutional complaint was aimed at challenging the decision of the High Court, and that the applicant alleged that *her right to fair trial had been violated in terms of the right to be tried by a court determined by law, of the principle of legal certainty related to res judicata and trial within a reasonable time*, the Court assessed that there were no compelling reasons for continuing the trial due to a public interest, since the applicant's claims were directly related to the violation of her constitutional interests and in these circumstances there was no point to apply the exception to the principle of disposition.

#### *Decision-making*

The Court decided, unanimously, to cease the adjudication of the case, based on article 31/b of law 8577/2000.

# INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Admissibility criteria for lodging an individual constitutional complaint – Exhaustion of effective legal remedies**

## **KEY WORDS**

**“Detention on remand” measure/ legal remedy/ substitution of the measure/ criminal report**

**Legal remedies, such as an appeal, have effect and produce direct consequences only for the individual who has exercised them, either personally or through appointed counsel.**

## **Mariglen Qato (exercise of the right of recourse by the defendant or his defense counsel) – Judgment No. 73, of 19.11.2025**

### *Facts*

The Special Prosecution Office registered criminal proceedings against the applicant and citizen R.M., who had been employed in subordinate directorates of the Municipality of Tirana since 2015. Following investigative actions, the Special Prosecution Office requested the imposition of a preventive measure, and the Special Court of First Instance against Corruption and Organized Crime ordered the applicant’s detention on remand. Subsequently, the Prosecution requested the verification and extension of such measure and the questioning of the persons under investigation, including the applicant. The Special Court of First Instance against Corruption and Organized Crime decided to extend the measure against the applicant. Therefore, the applicant filed an appeal, but the Special Court of Appeal upheld such decisions. Furthermore, the Criminal College of the High Court decided to reverse the appeal decision regarding the applicant and the person under investigation, R.M., and remanded the case for further proceedings.

Upon re-examination, the Special Court of Appeal once again upheld the Special Court of First Instance against Corruption and Organized Crime’s measure regarding the imposition of detention on remand. Thus, the applicant challenged such measure and requested its replacement with a more lenient measure. The two other persons under investigation, namely – citizens R.M. and T.T., lodged the same request with the Special Court of First Instance against Corruption and Organized Crime, which rejected such requests. Appeals by the applicant and citizen R.M. were rejected by the Special Court of Appeal. Thereafter, R.M. filed a recourse with the Criminal College of the High Court, which upheld the appeal decision. Therefore, the applicant lodged an individual constitutional complaint with the Court seeking the repeal of the judicial decisions.

### *Court’s Assessment*

*Locus standi* – Admissibility regarding the exhaustion of remedies criterion, the Court notes that the High Court was set into motion by the recourse of the person under investigation, R.M., whereas the applicant did not lodge a recourse. The Court emphasizes that, under domestic law, a recourse produces effects and direct consequences only for the individual who has exercised legal remedies, either personally or through appointed defense counsel. In the instant case, the right of recourse was exercised by the other co-defendant, while the High Court, in its decision, addressed only the complaints raised by R.M. Although the High Court decided to uphold the decision of the Court of Appeal without specifying against which of the defendants it produced effects, in fact, it appears to have produced effects and consequences only for the individual who exercised the right of recourse.

In these circumstances, the Court considered that insofar as the applicant did not lodge a recourse with the High Court and did not raise before that jurisdiction the complaints submitted to this Court, he has not exhausted all effective domestic remedies within the meaning of Article 131 (1), letter “f” of the Constitution.

### *Decision-making*

The Court decided, unanimously, to reject the application.

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right to a fair trial –  
Right to a fair hearing  
– Principle of legal  
certainty**

### **KEY WORDS**

**Armed Forces/ former officer/  
early retirement pension/  
length of service/ time at  
which the right arose/ time the  
specific administrative act is  
issued/ substantive law/ law  
no. 8087/1996/ unifying Deci-  
sion no. 3/2016**

**The High Court, in its capacity  
as a court of law, could not  
confine itself to a limited rea-  
soning but was required to  
provide a specific response to  
the applicant's claims in the  
recourse concerning the appli-  
cable law and the criteria for  
determining the amount of the  
early retirement pension for  
length of service, in particular  
by taking a stance regarding  
the limitation of the applicant's  
pension amount.**

**Having regard to its subsidiary  
role in upholding fundamental  
human rights and freedoms,  
the Court considers that it is  
for the High Court to review  
the lawfulness of the decisions  
of the courts of fact regarding  
the interpretation of substan-  
tive law.**

**The Court of Appeal does not  
appear to have addressed the  
provisions of Article 37(1) of  
Law no. 49/2012, pursuant to  
which the court reviews the  
lawfulness of the impugned  
administrative act based on the  
legal and factual situation ex-  
isting at the time the specific  
administrative act was issued,  
failing to take into considera-  
tion, for the calculation of the  
pension amount, the condi-  
tions and criteria under the  
statutory provisions in force at  
that time.**

**Bibë Kaza (violation of the right to an early retire-  
ment pension for length of service concerning courts'  
interpretation) – Judgment No. 74, of 20.11.2025**

### *Facts*

The applicant, a former active officer of the Armed Forces holding the rank of “Colonel”, who was transferred to the reserve in 2004 and received an early retirement pension for length of service since 1 August 2006, challenged the calculation method of such pension by the Tirana Regional Directorate of Social Insurance (*RDSI*). He raised claims for a violation of the applicable legal framework and requested the recalculation of the pension in accordance with Law no. 9210/2004, as well as the payment of arrears for the period from 2006 to 2009. His lawsuit was initially accepted by the Tirana Administrative Court of First Instance, but was subsequently rejected by the Administrative Court of Appeal. The latter, acting in compliance with Unifying Decision no. 3/2016 of the Joint Colleges of the High Court, held that the pension had been lawfully determined pursuant to Law no. 8087/1996, including a limitation on its amount. Following an appeal lodged by the applicant, the Administrative College of the High Court declared the appeal inadmissible. *Therefore*, the applicant lodged an individual constitutional complaint with the Court.

### *Court's Assessment*

Regarding the violation of the right to a fair hearing, in relation to the principle of legal certainty – The Court found that the Administrative Court of Appeal limited the applicant's early retirement pension for the period from 1 August 2006 to 30 June 2009 at the level of the maximum national old-age pension. Such decision was taken pursuant to the provisions of Article 11 of Law no. 8087/1996, as amended by Law no. 8521/1999, and the fact that Law no. 9210/2004 could not be applied due to the absence of by-laws necessary for its implementation.

The Court held that, by such reasoning, the Court of Appeal failed to consider the provisions of Article 37(1) of Law no. 49/2012. According to the aforementioned provisions, the court reviews the lawfulness of a contested administrative act based on the legal and factual situation existing at the time the specific administrative act was issued. By failing to take into consideration – for the calculation of the pension amount – the conditions and criteria in accordance with the legal provisions in force at that time, the appeal decision does not appear to satisfy the requirements of a fair hearing within the meaning of Article 42 of the Constitution.

Furthermore, the Court notes that the High Court failed to analyze the provisions of Law no. 9210/2004 and Article 29 of Law no. 10142/2009, as well as their interpretation by the Court of Appeal. Thus, it does not appear that the High Court addressed the grounds submitted in the recourse regarding the applicable law, nor those concerning the application of the statutory criteria provided for by Law no. 8087/1996, as amended by Law no. 8521/1999, for the period from 1 August 2006 to 30 June 2009, following the repeal of maximum level on the early retirement pension by Law no. 9210/2004.

In the light of the foregoing the High Court's decision violates the applicant's right to a fair hearing regarding the standard of a reasoned judicial decision, as well as the principle of legal certainty concerning his statutory entitlement to an early retirement pension. *Therefore*, the applicant's claim is founded.

### *Decision-making*

The Court decided, unanimously, to accept the application.

**Right to a hearing within a reasonable time**

### KEY WORDS

*Article 399/3, point 1 and Article 399/4, point 2, of the Code of Civil Procedure/ Request for retrial/ Reasonable time/ Acceleration of judicial proceedings/ Judicial expenses*

**The remedies provided by the Code of Civil Procedure for preventing and redressing the breach of the time-limit were not applied effectively in the instant case, thus – the conduct of the authorities resulted in a violation of the applicant’s right to a hearing within a reasonable time.**

**With regard to the excessive length of proceedings, the Court has held that right to a hearing within a reasonable time is violated even in cases not requiring special priority, such as disputes concerning property rights related to proceedings on property restitution and compensation.**

## ***Afroviti Xufa (finding of a violation of the right to a hearing within a reasonable time) – Judgment No. 75, of 20.11.2025***

### *Facts*

The applicant filed a request seeking the partial repeal of the Vlora Regional District Office for Restitution and Compensation Property decision (2009) concerning the properties (*namely – a plot of land and a building*); a declaration of absolute nullity of the sale contract; an order for the Vlora Local Office for the Registration of Immovable Property to cancel the property entry in the name of the defendants and register it in the applicant’s name; the annulment of the site permit and building permit; and the imposition of interim measures to secure the claim. The Vlora District Court upheld such request, while rejecting the imposition of the security measure. Following an appeal by the defendant party, the Vlora Court of Appeal reversed the decision of the first-instance court and remanded the case for retrial. Subsequently, following a recourse by the defendant party, the case was registered with the High Court in 2017. While the case was pending examination, the applicant submitted two requests for the acceleration of the proceedings (2023 and 2024). On 25 November 2024, the applicant filed an application to the High Court seeking a finding of a violation of the right to a hearing within a reasonable time and/or the acceleration of the judicial proceedings, pursuant to Articles 399/5 and 399/6, point 1/c, of the Code of Civil Procedure. By a decision of 16 January 2025, the High Court decided to discontinue the proceedings, holding that the civil case was scheduled for examination in chambers on 29 January 2025. Therefore, on 09 June 2025, the applicant lodged an individual constitutional complaint with the Constitutional Court, concerning the aforementioned subject matter, as well as the compensation of legal expenses. A few days prior to the Constitutional Court’s plenary session, the High Court examined the applicant’s case. It decided to reverse the decision of the Vlora Court of Appeal and remand the case to the Court of Appeal of General Jurisdiction for further proceedings.

### *Court’s Assessment*

*Locus standi* – The Court considered that the applicant lacked standing *ratione personae* regarding the claim seeking a constitutional review of the content of Articles 399/3, point 1, and 399/4, point 2, of the Code of Civil Procedure, since she failed to substantiate a real and direct interest.

*Regarding the violation of the right to a hearing within a reasonable time* – The Court found that the examination of the applicant’s case before the High Court manifestly exceeded the two-year time-limit provided for in Article 399/2, point 1, letter “b”, of the Code of Civil Procedure. Therefore, it verified the criteria determining the reasonable length of proceedings regarding: i) The conduct of the applicant – The applicant did not contribute to the delays and actively requested the acceleration of the proceedings. ii) The complexity of the case – The Court found that the case was not complex. iii) The conduct of the authorities – The Court noted that the length of the proceedings in the applicant’s case exceeded a reasonable time within the meaning of Article 42 of the Constitution and Article 6 (1) of the European Convention on Human Rights, holding that the delay in the adjudication of the applicant’s case before the High Court was a result of the conduct of the authorities. iv) The importance of what was at stake for the applicant – The Court noted that, although the case does not fall into the category of “vital” interests requiring priority treatment, it concerns property rights and proceedings on property restitution and compensation, an area where the Court has previously found violations regarding the reasonable time requirement. Thus, the Court held that the applicant’s request is accepted only regarding the claim for finding of a violation of the right to a hearing within a reasonable time.

### *Decision-making*

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

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

### Right to a fair trial – Standard of a reasoned judicial decision

#### KEY WORDS

*Commercial company/ Photovoltaic power plant/ Infrastructure impact tax/ Council of Ministers' Decision/ Building permit/ Authorization/ Expiry the deadline for works/ Approval of draft decisions/ Council of Ministers/ Secretary General/ Active and discretionary role/ Statutory time-limit / Regulation on the Procedures for Granting Authorization*

**The reasoning part constitutes an essential component of a fair decision; the arguments adduced therein must be grounded and logically interconnected, upholding the rules of sound judicial reasoning, and must ensure internal coherence of the decision. The courts of ordinary jurisdiction's decisions are not called into question, except in cases where an error of law or fact is so manifest that a diligent court could never have committed it, or is such that it renders the proceedings unfair.**

### “Malsia Solar 1” Ltd., “Malsia Solar 2” Ltd., and “Malsia Solar 3” Ltd. Companies (*violation of the standard of a reasoned decision by the High Court*) – Judgment No. 76, of 02.12.2025

#### Facts

In 2015, the applicant companies received final authorization from the Council of Ministers for the implementation of a project to construct a photovoltaic power plant, with a completion deadline of two years (March 2017). Due to a disagreement with the Municipality of Malësia e Madhe regarding the rate of the infrastructure impact tax (0.1% or 3%), the applicant companies failed to obtain the building permits for the beginning of works in due time. In 2018, the applicant companies requested the issuance of the building permit; however, due to the expiry of the deadline set out in the Council of Ministers' Decision (*DCM*) granting the authorization, this was not possible. Following communications through administrative channels aimed at extending the deadlines for the works, the Ministry of Infrastructure and Energy submitted three draft decisions to the Council of Ministers for approval. Such draft decisions were not approved, on the grounds that the request for extension had been submitted outside the statutory time-limits. In these circumstances, the applicant companies filed a lawsuit to the Tirana Administrative Court of First Instance, which, *inter alia*, partially accepted such lawsuit and ordered the Council of Ministers to approve the three draft decisions in question. Such decision was upheld by the Administrative Court of Appeal, but the Administrative College of the High Court repealed the decisions of the two lower courts (courts of fact) and rejected the lawsuit as unfounded in law and in evidence.

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

#### Court's Assessment

*Regarding the violation of the right to property* – The Court held that, given that the authorization for the construction of the project was preliminary and the investment had not been realized, there was no reasonable basis to support any legitimate expectation.

*Regarding the violation of the standard to a reasoned judicial decision* – The judges' assessments were divided into two views:

*According to one view* it was considered that the applicant companies' claim regarding the violation of the standard of a reasoned decision was founded, since the High Court, although it analyzed the applicable legal provisions in the interpretation of the circumstances and facts of the dispute at hand, did not to address them as interrelated. Thus, it failed to take into consideration the fact that the applicant companies were

in a state of objective impossibility – beyond their control – to fulfill and implement the project in accordance with the authorizations granted by the Council of Ministers. This issue and its dynamics were neither analyzed nor assessed objectively by the High Court, resulting in a reasoning that was formally based merely on legal provisions, disregarding the specific circumstances and facts of the case – facts which, moreover, have been established and acknowledged by the domestic authorities themselves.

*According to the other view* – The applicant companies' claim regarding the violation of the standard of reasoning is unfounded, since the High Court provided sufficient reasons for its assessment in relation to the applicable legal provisions that led to the resolution of the case in accordance with the content of the operative part of the decision. Such decision appears clear in its content and its constituent parts are coherent; furthermore, the reasoning part presents a legal interpretation based on the circumstances and facts of the case, containing no errors of fact or law.

#### Decision-making

The Court decided, to reject the application, due to the failure to reach a majority of five judges within the meaning of Article 73 (4) of the Law 8577/2000.

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

### Right of Access – Standard of Reasoned Judicial Decision

#### KEY WORDS

*Civil service/ disciplinary measure/ disciplinary proceedings/ passive standing/absolute nullity/ relative nullity/articles 116 and 118 of the Code of Administrative Procedure/ de plano review of the case*

**The right of access does not include only the right to initiate proceedings, but also the right to obtain from the court a conclusive resolution on the dispute before it, as access to the court must be substantive rather than merely formal.**

**When ordinary courts, in interpreting and applying the law in a specific case violate constitutional principles, standards, or rights, their interpretation is subject to constitutional review.**

**The court emphasized that when a claim raises issues concerning violations of the fundamental principles of judicial proceedings, and these issues are evident in the case materials, a decision by the deliberative chamber to dismiss the recourse undermines the right to a fair court trial.**

### Klodiana Cankja (*unlawfulness of the act of dismissal from office*) – Judgement No. 77, of 2.12.2025

#### Facts

The applicant was removed from her position as Director General of the Public Procurement Agency (PPA) following the disciplinary measure of dismissal from the civil service by the Secretary General of the Council of Ministers, on the grounds of violations committed in the course of exercising her duties.

Challenging the lawfulness of her dismissal, the applicant brought an action against the Council of Ministers, seeking the annulment of the decision, reinstatement to her position, and payment of the corresponding salary.

The court of first instance dismissed the claim due to the lack of passive standing of the defendant, a finding subsequently upheld by the Court of Appeal. The High Court, in turn, refused to admit her recourse.

Subsequently, the applicant once again addressed the Administrative Court of First Instance, seeking a declaration of the absolute nullity of her dismissal from office, reinstatement to her former or an equivalent position, and payment of her salary as Director General of the Public Procurement Agency (PPA).

The Administrative Court of First Instance in Tirana dismissed her claim, a decision upheld by the Administrative Court of Appeal. The High Court also refused to admit her recourse, reasoning that it did not invoke the grounds provided for in Article 58 of Law no. 49/2012, as amended.

The applicant then filed an individual constitutional complaint with the Constitutional Court.

#### Court's assessment

*Regarding the alleged infringement of the right of access, in connection with the standard of reasoning in judicial decisions* – the Court examined whether the applicant had received a conclusive response to her substantive claim, which concerned the (un)lawfulness of the procedure leading to her dismissal from office.

The Court noted that, although the applicant sought a declaration of the absolute nullity of her dismissal from the civil service on the grounds that it had been issued in violation of the procedure required by law, referring specifically to Article 116, letter “c” of the applicable Code of Administrative Procedure, the ordinary courts treated her claim as essentially challenging the lawfulness of the administrative act. In other words, they interpreted her claim as seeking its relative nullity under Article 118 of the Code of Administrative Procedure, which, according to the courts, had already been adjudicated.

Likewise, the Court of Appeal held that the act of dismissal from office did not contain the elements of absolute nullity, as it was issued by a duly identified administrative authority acting within its competence, with reference to letters “a” and “b” of Article 116 of the Code of Administrative Procedure. However, the Court of Appeal did not address or provide a response regarding the ground invoked by the applicant under letter “c” of the same article.

The High Court, as the court of law, was, in the exercise of its function and in accordance with the principle of subsidiarity, expected to take a clear position on the applicant's claim, even though it raised a constitutional issue, namely the right of access. By refusing to admit the applicant's recourse, limiting itself to a *de plano* review of the case and reasoning solely that the grounds of the recourse were not among those provided by law, without providing a reasoned response to the constitutional claim, the High Court cast doubt on the respect for and protection of the applicant's fundamental constitutional rights.

The Court concluded that the applicant's claim concerning the violation of the right to a fair court trial, in terms of substantive access in connection with the standard of reasoning in judicial decisions, is well-founded.

#### Decision – making

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

**Right not to be expelled – Principle of reciprocity**

### KEY WORDS

*Foreign court/ Interpol/ Criminal conviction/ preventive measure/ detention on remand/ Extradition/ Convention on Extradition/ acceptance with reservation/ protocol No. 4 to the European Convention on Human Rights/ statute of limitations*

**In the event of a conflict of norms between Article 10 (as amended) of the Convention on Extradition and Article 491, letter “ë” of the Code of Criminal Procedure (CCP), the norms of the Convention on Extradition shall apply; a conclusion also reached by the Criminal College in the decision under review. Thus, where the sentence has not become statute-barred in the requesting State, irrespective of whether it is statute-barred in the requested State, extradition shall be granted.**

## **Kleant Keshi (alias Gentian Hysa) (*Right not to be expelled in the context of extradition*) – Judgment No. 78, of 03.12.2025**

### *Facts*

The applicant having been convicted by the Italian courts in three sets of criminal proceedings and sentenced to more than five years’ imprisonment, was the subject of an international wanted notice issued by Interpol Rome. In 2021, the applicant was arrested and, subsequently, the Dibra District Court imposed on him the measure of detention on remand with a view to his extradition to Italy. The Tirana Court of Appeal held that, while the Dibra District Court had rightly granted extradition in respect of two convictions, as regards the conviction for the criminal offence of “production and sale of narcotics”, the principle of reciprocity should apply, since in an equivalent case – Italy would have refused to apply Article 10 (2) of the Convention on Extradition. Upon a recourse filed by the prosecutor, the Criminal College of the High Court held that the Court of Appeal had erroneously applied the expiry of the limitation period for prosecution in the requested State (the Albanian State) as an obstruction to extradition (solely regarding the criminal offence of production and sale of narcotics). It further held that such interpretation falls into conflict with the Fourth Additional Protocol to the Convention on Extradition, which provides that extradition shall not be refused on the ground that the prosecution or punishment of the sought person would be statute-barred under the legislation of the requested party.

Therefore, the applicant lodged an individual constitutional complaint.

### *Court’s Assessment*

*Regarding the claim concerning the right not to be expelled* –The Court assessed whether the applicant’s extradition had been carried out in compliance with Article 39 (2) of the Constitution, which guarantees the individual right not to be expelled, and within the stipulations of criminal legislation having regard also to the principle of reciprocity. The Court noted that both the Republic of Albania and the Italian State are parties to the Convention on Extradition, whereas the procedure granting the applicant’s extradition to the Italian State was concluded by a final decision of the High Court. Upon a combined reading of Articles 116 and 122 of the Constitution, international instruments ratified by law become part of the domestic legal order and take precedence over laws that are incompatible with them. In this regard, the Convention and its Additional Protocols rank above domestic criminal legislation and prevail over it.

Furthermore, the Court found that in the instant case it does not appear that Albania has entered a reservation regarding the amendments to Article 10 of the Convention on Extradition, as the Italian State has done, notwithstanding that the Convention grants such right. According to the provisions of the Convention, the principle of reciprocity cannot apply automatically but requires the exercise of such instrument by the Albanian State regarding the same provision in respect of which the Italian State has entered a reservation. The Court further held that even in the eventuality of a reservation being entered, it is not for the courts to apply such principle; the duty of the judicial system is solely to verify whether the conditions stipulated in Articles 490 et seq. of the Code of Criminal Procedure (CCP) are met. Referring to Article 499 of the CCP, the competent authority deciding on extradition is the Minister of Justice, who, in his capacity as the central authority in jurisdictional relations with foreign authorities, is in the appropriate position to possess all the information regarding facts relevant to the principle of reciprocity.

In the instant case, in compliance with the reasoning of the Criminal College of the High Court, it appears that the principle of reciprocity, as an instrument of international law in the field of judicial cooperation in criminal matters, cannot be applied by the ordinary courts but rather by the national political authorities. Such finding by the ordinary courts does not contain any element of unconstitutionality – thus, there are no grounds for the Court to overturn it. Against this background, the Criminal College of the High Court rightly rejected the applicant’s claims regarding the application of the principle of reciprocity, as unfounded.

### *Decision-making*

The Court decided, unanimously, to reject the application.

**Right to fair trial- The standard of a reasoned judicial decision - The principle of legal certainty**

### KEYWORDS

*Seniority of service/ early retirement/ reference salary/ pension amount/ Directorate of Social Insurances/ retroactive force of law/ the principle of disposition/ unifying decision of the High Court*

**The principle of retroactivity is present in cases where a legal norm applies to things already established in the past. From a constitutional point of view, a law with retroactive force is challengeable if it infringes rights acquired by existing laws or creates a new obligation with respect to past transactions.**

**Early retirement pension is granted in consideration of the nature of the work of military personnel, who after the termination of their career, with or without their wish, have difficulty finding a job of a comparable level to the functions they exercised. Therefore, the legislator envisaged the creation of a system of supplementary benefits to guarantee the maintenance of a comparable standard of living and economic conditions for military personnel of the Armed Forces, whose employment relationships were terminated. In this regard, early retirement pension is protected by the principle of legal certainty.**

### **Hajri Thaçaj (*the right to calculate the amount of early retirement acquired by law*) - Judgement No. 79, of 12.12.2025**

#### *Facts*

The applicant, an active officer with the rank of “Lieutenant Colonel”, after being released from duty and placed in reserve in 2003, was initially treated with transitional pay, and then, in 2005, became entitled to early retirement pension. Disagreeing with the amount of the pension, the applicant addressed the first instance court, which accepted his claim, returning the differences in the pension amount from date April 2009, when he was entitled to the pension. The appellate court did not uphold the first instance decision, meanwhile the High Court did not accept the recourse of the defendant. Further on, referring to decision no. 33/2010 of the Constitutional Court, which repealed as unconstitutional point 2, of article 14, as well as article 27, of law no. 10142/2009, -that, among others, provided for supplementary social insurance of Armed Forces-, the applicant addressed again the courts and requested: the obligation of Directorate of Social Insurances to continue the payment of the early pension and compensation for the damage caused as a result of failure to implement decision no. 33/2010 between May 2009 and March 2013. The first instance court partially accepted the lawsuit, and the Administrative Court of Appeal upheld the first instance decision. The High Court overturned the decision of the appellate and sent the case for retrial. The applicant filed an individual constitutional appeal, but the College of the Constitutional Court decided not to proceed in plenary session, since the applicant had not exhausted effective legal remedies within the meaning of Article 131, point 1, letter “f” of the Constitution, and the request was submitted outside the 4-month legal deadline.

Meanwhile, in 2023, the Administrative Court of Appeal, in retrial, decided to change the first instance decision and dismiss the lawsuit. Following the recourse filed by the applicant, the High Court decided to reject it. The applicant addressed the Court with an individual constitutional complaint.

#### *Court's assessment*

*For the violation of the right to a fair trial related to the principle of legal certainty, -* The Court analyzed whether the interpretation that the Administrative Court of Appeal and the High Court had made to the applicable substantive law had violated the applicant's right to an early retirement pension (for seniority of service).

For the early retirement pension until 01.07.2009, the Court observed that despite the repeal of the maximum ceiling for early retirement (Article 49 of Law No. 9210/2004), the Administrative Court of Appeal did not calculate the amount of the pension according to the legal provision in force for that period, but determined that its total amount cannot exceed the amount of the maximum old-age pension at the country level, thus, assessing that Law No. 9210/2004 could not be applied given that secondary legislation for its implementation was absent. The reasoning of the Administrative Court of Appeal does not seem to have taken into account the provisions of the Law on the administrative courts, according to which the court examines the legality of the contested administrative action based on the legal and factual situation that existed at the time of the specific administrative action, thus, the Court did not consider the calculation of the pension amount, the conditions and criteria, in line with the legal provisions in force for that period. Therefore, in the Court's assessment, the decision of the Court of Appeal does not seem to have fulfilled the concept of a fair trial within the meaning of the provision of Article 42 of the Constitution. Also, the High Court, as a court of law, should have responded, to the applicant's claims regarding the applicable law and the criteria for determining the early retirement pension for seniority. Therefore, that court could not remain satisfied with a limited reasoning, but had to take a position and reason both -the applicable law, and in particular -whether the limitation “not more than the maximum old-age pension amount countrywide” also included the time period 01.05.2009-01.07.2009. Hence, the High Court's decision does not meet the requirements for a fair trial in terms of the standard of reasoning of the judicial decision, violating the applicant's principle of legal certainty in terms of the right to early retirement acquired by him by law, at least for the time period 01.05.2009-01.07.2009.

#### *Decision-making*

The Court decided, unanimously, to accept partially the application.

**Right to a fair trial –  
Right of access –  
Standard of a rea-  
soned judicial decision**

### KEY WORDS

*Trading in influence/ po-  
lice officer/ discrimina-  
tion/ dismissal order/ dis-  
continuation of investiga-  
tion/ retrial/ compensation  
for health-related and non-  
pecuniary damage/ mani-  
festation of the will of the  
public administration*

**The Court has consistently held that it is the duty of the ordinary courts to assess the facts and the evidence adduced, as well as to interpret the law for the purpose of the judicial proceedings they conduct. Whereas, its duty is to assess whether there has been a violation of constitutional rights during the judicial proceedings, and whether the application of the law was potentially arbitrary, in the sense that it manifestly conflicts with the concept of a fair trial as stipulated in Article 42 of the Constitution.**

### **Gjergj Sokoli (*violation of the right of access due to the failure to notify the dismissal order*) – Judgment No. 80, of 16.12.2025**

#### *Facts*

The applicant, a former officer of the State Police in the Korça District, was initially suspended and subsequently dismissed from the State Police via a “dismissal order” following criminal proceedings for trading in influence, which also resulted in his conviction. Regarding such proceedings, the High Court repealed the decision and remanded the case to the first-instance court for retrial. The latter decided to transfer the case file to the Prosecution Office, which decided to discontinue the investigation. Thus, the applicant filed a lawsuit to the Lezha Regional Police Directorate seeking reinstatement to the State Police structures but received no response.

Subsequently, the applicant lodged an application with the Court seeking, *inter alia*, the obligation to pay monthly salary arrears calculated from the date of his arrest, reinstatement to his previous post, and compensation for health-related and non-pecuniary damage.

Following an examination of the merits, the Tirana Administrative Court of First Instance partially accepted the lawsuit. However, the Administrative Court of Appeal reversed such decision and remanded the case for retrial. During such proceedings, the first-instance court partially accepted the lawsuit, whereas the Court of Appeal discontinued the proceedings on the grounds that the lawsuit had been filed outside the statutory time limit. The High Court declared the appeal inadmissible due to the absence of statutory grounds. Therefore, the applicant lodged an individual constitutional complaint claiming a violation of his right of access to a court. He argued that the Administrative Court of Appeal, by discontinuing the proceedings of the case on the grounds of being time-barred, and the High Court, by declaring the appeal inadmissible, failed to examine on the merits the main claim regarding the failure to notify the dismissal order.

#### *Court’s Assessment*

*Regarding the violation of the right to substantive access related to the standard of a reasoned judicial decision*– The Court found that, concerning the claim that the courts failed to examine on the merits the main claim regarding the failure to notify the dismissal order, the Court noted that, as a rule, during administrative proceedings for removal from office, the administration, in its capacity as an employer, is under the obligation to notify the individual about the dismissal order. However, the Court noted that the applicant was aware of the termination of the employment relations, and consequently of the financial relations, due to his arrest.

In this regard, the Court found that the decisions of the ordinary courts satisfy the requirements established by constitutional jurisprudence regarding the standard of a reasoned judicial decision. The ordinary courts’ decisions were grounded on the evidence adduced during the trial, which was examined and assessed in its entirety and as a whole. The Court of Appeal also provided a reasoned response to the applicant’s claim regarding his notification of the dismissal order, and the relevant arguments for its rejection. Furthermore, the interpretation of the law applied to resolve the dispute – considering also the significant period that elapsed between the applicant’s removal from office and the filing of the application – does not appear to be arbitrary from a constitutional perspective, since the applicant received a reasoned response to his claim. In addition, the limited reasoning of the High Court’s decision is in conformity with the Court’s standards for decisions of such nature, thereby satisfying the criteria regarding the standard of a reasoned judicial decision. In conclusion, the Court held that the applicant’s claim concerning the violation of the substantive right of access linked to the standard of a reasoned judicial decision is unfounded.

#### *Decision-making*

The Court decided, unanimously, to reject the application.

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Right to a fair trial -  
Right of access - The  
standard of a reasoned  
judicial decision**

### KEYWORDS

**Moral damages/ material  
damages/ discrimination/  
expression of will/ waiv-  
ing of recourse/ memo-  
randum/verbal note**

**The College must have evaluated carefully the content of the memorandum submitted by the party, in order to reach the conclusion that the applicant was seeking the cessation of trial due to the case remaining without a subject of dispute, by -in fact- referring to the provision of article 299, letter “c” of Civil Procedure Code, according to which: in instances when the trial cannot longer pursue, and this is ascertained by higher courts, the courts squash the decision of the lower court and dismiss the proceedings.**

### ***Deshire Subashi (violation of the right of access due to negligence in interpreting the will to withdraw from recourse) - Judgement No. 81, of 16.12.2025***

#### *Facts*

The applicant, appointed in 1993 as a judge at Tirana Court of Appeal, by a decision of the former High Council of Justice (HCJ) was elected in 2003 member of the Central Electoral Commission (CEC) for a 7-year term. The entry into force of the new Electoral Code in 2008 brought about the premature termination of her term, but in 2009 she was re-elected by the Assembly as a member of CEC and exercised this function until the end of her term in October 2012. After the end of her constitutional term, the applicant addressed the HCJ three times with requests for reinstatement as a judge at Tirana Court of Appeal, requests that were never taken into account.

In these circumstances, the applicant filed a lawsuit with the administrative courts, alleging discrimination, violation of the law and seeking compensation. The Administrative Court of First Instance of Tirana decided to partially accept the suit, ordering, among other things, the obligation of the HCJ to consider the applicant's request, as well as to compensate her in the amount of one million lek after finding discrimination. This decision was changed by the Administrative Court of Appeal, as regards the amount of compensation (decision on the merits). Meanwhile, the Administrative College of the High Court decided to overturn the decision on the merits of the court of appeal only as regards the request for the finding of discrimination, returning the case for retrial, while leaving that decision in force for the remaining part, as regards the applicant's compensation. The Administrative Court of Appeal, following the request of the HCJ for clarification and interpretation of the decision on the merits, clarified -through its own decision- the operative part of the decision (on the merits). The applicant filed an appeal against this decision. The Administrative College of the High Court decided to reject the appeal, considering that the applicant, through her two written submissions (verbal notes), requested the cessation of the case, based on Article 490 of the Code of Civil Procedure (CCP). Subsequently, the applicant filed an individual constitutional complaint.

#### *Court's assessment*

*On the violation of the right of access related to the standard of reasoning of the judicial decision-* The Court analyzed the reasoning made by the Administrative College of the High Court, namely the assessment made about the acts submitted by the applicant (verbal notes), in order to understand whether this assessment coincides with the will/wishes of the applicant. Thus, the Court found that through document no. 5210 prot., dated 22.10.2024 (second document), it did not result that the applicant had waived the review of the recourse. Not only that, but according to this act, the Court observed that the applicant had never referred to Article 490 of the CPC (cases of waiving recourse) as a legal basis, neither in form nor in content, but faced with the fact that the issue of the merits had already been resolved by the same college of the High Court, she had requested the latter to dismiss the case with the aim of clarifying and interpreting the decision on the merits, which had become devoid of purpose.

The Court found that the Administrative College of the High Court, in their assessment of the second document (verbal note), had not correctly analyzed the will/wish expressed by the applicant, by carelessly interpreting her will. Consequently, by deciding not to accept the recourse, the college had not provided a substantive response to her claims.

#### *Decision-making*

The Court decided, unanimously, to accept the application.

### Expropriation in the public interest is permissible only against fair compensation

#### KEY WORDS

*Expropriation in the public interest/fair compensation/expropriation law/property value/technical evaluation criteria/property valuation methodology/preliminary valuation/final valuation/expert report/market value/balancing of interests*

**The purpose of compensation under Article 41, point 4 of the Constitution is to restore a situation “equivalent to the previous one.” The core of this constitutional guarantee is to ensure a balance between the public interest and the deprivation of individuals’ property rights, giving rise to the State’s clear and unconditional obligation to provide fair compensation for expropriation. Such compensation may correspond to a full valuation but may also be lower, as its calculation considers not only the interests of the affected individual but also weighs them against the public interest.**

**The competent authorities, during the expropriation process, and subsequently the ordinary courts in the course of judicial proceedings, must carefully assess all relevant factors in determining the amount of compensation for expropriation, so as to achieve an appropriate balance and avoid placing an undue burden on the individual.**

### Klodiana Cankja, Ermelinda Cankja, Ardit Cankja, Drita Cani, Suzana Cani, Marvis Cani, Engjëll Tirana, Brian Tirana, Helga Hasekiu (*proportionality of compensation resulting from expropriation of property in the public interest*) – Judgement No. 82, of 18.12.2025

#### Facts

The Council of Ministers expropriated two properties (land and a building) belonging to the applicants. The expropriation was based on the Expropriation Law and was done following a request from the municipality, for the purpose of constructing a road within the city. The applicants challenged the compensation, claiming it was unfair, and filed a lawsuit.

During the proceedings, an expert report was submitted calculating the compensation based on market value, which was nearly three times higher than the amount awarded to the applicants. Ultimately, the Administrative Court of First Instance in Durrës dismissed the claim, reasoning that the compensation had been determined in accordance with the secondary legislation in force at the time the expropriation request was submitted, and that the expert report did not have predetermined evidentiary value nor was it linked to the other evidence considered.

The court held that the value of the expropriation had to be determined according to a state-approved methodology, in order to safeguard the public interest. This decision was upheld by the Administrative Court of Appeal, while the High Court refused to admit the applicants’ recourse. The applicants subsequently lodged an individual constitutional complaint with the Constitutional Court.

#### Court’s assessment

*On the infringement of the standard of reasoning in judicial decisions regarding the proportionality of interference with property rights*—The lawful limitation of property rights must be carried out “by law,” “only in the public interest,” and “only against fair compensation.” The Court therefore examined whether the High Court had provided sufficient reasoning regarding the level of compensation, that is, whether the proportionality criterion was satisfied, given that it was established that the applicants’ property rights had been lawfully restricted for public interest.

The Court found that, although the applicants’ recourse concerning the lack of reasoning by the Court of Appeal on the fair compensation raised a potential violation of constitutional rights, an issue that ordinary courts are obliged to assess with due diligence, the High Court dismissed the recourse without addressing this claim, which was decisive for the outcome of the case. Consequently, the applicants’ constitutional rights, guaranteed under Article 42 of the Constitution in connection with its Article 41, point 4, were infringed by the High Court’s decision.

Considering the constitutional nature of individual complaints and the principle of subsidiarity, the Court referred the case back to the High Court, which faces no obstacle in either resolving it itself or guiding its resolution by the lower court. In doing so, the High Court is able to harmonize and develop judicial practice in line with constitutional standards and the case law of the European Court of Human Rights (ECtHR) addressed in this decision.

#### Decision-making

The Court unanimously decided to accept the application.

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

**Fair trial right - Right to be tried by a court established by law - The standard of reasoning the judicial decision**

### KEYWORDS

*Contract of undertaking / non-fulfillment of contractual obligations/ contractual penalty/ expert report/ damages/ addition of the subject matter of the lawsuit / invalidity of the contractual clause/value of the claim /court summons /ratione temporis*

**Regarding the value of the claim, as an essential condition in determining the proper composition of the trial panel according to the provisions of the CPC, the Court in its jurisprudence has assessed that the value of the claim simultaneously constitutes an essential element for concluding about a court established by law.**

**The ordinary courts should have reasoned sufficiently their decisions in order to precise the moment when the applicant became aware of the final value of the claim (over 20 million Albanian Lekë), because from that moment the applicant could have requested the trial of the case by a panel of three judges, as a right recognized by law, or could have submitted the objections/ defenses regarding the addendum in the subject matter of the lawsuit.**

### **“Industri Ndërtim” Ltd Company (violation of the right to be tried by a court established by law) - Judgment No. 83, of 18.12.2025**

#### *Facts*

The applicant signed a contract with the company K.I. Ltd. for constructing two buildings. The latter, due to the non-completion of the building according to the terms of the contract, filed a lawsuit with the Lezha District Court, requesting compensation according to the penalties provided by the contract. During the proceedings (which took place in 24 sessions and the applicant participated in only 2 of them), the interested party sought that the value of the claim is added. Lezha District Court accepted the lawsuit and decided that the applicant shall pay to the interested party the amount of 196,800 euros, as well as the additional value of 11,876.36 euros for each month (the contractual penalty of 1%), until the final execution of the decision.

Shkodra Court of Appeal upheld the first instance decision and considered as unfounded the applicant's claim for the establishment of a panel of three judges after the addendum at the subject matter of the lawsuit. The High Court decided not to accept the applicant's appeal (*recourse*).

Regarding the claim to be adjudicated by a panel of three judges, the High Court argued that the applicant had failed to comply with article 35 of the Code of Civile Procedure during the trial at first instance, and for that reason, the application was considered to be time barred.

The applicant lodged an individual constitutional complaint with the Constitutional Court, which decided not to proceed with the examination of the case for failure to comply with the *ratione temporis* criterion.

Subsequently, the applicant alleged a violation of the right to due process before the European Court of Human Rights, which found that the applicant's right to access to the court had been violated.

The College of the Constitutional Court decided to repeal its previous decision, to reopen the process, and to send the case for examination.

#### *Court's Assessment*

*Regarding the violation of the standard of reasoning of the judicial decision related to the right to be tried by a court established by law* - The Court assessed that although the applicant's failure to appear in at least 20 court sessions may appear intentional or abusive, this does not justify the ordinary courts and the High Court from not providing a reasoned response to the claim for a court established by law and for the case to be judged by a panel of three judges due to the value of the subject matter of the lawsuit, being satisfied with merely making a simple reference to Article 158/a of the Code of Civil Procedure.

The Court also found that the applicant had not received a response to the claim for the invalidity of the contractual clause providing for a penalty of 1% on the amount of the unfulfilled obligation, a clause which was decisive for the value of the claim.

In conclusion, despite the fact that the High Court's decision reflected the applicant's allegations, including those related to the merits of the case regarding the validity of the contractual penalty, the constitutional claims raised by the applicant regarding respect for the right to be tried by a court established by law and the right to appeal to a higher court were not sufficiently analyzed.

#### *Decision-making*

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

**Right to a fair trial – Principle of legal certainty – Right to personal liberty – Principle of equality of arms and adversarial proceedings – Standard of a reasoned judicial decision**

### KEY WORDS

*Principle of ne bis in idem/ Criminal conviction/ Sentence/ Pre-trial detention/ Detention on remand/ House arrest/ Application of Article 59 of the Criminal Code/ Probation/ Extinction of security measure/ Foreign court judgment/ Extradition/ Recognition of foreign criminal decision/ Legislative Decree No. 286/1998/ Expulsion/ Articles 512 et seq. of the Code of Criminal Procedure/ Enforcement of criminal sentences*

**In criminal proceedings, the principle of equality of arms and the adversarial principle – closely linked to the defense of the defendant – constitute the most intrinsic and essential elements of a fair trial in the constitutional sense. To ensure their effective observance, the court is under a positive obligation to take measures aimed at guaranteeing a real debate between the prosecution and the defense. Such engagement directly contributes to the establishment of the truth, and enables the court to administer justice with objectivity and impartiality.**

### **Klement Shehu (violation of the principle of legal certainty in the process of recognition of a foreign decision) – Judgment No. 84, of 22.12.2025**

#### *Facts*

The applicant was convicted by a final decision of the Italian courts. In the context of proceedings for the enforcement

of such decision, the Gjirokastra District Court initially ordered the applicant's detention on remand (pre-extradition detention) as a preventive measure. He remained in detention under this measure for a period of one month and seven days. Subsequently, the aforementioned court substituted such measure with that of house arrest for the purpose of executing the Italian judicial decision. Such measure was enforced for a period of four months. Thereafter, the same court recognized the Italian criminal sentence, which imposed a term of imprisonment of four years and twenty-one days. The court, however, ordered the stay of the sentence's execution and placed the applicant on probation. While the case was pending before the Court of Appeal, following an appeal lodged by the prosecution, the applicant travelled to Greece, where he was arrested by the Greek authorities pursuant to an international arrest warrant issued by the Italian authorities. Following his extradition to Italy, he resumed serving the sentence imposed by the Italian courts. When the remaining period of his sentence amounted to less than two years, the Italian authorities, pursuant to provisions of immigration law pertaining to foreign nationals, issued an expulsion order against the applicant as an alternative measure. Upon his return to Albanian territory, the applicant filed a request to the Court of Appeal to declare the prosecution's appeal inadmissible, arguing that he had fully served the sentence imposed by the Italian State. The Court of Appeal upheld the District Court's decision to recognize the Italian criminal decision but reversed its ruling concerning the stay of the sentence's execution and the applicant's probation. It held that the applicant's claims concerning the full service of his sentence in Italy should be raised in a separate request for the extinction of the sentence. Following the enforcement of such decision, the prosecution issued an execution order stipulating that the applicant had a remaining sentence of three years, six months, and twenty-five days' imprisonment to serve; which was not enforced. The applicant's subsequent requests for a stay of execution of the Court of Appeal's decision and for appeal were rejected by the High Court. It upheld the Court of Appeal's reasoning regarding the necessity for the applicant to file a separate request for the extinction of the sentence.

The High Court further held that, under Article 518 of the Code of Criminal Procedure, the enforcement of a final decision falls within the competence of the prosecutor, and that once a recognition decision becomes final, the convicted person retains the right to apply to the court of the place of execution for any claims related to the enforcement stage, including a request for its extinction. Prior to these High Court proceedings, the applicant had already applied to the Court of First Instance for the nullification of the sentence. Such court rejected his request, holding that pursuant to Article 11 of Law No. 79/2020, the procedure for the enforcement of criminal sentences is set into motion by the prosecutor. Therefore, following the High Court's decision declaring the appeal inadmissible, the Gjirokastra Prosecution Office repealed its execution order on the grounds that the applicant had served the sentence in Italy, and ordered the Gjirokastra Local Police Directorate to remove the applicant from the wanted list.

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

#### *Court's Assessment*

*Regarding the locus standi* – The Court finds that the applicant was not subjected to an effective deprivation of liberty, since the impugned decisions did not result in any consequences affecting his personal freedom. Thus, he lacks standing *ratione personae* concerning the claim for a violation of his right to liberty. However, he has standing regarding the remaining claims.

( continues on page 24)

## INDIVIDUAL CONSTITUTIONAL COMPLAINT



*Regarding the violation of the principle of legal certainty related to the principle of equality of arms* – The Court held that the principle of *ne bis in idem* is not applicable in the instant case, insofar as the applicant was not subjected to two separate sentences by the Albanian judicial authorities for the same criminal conduct – namely, the recognition decision and another criminal decision. The Court further noted that the ordinary courts, by failing to uphold the principle of adversarial proceedings and equality of arms, applied the law in a formalistic manner, transferring the jurisdiction to restore the situation to the prosecution. Although the prosecution repealed its previous detention order *de facto* – it lacks the competence under the domestic legislation to alter the substantive aspects of judicial decisions, since its role is confined to the enforcement thereof. Such courts shifted the burden of proof onto the applicant, in his capacity as an individual, placing him at a disadvantage vis-à-vis the prosecution. As the entity that set into motion the recognition procedure, the prosecution has the obligation to demonstrate in court the existence of an enforceable judgment, valid for recognition. The applicant was thereby placed in a situation where, despite the interruption of the original sentence's execution in Italy due to an alternative measure (expulsion), the recognition process in Albania imposed a renewed term of imprisonment of four years and twenty-one days. Given that the execution of Italian court's sentence was directly linked to the process of its recognition in Albania, the Court found that the change in the applicant's legal situation should have been addressed by the High Court to ensure compliance with the principle of legal certainty in criminal matters. By failing to examine the specific circumstances of the instant case, and by declaring the appeal inadmissible, the High Court allowed the execution of the imprisonment sentence imposed on the applicant by the Italian court, an action inconsistent with its fundamental role as a court of law. Therefore, the Court held that the applicant's claims regarding the violation of the principle of legal certainty linked to the principle of equality of arms are founded.

### *Decision-making*

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

## INDIVIDUAL CONSTITUTIONAL COMPLAINT

### Fair trial – Standard of a reasoned judicial decision

#### KEYWORDS

*Armed Forces/ active military/ colonel/ Military Career Law/ right to pay/ reinstatement/ dismissal for disciplinary offense/ livelihood/ legal work/ adjudication*

The Court, taking into account that the Law on Military Career can be interpreted in several ways regarding the duration of the military person's entitlement to remuneration while on standby status, reiterates that when there is a possibility that the law can be interpreted in more than one way, which yield different results, then the interpretation that leads to the result which is in accordance with constitutional values must be selected, taking into account at this point the fundamental rights of individuals.

The Court, based on the nature of the constitutional adjudication of individual claims, as well as on the principle of subsidiarity that governs the relations between constitutional jurisdiction and the jurisdiction of ordinary courts, reiterates the irreplaceable role of the High Court, which has the constitutional duty to ensure the unification and development of judicial practice. That court has no obstacle to resolving the issue itself or to orient its resolution by the lower court, thereby unifying and developing judicial practice in accordance with the constitutional standards addressed in this decision.

### Ylli Zyla (*violation of the applicant's right to earn a living through lawful military work*) - Judgement No. 85, of 23.12.2025

#### Facts

The applicant, an active military officer with the rank of “Colonel”, was released from duty and placed at the disposal of the Armed Forces with the right to pay for two months, pursuant to Article 26 of the Law on Military Career, but was not assigned to another position and his payment was discontinued. Following administrative claims for reassignment, he addressed the court requesting reinstatement or appointment to an equivalent position and full payment until reinstatement. The Administrative Court of First Instance partially accepted the claim, ordering payment until appointment or release, while the Administrative Court of Appeal overturned the decision and discontinued the trial, on the grounds that payment beyond two months was not provided for by law and that the claim had been filed inappropriately. The applicant's appeal (*recourse*) was not accepted by the High Court.

While the applicant was released from duty for disciplinary violations, he filed a new lawsuit in court. He claimed payment of the period between he was placed at disposal until the date of his release from duty. His suit was dismissed by the court of first instance on the grounds that the obligation to pay was limited to two months and that the matter was *res judicata*. The Administrative Court of Appeal upheld the decision, while the High Court again ruled to reject the recourse. The applicant filed an individual constitutional complaint with the Court.

#### Court's assessment

*On the violation of the standard of reasoning of the decision regarding the right to earn a living through lawful work* - the Court analyzed whether the High Court had sufficiently reasoned regarding the applicant's right to earn a living through lawful work as military. On that, the Court noted that the applicant's appeals to the courts concerned a potential violation of constitutional rights, which the ordinary courts were obliged to examine with due care, and that the High Court had decided to reject the recourse without giving an explicit answer to the decisive claim for the resolution of the case. According to the Court, the claim concerned the unjustified restriction imposed on the applicant's right to earn a living through lawful work, since, on the one hand, he was kept at his disposal without being assigned to a job, which prevented him from being elected or appointed to other positions outside the Armed Forces, and, on the other hand, he was not paid. The Court considered that the applicant's constitutional rights guaranteed by Article 42 of the Constitution, read in conjunction with Article 49, paragraph 1 thereof, were violated.

#### Decision-making

The Court decided, unanimously, to accept the application.